

OKLAHOMA ABSTRACTORS BOARD
MINUTES OF REGULAR MEETING
April 19, 2022

1. A regular meeting of the Oklahoma Abstractors Board (OAB) was called to order by Chairperson Randy Coffman at 10:00 a.m., at the OLERS Conference Room, 421 NW 13th Street, Suite 100, Oklahoma City, Oklahoma.
2. Ken McDowell called the roll. Attending were: Darla Ringo, J. Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Absent: Scott Ward.
3. The Minutes of the Regular Meeting of the OAB, conducted on March 15, 2022, were reviewed. A motion was made by Mr. McDowell to approve the minutes as presented. The motion was seconded by Ms. Ringo. Motion carried.
Yeas: Darla Ringo, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Nos: None.
Abstention: J. Thomas abstained from voting on the minutes as he was not present at the meeting.
4. **Chairperson's Report-Randy Coffman:** Mr. Coffman reported that he had given an OAB update at the Oklahoma Land Title Association's convention.
5. **Administrator's Report (Board Report):** Ms. Smith stated that the agency is experiencing the same issues with implementing online licensing as has been seen several times before. Because several agencies are experiencing the same issues, the Cabinet Secretary for agencies that offer occupational licensing has called for a round table meeting with those agencies and the company providing the licensing platform to hopefully resolve those issues.
6. **Committee Reports.**
 - a.) **Budget and Finance – Jeff Mapes:** Mr. Mapes gave an update on the budget reporting that the annual budget is \$280,955.00 with encumbrances of \$33,756.35, which gives us a total Year-To-Date Encumbrances and Expenses of \$200,715.99 and a variance of \$80,239.01. The revenue for the month of February was \$21,050.00 and expenses were \$21,234.29 which leaves us with an ending cash balance of \$886,735.62. After review and discussion, a motion was made by Mr. Mapes to approve the report as presented. Second by Mr. Thomas. Motion carried.
Yeas: Darla Ringo, J. Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Nos: None.
 - b.) **Rules and Regulations – Randy Coffman:** Mr. Coffman stated that Rule Changes had been submitted to the legislature and the Office of Administrative Rules for approval. Ms. Smith verified that proof of publication for this phase was received.

c.) **Licensing and Testing-Ken McDowell:** Mr. McDowell reported that there had been 12 people take the test and all but two passed. The next testing date is at the Basic Abstractors School on May 4th.

d.) **Inspections-Katherine Smith:** Ms. Smith reported that there had been thirteen inspections since the last board meeting, but one would be tabled until the next meeting. Seven companies had no findings and five had issues with orders that were late and the recommendation from the Enforcement Committee is included in the packet. She asked for a motion to approve the inspection reports as presented and authorize the action recommended by the Enforcement Committee and the issuance of consent orders. A motion was made by Ms. Ringo. Second by Mr. Lower. Motion passed.

Yeas: Darla Ringo, J. Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Nos: None.

Abstention: Mr. McDowell, Ms. Yates and Mr. Koller abstained from voting on those reports related to their companies.

e.) **Enforcement Committee Reports-Jeff Lower:**

Applications for Licenses: Presented to the Board for approval was a list of applicants for abstract licenses or renewals, which are set out in the attachments hereto. A motion was made by Mr. Lower on behalf of the Enforcement Committee to approve all the licenses presented, subject to administrative review and to make sure all compliance issues were met, and appropriate fees paid. Second by Mr. Mapes. Motion passed.

Yeas: Darla Ringo, J. Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Nos: None.

Abstention: Mr. Koller abstained from voting on those licenses related to his company.

Renewal of Certificate of Authority (With NO Fee Changes): Presented to the Board for approval were applications for renewal of Certificate of Authority with their rate sheet by Abstract & Guaranty of Blaine County, OK, Inc., American Eagle Title Insurance Co dba Union-Creek Abstract Co (Creek), Durant Abstract, Inc. (Bryan), First American Title Insurance Company (Tulsa), Marietta Abstract Company, Inc (Love), Pioneer Abstract & Title Co. of Muskogee, Inc. (Muskogee), Grand Valley Abstract Title& Closing of Pryor, LLC dba Smith Brothers Abstract & Title Co., LLC (Mayes), Metro Abstract Title & Closing Co of Wagoner dba Smith Brothers Abstract & Title Co., LLC (Wagoner), Smith Brothers Abstract & Title Co, LLC (Tulsa), Smith Brothers Abstract & Title Co, LLC (Caddo), Tulsa Abstract & Title Co, LLC (Tulsa). A motion was made by Mr. Lower on behalf of the Enforcement Committee to approve the applications. Second by Mr. Koller. Motion passed.

Yeas: Darla Ringo, J. Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Nos: None.

Abstention: Mr. Coffman and Mr. Koller abstained from voting on those licenses related to their companies.

Renewal of Certificate of Authority (With Fee Changes): Presented to the Board for approval were applications for renewal of Certificate of Authority with their rate sheet by AAA Abstract Company, Inc. (Adair), Alfalfa Abstract Company, Inc. (Alfalfa), Rogers County Abstract Company (Rogers), Smith Brothers Abstract & Title Co., LLC (Creek), Washington County Abstract dba Southern Abstract Co (Washington). AAA Abstract was tabled until next month due to a change to their rate sheet. A motion was made by Mr. Lower on behalf of the Enforcement Committee to approve the applications. Second by Mr. Koller. Motion passed.

Yeas: Darla Ringo, J. Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Nos: None.

Abstention: Mr. Koller abstained from voting on those licenses related to his company.

Transfer of Ownership: Presented to the Board for approval was an application for the Transfer of ownership of Sapulpa Abstract and Title Company, Inc. dba American Abstract & Title Company/Smith Brothers Abstract & Title Co., LLC (Creek). A motion was made by Mr. Lower on behalf of the Enforcement Committee to approve the Transfers of Ownership. Second by Mr. Mapes. Motion passed.

Yeas: Darla Ringo, J. Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, and Randy Coffman. Nos: None.

Abstention: Mr. Koller abstained from voting because the application is related to his company.

Renewal of Permit to Build an Abstract Plant: Presented to the Board for approval was an application for the Renewal of a Permit to Build an Abstract Plant by American Eagle Abstract of Canadian County, LLC. A motion was made by Mr. Lower on behalf of the Enforcement Committee to approve the application. Second by Ms. Ringo. Motion passed.

Yeas: Darla Ringo, J. Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Nos: None.

Complaints OAB-2022-W127: Ms. Smith reported that complaint was regarding the recertification of an abstract. During the course of the investigation, it was discovered that the Respondent was presented with two different legal descriptions at the time of the order. They asked the Complainant which one the abstract should be built in reference to, and the Complainant chose one. Upon review by an attorney, it was discovered that the wrong legal description was chosen and to pull in the additional property attached to the correct legal description, the Respondent needed to recertify the abstract. The Complainant was disputing being charged for both the build and the recertification. The Enforcement Committee finds that there was no violation of the law in charging a recertification fee and recommends terminating the investigation and closure of the complaint. A motion was made by Mr. Mapes to approve the recommended action. Second by Ms. Ringo. Motion passed.

Yeas: Darla Ringo, J. Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Nos: None.

Complaints OAB-2022-W128: Ms. Smith reported that complaint was regarding the copying of an abstract. During the course of the investigation, it was discovered that the Complainant's abstract was requested by a company in the same county as the competitor who was storing the abstract. The company storing the abstract did not ask for proof of a current transaction as is allowed in the law but simply sent the abstract to the Respondent. The Respondent copied the abstract and returned it to the competitor to return to storage. The Enforcement Committee finds that there was no violation of the law by requesting, copying, and returning an abstract and recommends terminating the investigation and closure of the complaint. A motion was made by Mr. McDowell to approve the recommended action. Second by Mr. Lower. Motion passed.

Yeas: Darla Ringo, J. Thomas, Jeff Lower, Jeff Mapes, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Nos: None.

7. **New Business:** Mr. Coffman asked for new business. There was none.
8. **Report Legal Counsel-Whitney Scimeca:** Ms. Scimeca reported that she had been working with the Enforcement Committee.
9. **Visitor's Comments:** Mr. Coffman asked for any visitor comments. Mitzi Combs thanked Randy for speaking at the OLTA Convention and that she was glad that other board members and Ayla were able to attend.
10. **Announcement of next meeting:** Tuesday, May 17, 2022, at 10:00 a.m., 421 NW 13th Street, Suite 100 (OLERS) Conference Room, Oklahoma City, Oklahoma. Mr. Coffman recused the members of the Enforcement Committee from attending the Administrative Hearing portion of the Board Meeting.
11. **Administrative Hearing:** Upon the arrival of the Respondent's attorney, the Administrative Hearing was commenced. Counsel introduced themselves. Ms. Whitney Herzog Scimeca for the Complainant and Mr. Wes Johnston for the Respondent. Mr. Johnston also introduced Luke and Lisa Pollard, owners of the Respondent company, Arbuckle Title and Closing Services.

Mr. Ashbaker, counsel for the Board made announcements that he would allow opening arguments, if there were any and then Ms. Scimeca would begin the presentation of witnesses for the Complainant. He also stated that he would allow questioning but that all cross questions would be held until the initial presentation/questioning was complete.

Mr. Johnston stated that he felt things had been set up at the last meeting and would be willing to waive opening arguments. Ms. Scimeca stated that she did have an opening argument, so Mr. Johnston reserved the right to present one as well upon hearing Ms. Scimeca's.

Ms. Scimeca stated that the formal complaint had been filed related to actual physical presence. She would present evidence and testimony that three things had not been done. There was no actual physical presence at the time that the Certificate of Authority was issued on September 15, 2020 which is a violation of rule. The Respondent was not standing upon like footing as a common carrier which is in statute. That there was misrepresentation to the board in order to obtain a Certificate of Authority. Those are the items that will be presented. Witnesses will be Kathy Smith, the State Administrator of Abstracting and Mark Luttrull, a previous member of the Board. Mr. Luttrull was a board member at the time the Certificate of Authority application was presented and there are also three members still on the board that were present also. She asks that all of those factors be considered when deciding if there was misrepresentation to the board in order to obtain the Certificate of Authority. The board has the authority through statute to take action related to their decision.

Mr. Johnston waived presenting an opening argument.

Ms. Scimeca called Mark Luttrull to be the first witness and he was sworn in by Mr. Ashbaker. He stated his name for the record. Ms. Scimeca asked if he was a licensed abstractor, which he affirmed and stated he had been an abstractor for around thirty-two years and currently works for Pioneer Abstract and Title of Muskogee, Inc. which holds a Certificate of Authority in Muskogee County with no other Certificates or Permits to build in any other counties. Mr. Luttrull holds an ownership interest in that company. He does not consider the Respondent company to be a competitor in any way because neither his company or the Respondent's hold Certificates of Authority in the other's county.

She asked him about his presence on the board which he served on from July 2013 through June 2021. He has also been a member of the Enforcement Committee.

She asked him what his understanding of actual physical presence was to which he replied, the requirement by the statute for a Certificate of Authority holder to have their office in the county, usually the county seat. It was clarified that it is in the Rules, not statute. She presented him with a printout of the Rules to identify it specifically as 5:11-9-1 3(A)7 which she asked the Board to take note of and handed them out to the Board. Mr. Johnston noted that he would also be referencing the Rules.

She asked him what his understanding of what it means for a Certificate of Authority holder to stand on like footing as a common carrier. He responded that the term is used by the state to establish the utility of the business of abstracting. The state regulates virtually every aspect of the abstract from setting requirements of who may participate and how. It defines the abstract, the certificate of authority, sets time periods and reserves the right/has the duty to regulate the fees, and regulates every function regarding the relationship with the customer, how abstracts are completed (first in/first out), establishes forms, the fashion the abstract the abstract is to be completed. With that in mind, he believes the state considers it to be a utility in every aspect except the guaranty of profit. He expanded upon the first in/first out prospect stating that because almost every abstract order is tied to financing from lenders, it is important that orders be handled in the same

manner with only one tier of customers with no differentiation in frequency of business or importance. Common carriers in the context of abstracting cannot refuse an order if the criteria for a valid order are met. It was verified that the common carrier status is part of the statutes in 1:32-C. She asked the court to take notice of the statute and handed copies out to the board.

Mr. Luttrull was a board member on the date that the Certificate of Authority was reviewed in the consideration of a Certificate of Authority for the Respondent on September 15, 2020. The application for Certificate of Authority and related inspection documents were reviewed. Counsel presented those documents to the witness which he verified and confirmed that they were for the Respondent's company. She handed copies out to the board.

Ms. Scimeca asked if there had been a vote for approval of the Certificate of Authority which there was, and Mr. Luttrull voted yes. He asked a question twice during the meeting because the first time he asked about physical location for the plant because counsel for an objector had asked about the location and Mr. Luttrull didn't feel like it had been fully answered so he asked again and then asked it again because of some of the comments that had been made, he wasn't sure what the actual address would be. Counsel presented him with a copy of the minutes from that meeting and passed it out to the board, as well.

Counsel asked what the location of the business was listed as on the application which he responded was 108 South 2nd in Marietta. She also asked what was on the inspection report which was the same address. He asked the question about the location in the board meeting because the objector's counsel stated that there was no location for the plant listed on the report, so he wanted to clarify the location. Ms. Smith gave the answer that the location would be the same one as on the inspection report and explained the inspection process to the objector's counsel. The second time Mr. Luttrull asked was because of conversation about there not being a fixed location for the title plant. At that time, Mr. Pollard was asked which address he would be using for customers to be placing orders and he started talking about other locations that were not on the application or in the inspection report and Mr. Luttrull was concerned.

Mr. Luttrull was a little confused whether he was misunderstanding something that had already been approved by the Enforcement Committee, so he went ahead and approved the application. He stated that the location is important because it's required by law to have an actual physical presence and it's also important to customers so that they can reach you in your county and not have to drive out of county or to some other town to place orders.

He confirmed that the board voted to approve the issuance of a Certificate of Authority and it was issued that day, September 15, 2020. Once the Certificate of Authority was issued, he wasn't concerned other than he wasn't clear in his mind about what the actual physical location would be. Months later, in April, he heard a comment in the hallway that Arbuckle Abstract was not open in Marietta. The next day he drove to Marietta

himself to look to visit the location to see if there was an abstract company located at that address. He found a dentist's office at 108 S 2nd. He did search for, but did not find a Suite A. He saw an exterior staircase but did not go up to the door. There were no signs advertising an abstract company at that address. When he drove through town, he saw a building at 304 W. Main that had a sign that advertised it as being an abstract office. He saw a sign on the window at that location stating that Arbuckle Title and Abstract was not ready to receive customers and gave a phone number to call. He took pictures at those locations while he was in Marietta. He returned home and a few days later emailed the pictures to the OAB office and asked if it might be a violation and asked Ms. Smith to forward the information to the Enforcement Committee. He was handed a copy of the email he sent to Ms. Smith in the OAB office which included the photos he took on his visit to Marietta. He identified the photos. One was a close up of the door of the dentist's office. The second was a broader view of the entry to the dentist's office. The third was the storefront that had the banner at 304 W Main and the final was a close up of the sign on the door at 304 W Main which said they weren't ready for customers. He visited the locations on a Wednesday between 2 PM and 4 PM in the afternoon. The sign reads that Arbuckle Title and Abstract, bonded abstractor for real estate situated in Love County, Oklahoma. We are open for business and are now taking orders in Love County. Until internet and phone service is installed at this location, we can be contacted, and orders can be placed by emailing orders@arbuckletitle.com or by calling 580-223-0111. Thank you, and we appreciate the opportunity to serve you.

He stated that he sent the information to Ms. Smith to make sure she was aware of what he found and so that she could forward it to the Enforcement Committee. He was concerned because of the lack of a physical presence.

He went to the address on the documentation when they applied for their Certificate of Authority and also verified that the same address on their rate sheet. Counsel gave copies of the rate sheet to the board. He went to the second location because he saw the sign. He confirmed that customers would have been unable to walk in and submit an order at either location. Based upon what he observed, the Respondent was not operating on like footing as a common carrier because he did not have an actual physical presence in his county and the location of his Certificate of Authority was not an abstract office. He was curious if either location had ever been opened as an abstract office and he regretted approving the Certificate of Authority. It did not appear that either location had ever been opened as an abstract office. His belief is that at the time of the issuance of the Certificate of Authority was that it was the Respondent's intention to make us believe that he intended to have an actual physical presence open the next day when he did not. It is a requirement that there be an actual physical presence when the Certificate of Authority is issued unless the applicant lets the board know that they won't have one in place right away then a conditional approval can be given. He does not believe the Respondent had an actual physical presence in place when the Certificate of Authority was issued on September 15, 2020. He does not believe there was a physical presence in place when he visited Marietta on April 21, 2021. He believes the existence of an actual physical presence was misrepresented to the board.

Mr. Johnston cross examined Mr. Luttrull beginning with asking him about the comment he heard in the hallway after a board meeting that brought the matter to his attention. He stated that he didn't know who heard the comment, only that it was a man. Upon hearing the comment, he decided to go to Marietta to see what he could find out.

The address on the application and inspection report was reviewed again and confirmed to be 108 S 2nd. The plant was located online, and a portion of the inspection was performed via the web. The objector's counsel was questioning where the plant was physically going to be located. Mr. Pollard stated that he had one building on 114 W Main that he purchased for the interim until the other building is fixed. Mr. Luttrull did not reference the minutes from the board meeting when he made his visit to Marietta. Counsel showed a photo of the dentist's office to Mr. Luttrull. Mr. Luttrull confirmed that he did not locate a Suite A and did not go up the stairway and did not know what he would have found if he did. He confirmed that it was not a desirable location for an abstract office. He confirmed that he visited the location at 304 W. Main and found it closed up. He confirmed that he did not visit 114 W Main and would not know if the Respondent was operating there. Counsel asked if he felt Mr. Pollard was trying to be misleading when he stated in the meeting that he would be using 114 W Main in the interim. Mr. Luttrull stated that he didn't know what to think because Mr. Pollard did not appear to be confident in any of his answers and mentioned two or three different addresses and the one address we knew for certain was the address on the application. Counsel asked if his feeling of misrepresentation came from Mr. Pollard seeming unconfident in his answers about location. Mr. Luttrull stated that it came from the documentation having the wrong address. Counsel asked to be shown where the application for a Certificate of Authority asks for an actual physical presence. Mr. Luttrull said that it shows a business street address of 108 S 2nd Suite A. It was confirmed again by Mr. Luttrull that Mr. Pollard stated in the board meeting that he was possibly going to use 114 W Main as an interim location, but it was not a confident fact-based statement.

Mr. Luttrull stated that Mr. Pollard missed the common carrier requirement in that statute because he did not open a location for business in the county which the Certificate of Authority was issued for. The sign pointed potential customers to a location in Ardmore and was current as of the day he visited the location. Regardless of when it was placed it was still there on the day he visited. Mr. Luttrull was not aware of any complaints from anyone in Love County about Arbuckle. He did not call the Respondent while he was there.

Ms. Scimeca redirected by asking Mr. Luttrull about his visit and whether he thought it was an inspection. He said no, it was more of an investigation which as a board member he is able to do and then sent his findings to Ms. Smith to turn over to the Enforcement Committee. Counsel read from the minutes that Mr. Pollard stated that he had the location listed on the application but that he had since purchased another location at 114 W Main which was open to the public but also has the address on 2nd street and are currently remodeling another location on 304 W Main and asked Mr. Luttrull if that statement was clear to him. Mr. Luttrull stated that it was not clear to him. She went

farther back in the minutes and asked him if he asked about the physical presence at that time and asked him what the answer was. He stated that Ms. Smith answered at that time that it was the location listed on the inspection report which is 108 S 2nd, Suite A and that Mr. Pollard did not contradict that answer. He confirmed again that while he went to 108 S 2nd, but did not go up to the 2nd floor because he didn't know to go up there. He stated that if there was no location for a customer to go to in the county that it could be considered a refusal. He also feels that because the address on the application and rate sheet were not corrected that they are misrepresentations.

He confirmed that he felt that not having an office counted as a refusal. Opposing counsel asked him to show him in the Rules or Statutes where it states that not having an office open is a refusal. He could not show it in the law but stood by his opinion that it counted as a refusal. He stated that he felt it was a violation of common carrier because if you're not open for business, you can't serve the public. The rule doesn't specify that you have to have specific business hours, but he feels it is a violation of common carrier if you're not open for business at the location you identified. He stated again that he did not consider it an inspection but an investigation and had done that five or six times in addition to the time he went to Marietta because he wanted to check out a particular situation he had heard about.

The answer Mr. Pollard gave during the board meeting was revisited and Mr. Luttrull stated that he did not ask clarifying questions at that time to untangle Mr. Pollard's answer.

Ms. Yates stated Mr. Luttrull the statute regarding common carrier for a Certificate of Authority holder and how they cannot refuse a valid order and asked how it related to the case at hand. Mr. Luttrull contrasted it with an example of private carrier and common carrier stating that a private carrier has the right to approve orders and choose whether to take them, but a common carrier cannot. He reiterated that if someone is not open for business then it could be considered a refusal.

Ms. Scimeca called Kathy Smith as the next witness. Ms. Smith was sworn in by Mr. Ashbaker. She stated her name as Katherine Smith and that she works for the Oklahoma Abstractors Board as the State Administrator of Abstracting and has done so for a little over six years since September 28, 2015. Previous to that, she was self employed and ran the Oklahoma Land Title Association for seven-and-one-half years. She is not an abstractor but has attended the OLTA's Basic Abstractors School at least twice a year for the entire time she was with the Association and has attended several intermediate and advanced abstractors schools. She does not have and has not had any ownership interest in any abstract companies. Ms. Scimeca asked what her understanding of actual physical presence for a COA is. She stated that the holder of a COA needs to have a building, whether it's a leased office or an owned property where a customer can come and transact their business. She said it's important because a customer needs to have somewhere to come do their business. Although abstracting produces a product, it is a service industry and if you do not have a location where the consumer can come to do their business and they have to chase you down for it, that's not servicing the customer.

She confirmed that she sees that the term of actual physical presence means that there has to be a location in the county where a customer can walk in and order an abstract.

She stated that the application for a Certificate of Authority requires that the applicant give a business address which is what is presumed to be their actual physical presence. Ms. Scimeca asked for her understanding of what “upon like footing as a common carrier” means. She stated that to her it means that all businesses need to act in the same manner and they also need to act with regard to consumers in the same manner meaning they need to have established rate sheets, that they need to have a physical presence where people can come and do business with them, and that they need to have set policies to where they treat everyone the same.

Ms. Scimeca asked for judicial notice of Title 13 related to Common Carrier. There was no objection. It was given judicial notice and was allowed to be handed out to the board.

Ms. Smith read the statute. Title 13 Chapter 1 Section 1 Accept and Carry and it says that a common carrier must, if able to do so, accept and carry whatever is offered to him at a reasonable time and place of a kind that he undertakes or is accustomed to carry.

She confirmed that it aligned with what her thinking of what a common carrier means.

Ms. Scimeca asked for an explanation of the process to obtain a new COA. Ms. Smith stated that as soon as an application for a new Certificate of Authority is received, notification goes out to any competitors in the county as well as to the clerk’s offices and the comment period is started. Twenty-five legal descriptions are gathered for which the applicant has to prepare chains of title and ten legal descriptions are gathered for which they applicant has to prepare complete abstracts. They are given time to do that and once it’s complete, a time is set up for an in-person inspection. The abstracts are reviewed typically by abstractor members of the board, and she takes the chains of title and compares them against what the county clerk has in their records at the courthouse to verify they have the information in their plant that should be. There are also thousands of name searches performed to check for things like probates, divorces, tax liens, and statements of judgment. She also verifies their physical presence and requires someone to be there so that she might enter the location to verify it is a space that can be open for business. This is all part of the process upon receipt of the application and there are timelines that have to be adhered to for certain aspects. After the in-person inspection occurs, an inspection report is prepared and presented to the Enforcement Committee. They review the report as well as any feedback from those reviewing the abstracts. They make a decision as to whether to recommend it for approval to the Board or to push back and ask for further inspection or ask questions. If it is going to be recommended for approval, it goes on the agenda for the next board meeting.

She confirmed that the Respondent completed an application for a new Certificate of Authority for Love County and that she was the administrator at the time of the application. The Respondent applied with an LLC entity and has no other COAs in other counties, only a permit to build an abstract plant in Carter County.

Ms. Scimeca handed Ms. Smith the Application the Respondent filed for their new Certificate of Authority in Love County. She confirmed that the business street address on the application was 108 S. 2nd Street, Suite A. At the time of the application, that's the address she considered to be their actual physical presence. She confirmed the application was processed with notifications and all of the gathering of information was performed. She noted that the name search portion of the inspection was performed via the web because that was possible with the platform that the Respondent was using for the housing of their plant records. She was assisted with the review of the abstracts by Robert Getchell who was the attorney member of the Board at the time who actually had abstracts from the county that he could compare side-by-side, as well as by a long-time abstractor and employee of John Bailey, also a member of the Board who had been reviewing abstracts for the existing COA holder in Love County for some time to help them out. She conducted the in-person inspection on September 2, 2020. She went to the location listed on the application, 108 S. 2nd and found everything was locked and went to the dentist office and they weren't aware of any abstract company located there. Because no one was there to meet her, she called up to the Ardmore office where the Respondent's closing office is located and had to wait for Mr. Pollard to come down and meet her. Upon his arrival, he took her upstairs to the apartment on the back of the dentist's office. It was in disorder, but there was a table and chair there and she told him it was fine, and he could use it, but it needed to be cleaned up and there needed to be clear signage showing people where to go because there wasn't a clear path to the stairs and no way to know whether they should go upstairs or into the dentist's office. The signage needs to make it clear where people need to go. The Respondent took her to another building that he'd purchased that they were building out to be their offices which is located on the 300 block of Main Street. Ms. Scimeca confirmed that was 304 W Main Street. Ms. Smith stated that it was the location that had a banner sign above the door with the company's name on it. She was shown around the space, and it was clearly going to be a nice space with closing offices and conference rooms, but at that point it was just drywall and bare wire everywhere. She was concerned that it would not be ready in time, so she needed to know where he was going to be able to transact business from. He then confirmed that it probably wouldn't be ready and said he had a third space he wanted to show her. He took her to 114 W. Main which had been a gift shop and was still full of gift shop items. She told him again that the Board needed to know for sure which location was going to be open for business when they received their COA that she didn't care which one it was, but they needed to know which one. He then wanted to take her across the street to show her a fourth building that was purchased for \$1 from the city because it was slated to be condemned. She said she didn't need to see that building but needed to know for sure which one was going to use to transact business. That statement was made multiple times. She confirmed again that the location on the application, 108 S. 2nd was reviewed and there was no signage at that time. She confirmed that the location at 304 W Main had a vinyl banner sign over the door on the building which matched one of the pictures taken by Mr. Luttrull.

Ms. Scimeca handed the witness the email that was sent by Mr. Luttrull and asked her to confirm which picture showed the building with the banner. Ms. Smith confirmed the

photo. She also confirmed that the third location was 114 W Main which had been a gift shop.

Upon completion of the inspection, the inspection report was completed, reviewed by the Enforcement Committee, they recommended it to the Board for approval, and the application was approved, so the Certificate of Authority was issued.

The address used on the inspection report was the 108 S. 2nd because at the time of the in-person inspection, it was the location most ready to be open for business and it was the address on the application. No other official notification was received of one of the other locations being ready. She confirmed she was present at the board meeting where the Certificate of Authority application was presented, and she believed they had actual physical presence at that time because he had three possible locations and the one on the application could have been easily cleaned up and had furniture and could have been open for business on the day the COA was issued. She stated that she didn't see how it could have been unclear that he needed to have an actual physical presence upon issuance of the COA. The COA was issued by the office and handed to the Respondent the same day of the board meeting which was September 15th. She was handed a copy of the Certificate of Authority document that was issued to the Respondent on September 15, 2020. The document was also handed out to the Board. The second page of the document is identified as the cover letter that accompanied the certificate.

Once the email was received from Mr. Luttrull, Ms. Smith went to Marietta herself. Ms. Scimeca handed her a copy of the email received from Mr. Luttrull which Ms. Smith confirmed. She went to the location on April 29, 2021. She emailed the Enforcement Committee and asked if they wanted her to look into it and Mr. Getchell, Chair of the Committee at the time said yes. She went to Marietta and arrived around 10 AM. It had been raining so she had to go through puddles to get to the stairs but went up and although it couldn't be seen from the ground, she opened the storm door and found a sign on the door that said that the company was open for business but until phone and internet were installed, they customer needed to contact them by phone or email at their location in Ardmore. She went to the build out location and found the same sign on the door. She went to the gift shop location and found the same sign there. Looking through the window, she saw a table, but no chair and it was locked. She left that location and drove their closing office in Ardmore. She confirmed that it was a normal business day when she was there. Upon arriving at the closing office in Ardmore, she asked to speak to Luke who was not there so his wife Lisa took Ms. Smith to her office where she got Luke on the phone. She asked him to help her understand why there was not a location open in Love County. He said that they had locations in Marietta to which Ms. Smith stated that there was no one there and he said that he didn't understand that they actually had to have people there. She asked him how he got that impression because she had told him over and over and over and over again that there needed to be a location where people could come to transact business. He stated that wasn't his understanding and stated that he wears hearing aids so he doesn't hear real well so he must have misunderstood. Se told him that from that point forward, they would not have any one-on-one conversations but that he would need to have a third person there to be sure everything they were being told

was understood. She didn't have any conversations with Lisa Pollard beyond having her get him on the phone but while she was on the phone, Lisa was sitting in the corner of the office looking down at her hands and to Ms. Smith it appeared that Mrs. Pollard was mouthing the words, "I tried to tell him" while shaking her head. At the end of the phone conversation, he stated that he would have someone at the location first thing on Monday morning.

Ms. Scimeca handed Ms. Smith a document. She confirmed that it was the email she sent to the Enforcement Committee and the AG Representative for the Board at that time once she returned from her visit to Marietta. It was sent on April 29, 2021 at 1:01 PM. Ms. Scimeca asked if it contained what she had just relayed and Ms. Smith said yes, for the most part but that there was a part she hadn't mentioned. While on the phone with Mr. Pollard, he stated that they'd been down there and been down there almost every day. She asked if it had been open for business and he said no. She asked how often there had been someone there within the last nine months with the issuance of the COA and he said he didn't know off the top of his head to which she replied that means none at all. He said they could have someone there as early as Monday and she told him it was in the hands of the Enforcement Committee.

She confirmed that a Certificate of Authority is good for one year and has to be renewed annually. The Respondent did submit an application for renewal of their Certificate of Authority. She was handed that application which was received July 13, 2021. It was admitted and handed out to the Board. The address listed on the application was 114 W. Main Street, the former gift shop. Ms. Smith confirmed that this application was the first official notice of the change in location because until something is received in writing, the office does not consider they've been notified. She believed they did have an actual physical presence at the time of the renewal application because she had returned to Marietta when she was in the area in the July timeframe and verified that they had staffed an office. There was a young woman there, seated at a desk who had an abstract on her desk waiting for someone to come pick it up, so it was obvious she was there for Arbuckle. She confirmed the renewal application was approved by the Board. She was handed a copy of the application which she confirmed was received August 17, 2021. It was admitted and handed out to the Board. One the second page was the cover letter that went out with the certificate which had the mailing address of 1405 W Broadway in Ardmore which is their closing office in Carter County. The original certificate's letter in September 2020 used the same mailing address.

In the Respondent's motion to dismiss, they state that it is not disputed that the Respondent has provided at least two abstracts for every business day for Love County property owners. Ms. Scimeca asked if it was truly undisputed. Ms. Smith stated that she had no way to dispute it because she doesn't see their order logs so there is no way to know if it's accurate or not. She also stated in response to a question that advertising in the paper and being a member of the Chamber of Commerce have nothing to do with actual physical presence because pretty much anyone can do that. Ms. Scimeca asked if it was truly undisputed whether Mr. Pollard and his employee being in Marietta at least some portion of every business day constituted actual physical presence. Ms. Smith

replied that the consumer had no way to know when someone would be there. She was there and no staff was present. When she asked him for specifics of when they were there, he responded that he didn't know off the top of his head so that means they weren't consistently every business day with consistent hours so how is the customer supposed to know when they'll find someone there. They can't. No business hours were posted on any of the locations. All three had a sign stating that the customer had to phone or email to receive service.

Mr. Johnston began his cross by asking if the complaint came to her attention through Mr. Luttrull. He pointed out that the Board has Rules regarding the handling of complaints. She clarified that it stipulates how to deal with formal written complaints and that this was not an item received via the written complaint form. She also stated that the Board has the ability to perform investigations at its discretion. She confirmed the procedure for a written complaint received on the form, the Respondent is sent a copy of the complaint and given time to respond. She confirmed that process was not followed because the qualifying event of receiving a written form had not happened. Mr. Johnston continued to stipulate multiple times that the process was not followed, and Ms. Smith continued to state that the form which initiates that process was not received. A copy of the Rules was handed to Ms. Smith, and she pointed out the section that gives the Enforcement Committee authority to acquire information 5:21-3-1(C). Mr. Johnston asked to have the Rules admitted. There was no objection, and the rules were handed out to the Board. Mr. Johnston continued to ask the same question repeatedly until Ms. Scimeca objected that he was being argumentative with the witness. It was overruled, but Mr. Johnston was cautioned against badgering the witness. Mr. Johnston asked the same question again. Ms. Smith answered again.

Mr. Johnston asked Ms. Smith about the application for the original Certificate of Authority by the Respondent. She confirmed the application again. She verified that she had been shown three possible locations for the Arbuckle office in Marietta and that he needed to let the office know which location he would be using for sure. She did not follow up with him because she had already told him that he needed to inform the office. He asked if the 108 S 2nd, Suite A had been correct at the time of the inspection and at the time of the application. He pointed out that Mr. Pollard had stated in the board meeting that the 104 W Main location would be the interim location. She responded that as Mr. Luttrull had already pointed out, that the answer given by Mr. Pollard was not completely clear. She also pointed out that it was a verbal comment and that the OAB office does not take verbal comments as notification but that notifications have to be received in writing. He stated that he was trying to figure out where the misrepresentation was. He went through the inspection report and asked her about the items contained in the report and whether there had been misrepresentation. She stated that there was possibly a misrepresentation with regard to their physical presence. He asked where it mentioned physical presence which she answered that it doesn't use the exact words of physical presence, but it does state physical address. He stated that the application doesn't ask for a physical presence either, but she pointed out that it asks for a business address, which was provided. He asked her for where Arbuckle made an intentional attempt to deceive the Board. She responded that based upon the information provided and the subsequent

conversation that he stated that he hadn't understood that he had to actually staff the office that constitutes, in her opinion, an intention to not fulfill the requirement of a physical presence open for consumers. He asked whether it was clear that there was a misrepresentation at the time of the board meeting regardless of what was uncovered later. She stated that based upon the information provided, it was assumed that there was no misrepresentation. He asked her if she was in charge of interpreting the statutes. She responded that no, she did not personally interpret the statutes, but leaned upon her Board for that interpretation. She confirmed that the term "actual physical presence" was not in statute, but only in the rules. He stated that the legislature didn't think it was important enough to put actual physical presence in the statute to which she responded that the rules are also reviewed by the legislature and the phrase is in there. She confirmed that it appears twice in the rules. She confirmed that there is not a definition of actual physical presence in the rules. He stated that there was nothing in the rules that requires a holder of a Certificate of Authority to maintain an actual physical presence in the county. She confirmed that is correct but seems a fallacy of logic to have someone have a physical presence just to get their Certificate of Authority and there would be no expectation of maintaining it. She confirmed that the Respondent had four buildings in the county. He asked her about the gift shop location which she stated had no furniture in it when she viewed it but a lot of gift items in the shop. When she visited during the investigation in April of 2021, the gift items had been cleared out, but there was one table present but no phones. She stated that there were some built in cabinets on the wall from when it had been a gift shop, but that there were no file cabinets. The table was the only thing that could be seen looking through the front window. She confirmed that no one was there when she visited and could not say if someone had been there before or after her visit but that it was mid-morning on a Thursday during normal business hours on a normal business day. He asked if there was a requirement in the rules to have normal business hours to which she replied there was not. He asked if there was something in the rules that stated that a company had to post business hours to which she replied there was not. He asked if she was aware of any customers who had trouble doing business with Arbuckle. She replied that she had not received any information on that. She confirmed that she had not received any complaint from the public about being unable to do business with the Respondent. He asked her that if there is no evidence of harm, then why does he have to have a physical presence. She stated that if he didn't meet the requirement for physical presence, then other companies wouldn't have to meet the requirement for physical presence and the consumer would definitely be harmed. He asked again about the requirement for specific hours, which she confirmed again was not stipulated in the rules. She confirmed that she's not the one to decide what actual physical presence means.

He stated that she had made an allegation via email that the Respondent had violated Section 36 to which she said she would need to see the email. She confirmed that she had sent the letter out as directed by Marie Schuble, the Board's Attorney General at the time to go with the Consent Order Ms. Schuble had prepared. Ms. Scimeca objected because of relevancy. Mr. Ashbaker stepped in to see what the question was. Mr. Johnston asked whether it was Ms. Smith's position, based upon the letter whether the Respondent had violated Section 36. Ms. Scimeca objected because he was it was an offer of settlement

that took place before the formal complaint which the hearing is being held in reference to. Mr. Ashbaker asked for clarification and Mr. Johnston stated that he was trying to establish the credibility of the witness and Mr. Ashbaker sustained the objection.

Mr. Johnston moved on to the subject of common carrier. He asked if allegations about common carrier were in any previous allegations against the Respondent and she stated that they weren't to her recollection. He stated they were cooked up at a later time. Ms. Scimeca objected, and Mr. Ashbaker stated that he agreed, and counsel should move on because previous discussions are not applicable to the current issues at hand. Mr. Johnston stated again that he wasn't brought up before to which Ms. Smith stated that she could not say with certainty that it was not. He stated that the term common carrier is used in reference to where everyone has to be on a level playing field and that one of the most common uses is with pipelines. Ms. Smith replied that she didn't know about pipelines but was aware of it in terms of transportation. He stated that you could call for a taxi and there was nothing in common carrier that stated you had to be able to go in and see them to get a taxi to which she replied that was correct.

She confirmed that she had given her account of the phone conversation she'd had with Mr. Pollard on April 29, 2021 but that while she had been told he was visiting Kimmel Corporation in Idaho, she had not been told the purpose of the visit. She confirmed that she had already gone over the conversation and read a portion of what he had said. Mr. Johnston asked if he had tried to lie or cover up anything to which she replied that was the case to her understanding but that she had no way to know if he was making anything up or not. She stated that based upon the conversation he admitted that he didn't understand that he had to have people down there. He reiterated again that Mr. Pollard wears a hearing aid and can't hear so well. They also revisited the statement that Ms. Smith had told Mr. Pollard repeatedly that he needed to have a location where consumers could come and transact their business. Mr. Johnston stated that customers can do that at 119 (gift shop), can't they? She stated that now they can. He asked if customers were able to drop off abstracts to which she replied that she had no idea. He asked if arrangements were made for customers to do business to which she replied that she had no idea. He asked her if there was any email or anything in writing that told him over and over that he needed to have an office open for business. She reiterated again that she made multiple statements the day of the in-person portion of the inspection that he needed to have a location open for business where customers could come to transact their business and that she's never had any other company that didn't understand that physical presence meant they needed to have an office open for business. She stated that if she is not specifically quoting the statute, something she says does not carry as much weight. He asked if other companies had gotten in trouble with the Board. She affirmed that. He asked about a complaint filed against Steward by Arbuckle. Mr. Ashbaker stopped the questioning because it wasn't the same type of infraction and was therefore not applicable.

Mr. Johnston asked to make an offer of proof should the Board go into deliberations. Mr. Ashbaker stated that would be allowed.

Mr. Johnston asked if Ms. Smith could have called the Respondent up when the issue was brought to her attention. She stated that she could not change the past but had acted how she was directed by the Enforcement Committee. She confirmed that once she contacted the Respondent when she investigated, he remedied the matter. Mr. Johnston asked if that was indicative of a misunderstanding to which she replied that she couldn't say if there was a misunderstanding or not but that she did not see how there could have possibly been a misunderstanding. Once she talked with them in April, they remedied the situation quickly and to her understanding, they continued to have staffing at the location through the renewal application.

Ms. Scimeca redirected whether it was Ms. Smith's ability to make recommendations to the Board on behalf of the Enforcement Committee for any penalty amounts. Ms. Smith responded that no, the Enforcement Committee has that sole decision-making ability. She also verified that there is an additional Certificate of Authority holder in Love County and that if someone had gone to one of the Respondent's locations and, finding no one there, they could have gone to the competitor, and she would not have known that information. She stated that she believed she had handled the information from Mr. Luttrull in accordance with the allowances of the rules.

Mr. Johnston asked about the competitor in Love County and stated that they would close for two weeks at a time and have irregular business hours to which Ms. Smith replied that she had no information about that and that she had not received any complaints about that company.

Questions from Board members was allowed. Ms. Yates asked if Ms. Smith recalled getting a complaint about someone not being open to which Ms. Smith replied that she had received calls about phones at businesses not be answered, but that she had not had a written complaint that a business had been closed. The witness was excused.

Mr. Johnston stated that they would like to renew their motion to dismiss because there was no proved misrepresentation and no specifics about the meaning of actual physical presence in the rules and that there had been no particular rule identified that had been violated.

Mr. Ashbaker responded that there was no statute or rule that allowed for a motion to dismiss but at this point, since there had been testimony that it would be more akin to a summary judgment and that was not allowed either. He stated that now, it was the Board's charge to make a decision on the matters and that the standard to dismiss has not been met so he overruled.

Mr. Johnston agreed that it was up to the Board to decide based upon the information received.

Mr. Ashbaker asked if Mr. Johnston was demurring which he confirmed. Ms. Scimeca asked for clarification if he was demurring and not going to present a case. Mr. Ashbaker

stated that Mr. Johnston could demur and if they agreed, the case would be over but that if they don't agree then he could go ahead and present his case.

Ms. Scimeca stated that there had been items presented that were supported by statute and rule including actual physical presence in 5:11-9-1, not standing upon like footing as a common carrier in 1:32(c), and misrepresentation to obtain a Certificate of Authority by not having actual physical presence which was shown through the use of the address of the dental office which was on the application and the inspection report which was shown during a physical location check and confirmed in the board meeting minutes and not contradicted by the Respondent. It's also the address shown on the rate sheet and was one of the locations visited by Mr. Luttrull and not open for business. It was also visited by Ms. Smith along with the gift shop location and none of the locations checked were open for business and therefore was not a physical location at the time of the in-person inspection nor at the time of the board meeting when the COA was issued. The Respondent had a duty to inform the board of their actual physical presence. It's up to the Board to decide if there was misrepresentation. She asked that the Board make a ruling to the charges because agencies are able to interpret their own rules even when they aren't spelled out.

Mr. Ashbaker stated that the Board needs to make a decision regarding Mr. Johnston's motion. Mr. Coffman confirmed and asked for a motion to go into Executive Session to make a decision about the motion of dismissal. Ms. Yates made that motion. Second by Mr. McDowell. Motion passed.

Yeas: Darla Ringo, J. Thomas, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Nos: None.

Mr. Coffman asked for a motion to come out of Executive Session. Mr. McDowell made that motion. Second by Ms. Ringo. Motion passed.

Yeas: Darla Ringo, J. Thomas, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Nos: None.

Mr. Ashbaker restated that there was a motion to demur on the table. Ms. Yates made a motion to deny defendant's request for demur on count one and grant the request for demur on count two. Mr. Ashbaker clarified that count one refers to the failure to maintain a physical presence in the county where a Certificate of Authority was granted. Count two is misrepresenting to the board that they had an actual physical presence in the county in their application for a COA. Second by Mr. Koller. Motion passed.

Yeas: Darla Ringo, J. Thomas, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Nos: None.

Mr. Coffman asked for a motion to continue the hearing to the next Board Meeting on May 17, 2022. Mr. McDowell made that motion. Second by Ms. Yates. Motion passed.

Yeas: Darla Ringo, J. Thomas, Ken McDowell, Lisa Yates, Randy Coffman, and Rex Koller. Nos: None.

12. **Adjournment:** Mr. Coffman asked for a motion to adjourn the meeting. Motion was made by Mr. Ward. Second by Ms. Ringo. Motion passed.

Yeas: Darla Ringo, Jeff Lower, Ken McDowell, Lisa Yates, Randy Coffman, Rex Koller and Scott Ward. Nos: None.