

**OKLAHOMA ABSTRACTORS BOARD**  
**MINUTES OF REGULAR MEETING**  
**August 16, 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 13<sup>th</sup> Street, Suite 100, Oklahoma City, Oklahoma.
2. Darla Ringo called the roll. Attending were: Darin Kent, Darla Ringo, Jeff Lower, Jeff Mapes, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains.
3. The Minutes of the Regular Meeting of the OAB, conducted on July 19, 2022, were reviewed. A motion was made by Mr. Ward to approve the minutes as presented. The motion was seconded by Mr. Mapes. Motion carried.  
Yeas: Darin Kent, Darla Ringo, Jeff Lower, Jeff Mapes, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Nos: None.
4. **Chairperson's Report-Randy Coffman:** Mr. Coffman welcomed Mr. Kent to the Board.
5. **Administrator's Report (Board Report):** Ms. Smith reported that Ayla would be out of the office for a few days.
6. **Committee Reports.**
  - a.) **Budget and Finance – Jeff Mapes:** Mr. Mapes gave an update on the budget reporting that the annual budget is \$298,063.00 with encumbrances of \$7,682.21, which gives us a total Year-To-Date Encumbrances and Expenses of \$71,005.77 and a variance of \$227,057.23. The revenue for the month of June was \$9,760.00 and expenses were \$19,324.73 which leaves us with an ending cash balance of \$899,123.05. After review and discussion, a motion was made by Mr. Mapes to approve the report as presented. Second by Ms. Ringo. Motion carried.  
Yeas: Darin Kent, Darla Ringo, Jeff Lower, Jeff Mapes, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Nos: None.
  - b.) **Rules and Regulations – Randy Coffman:** Mr. Coffman stated that the committee had not met yet for the new year.
  - c.) **Licensing and Testing-Rex Koller:** Mr. Koller reported that there had been people take the test and people pass since the last board meeting. The next testing date is September 15<sup>th</sup> at the testing center.
  - d.) **Inspections-Katherine Smith:** Ms. Smith reported that there had been thirteen inspections since the last board meeting and that the findings could be found in the packet along with penalties recommended by the Enforcement Committee. She asked for a motion to approve the consent orders as presented and the action recommended

by the Enforcement Committee. Ms. Loggains asked about the reasoning for companies using third party vendors not receiving a fine for an indexing error. Ms. Smith explained that because several companies had the same error because of a shared title plant, the Enforcement Committee didn't deem it fair to penalize all five companies nor to single one out. A motion was made by Mr. Ward. Second by Ms. Yates. Motion carried.

Yeas: Darin Kent, Darla Ringo, Jeff Lower, Jeff Mapes, Lisa Yates, Randy Coffman, Rex Koller, and Scott Ward. Nos: Sue Ann Loggains.

Abstention: Ms. Ringo and Ms. Yates abstained from voting on those reports related to their business interests.

e.) **Enforcement Committee Reports-Scott Ward:**

**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. Ward 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 Ms. Ringo. Motion passed.

Yeas: Darin Kent, Darla Ringo, Jeff Lower, Jeff Mapes, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Nos: None.

**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 American Eagle Abstract of Cleveland County, LLC, American Eagle Title and Abstract, LLC (Tulsa), Buffalo Land Abstract Company (Osage), Pushmataha County Abstract Company, Oklahoma Digital Abstract, LLC dba American Eagle Abstract Rogers County. A motion was made by Mr. Ward on behalf of the Enforcement Committee to approve the applications. Second by Mr. Koller. Motion passed.

Yeas: Darin Kent, Darla Ringo, Jeff Lower, Jeff Mapes, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Nos: None.

**Fee Changes Only:** Presented to the Board for approval were amended rate sheets by American Eagle Title Insurance Company (Oklahoma). A motion was made by Mr. Ward on behalf of the Enforcement Committee to approve fee changes. Second by Mr. Kent. Motion passed.

Yeas: Darin Kent, Darla Ringo, Jeff Lower, Jeff Mapes, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Nos: None.

**NEW Permit to Build an Abstract Plant:** Presented to the Board for approval was an application for a New Permit to Build an Abstract Plant by Chicago Title Oklahoma Co. (Logan). After discussion and comments, a motion was made by Mr. Ward on behalf of the Enforcement Committee to approve the application. Second by Mr. Lower. Motion passed.

Yeas: Darin Kent, Darla Ringo, Jeff Lower, Jeff Mapes, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Nos: None.

**Renewal of Permit to Build an Abstract Plant:** Presented to the Board for approval was an application for a Renewal of Permit to Build an Abstract Plant by American Eagle Title and Abstract, LLC (Okmulgee). After discussion and comments, a motion was made by Mr. Ward on behalf of the Enforcement Committee to approve the application. Second by Ms. Yates. Motion passed.

Yeas: Darin Kent, Darla Ringo, Jeff Lower, Jeff Mapes, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Nos: None.

**Renewal of Permit to Build an Abstract Plant:** Presented to the Board for approval was an application for a Renewal of Permit to Build an Abstract Plant by Genesis Abstract & Title, LLC (Atoka). After discussion and comments, a motion was made by Mr. Ward on behalf of the Enforcement Committee to approve the application. Second by Mr. Koller. Motion passed.

Yeas: Darin Kent, Darla Ringo, Jeff Lower, Jeff Mapes, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Nos: None.

**Complaints OAB-2022-W135:** Ms. Smith reported that the complaint was regarding the exclusion of documents in an abstract, namely mortgages and releases prior to 1982 and that the Respondent told them they regularly leave those documents out based upon Title 46 Section 30 and approval from an underwriter in support of the practice. The Respondent stated that upon the Complainant's request, the abstract was updated to contain those requested mortgages and releases. The Enforcement Committee recommends a letter of reprimand for not including all instruments pertaining to title as defined in Title 1 Section 21. Ms. Smith asked for a motion to approve the recommended action from the Enforcement Committee. A motion was made by Mr. Ward. Second by Ms. Yates. Motion passed.

Yeas: Darin Kent, Darla Ringo, Jeff Lower, Jeff Mapes, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Nos: None.

**Complaints OAB-2022-W136:** Ms. Smith reported that the complaint was regarding the exclusion of documents in an abstract, namely a judgment that pertained to the property, which led to the judgment being left off the title commitment. The Respondent admits that a judgment was missed but once it was brought to their attention, they took the path most expedient to maintain the closing for the customer and paid off the judgment themselves and ensured a release was filed and therefore, there was no need for it to be included on the commitment. The Enforcement Committee believes the Respondent resolved the matter in an acceptable manner and therefore, there is no violation, and they recommend closure of the complaint and termination of the investigation. Ms. Smith asked for a motion to that effect. A motion was made by Mr. Ward. Second by Ms. Loggains. Motion passed.

Yeas: Darin Kent, Darla Ringo, Jeff Lower, Jeff Mapes, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Nos: None.

**Complaints OAB-2022-W137:** Ms. Smith reported that complaint was regarding the non-update and subsequent release of an abstract to a competitor once it was dropped

off to the Respondent's location. The Respondent had no choice but to release the abstract to the competitor because they had the order and the abstract had been dropped off at the wrong office. The Enforcement Committee deems there is no violation, and they recommend closure of the complaint and termination of the investigation. Ms. Smith asked for a motion to that effect. A motion was made by Mr. Ward. Second by Ms. Ringo. Motion passed.

Yeas: Darin Kent, Darla Ringo, Jeff Lower, Jeff Mapes, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Nos: None.

**Consent Orders:** Ms. Smith reported that there are some consent orders in the packet, all related to the same company for complaints reviewed at last month's board meeting. The Respondent has agreed to the orders, signed them and returned them with the penalty. Ms. Smith asked for a motion to accept the consent orders and authorize the Chairperson to sign off of them. A motion was made by Mr. Ward. Second by Mr. Kent. Motion passed.

Yeas: Darin Kent, Darla Ringo, Jeff Lower, Jeff Mapes, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Nos: None.

7. **New Business:** Mr. Coffman asked for new business. There was none.
8. **Report Legal Counsel-Whitney Scimeca:** Ms. Scimeca stated that she had been working with the Enforcement Committee.
9. **Visitor's Comments:** Mr. Coffman asked for any visitor comments. There were none.
10. **Announcement of next meeting:** Tuesday, September 20, 2022, at 10:00 a.m., 421 NW 13<sup>th</sup> Street, Suite 100 (OLERS) Conference Room, Oklahoma City, Oklahoma. The Chairperson recused the three members of the Enforcement Committee from the remainder of the meeting.
11. **Administrative Hearing:** Upon the arrival of the Respondent's attorney, the Administrative Hearing was commenced. Mr. Ashbaker pointed out that the case was starting over and because of that there was a pending motion to dismiss. Since the previous sessions are now moot, he feels it's only fair to hear that motion again. He stated that if there was something else to be added to the motion, it would be allowed.

Mr. Johnston introduced himself then pointed out the motion to dismiss in the packet because the complaint that was filed against Arbuckle had two prongs – misrepresentation on the application for Certificate of Authority (COA) and that the Respondent had failed to have an actual physical presence in the county where the COA was granted. He stated that statutes are meant to be penal and should only be applied with strict construction and should not be interpreted other than with exactness and any accusations have to be made in a clear and convincing manner. Also, when alleging misrepresentation, there has to be an intent to deceive which needs to be applied that way to the application for new COA. He states that the Respondent had an office there with staff and equipment which is enough of a representation of a physical presence. They met

people to pick up abstracts, went to their location to pick them up and there were no complaints about the presence. There is no evidence of intentional misrepresentation on the application.

Ms. Scimeca responded to the motion to dismiss by directing the board to the response to the motion to dismiss. She stated caselaw that motions to dismiss are typically held in disfavor. There has been no sizeable deficiency demonstrated and therefore the motion to dismiss cannot be upheld and there is nothing in the Administrative Procedures act or abstracting law that give the board the ability to even consider a motion to dismiss. Therefore, she asks that the motion to dismiss be denied.

Mr. Ashbaker asked if there were any questions. There were none.

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. Ringo made that motion. Second by Ms. Yates. Motion passed.

Yeas: Darin Kent, Darla Ringo, Lisa Yates, Randy Coffman, Rex Koller, and Sue Ann Loggains. Nos: None.

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

Yeas: Darin Kent, Darla Ringo, Lisa Yates, Randy Coffman, Rex Koller, and Sue Ann Loggains. Nos: None.

Mr. Coffman asked for a motion regarding the ruling for the motion to dismiss. A motion was made by Ms. Yates to deny the motion to dismiss. Second by Mr. Koller. Motion passed.

Yeas: Darin Kent, Darla Ringo, Lisa Yates, Randy Coffman, Rex Koller, and Sue Ann Loggains. Nos: None.

Ms. Scimeca introduced herself and pointed out the complaint which states that the Respondent has violated the Act and Rules by failing to maintain an actual physical presence in the county from the issuance of the Certificate of Authority in September 2020 through April 29, 2021, and that they have misrepresented to the board that they have had an actual physical presence in the county in their application for Certificate of Authority. She covered the criteria required for receipt of a Certificate of Authority in the rules and statutes and references the Boards ability to act on instances of fraud or misrepresentation. She pointed out that there are several types of misrepresentation – innocent, accidental, intentional, and negligent. She stated that she will be addressing the entire process of obtaining a Certificate of Authority. She will show that the violations in obtaining the Certificate of Authority have occurred.

Mr. Johnson stated that the only misrepresentation that the Board can concern itself with are misrepresentations intended to deceive. He gave a case of the State Bar Association v. Johnston 1993 OK-91 paragraph 16 where the court said that any charge of

misrepresentation to a judge or tribunal must carry with it an included count of making a false statement in violation. Therefore, a misrepresentation must include an underlying motive for making an attempt to deceive. It can't be something innocent but must be intentional and deceitful driven by some bad motive.

Ms. Scimeca called Mr. Mark Luttrull to testify, and he was sworn in by Mr. Ashbaker.

Mr. Luttrull confirmed his name and stated that he had been a licensed abstractor for thirty-two years. He works for Pioneer Abstract and Title of Muskogee, Inc. which holds a current Certificate of Authority. Mr. Luttrull holds an ownership interest in that company but not in any other abstract companies. His company does not hold a COA, nor Permit in Love County and he does not consider the Respondent a competitor.

Mr. Luttrull confirmed that he was a Board Member from 2013 through 2021.

Ms. Scimeca asked him what his understanding of actual physical presence means for a Certificate of Authority. He stated that it is a requirement of the law but that it is also an element of common carrier. An abstract company has a public interest to provide services to the customers alike. It is important because the customers or anyone who wants to order an abstract in the county needs to have direct access to the company. If they had to go somewhere else, it would make it difficult to the consumer.

He believes actual physical presence relates to common carrier because it has a public interest component to it. The public has to be able to access you. Common carrier is best understood by contrasting it with a private carrier. A common carrier has to react to customers indifferently whereas a private carrier can offer their services to whomever they wish based off a contract. Abstractors are given direction as to how to prepare the product, the timeframes for preparing the product, and the rates for the product have to be approved by the state. It seems obvious to him that the state considers abstracting to be a common carrier with a public interest.

She asked if Mr. Luttrull was a Board Member during the time when the Certificate of Authority was approved for the Respondent. He confirmed he was and voted on whether to issue the Certificate of Authority to the Respondent. He voted to approve the COA.

She asked him to look at the minutes for the meeting where the COA was approved on September 15, 2020. He confirmed that he reviewed the application for COA. The minutes were admitted into evidence.

She had him look at the application for COA by the Respondent which was admitted into evidence. He confirmed it was the one reviewed at the meeting. She had him look at the Inspection Report presented at that meeting which was also admitted into evidence. He confirmed that it was the one presented at the meeting.

She asked what address was listed on the application. He stated that 108 S. Second, Suite A, Marietta, OK 73448 was listed as the business address. He confirmed that he

understood it to be the intended actual physical presence because it's the one listed on the application and signed under oath. There is no listing of a different address for physical presence on the application.

He confirmed the physical address on the Inspection Report also lists 108 S. Second, Suite A, Marietta, OK which he took to be their physical presence which has, to his experience, has always been the same.

She pointed out in the minutes for the board meeting where the application was approved references to location. He read from the minutes where it states that the location of the plant is in an office with computers and equipment in the county. She points out that the statement was made by the Respondent's attorney.

The second mention of location is when he asked in the meeting where the physical location of the company in the county would be to which Ms. Smith responded that it is the same address listed on the inspection report and stated further that the applicant owns four properties in the county, of which she viewed two. One of them is a temporary space above a dentist's office which the applicant owns but leases the first floor to a dentist's office but uses the second-floor space as a temporary location until the second location is ready for business. He confirmed that the 108 S Second location had a dentist's office on the first floor.

Ms. Scimeca asked if the question of location was brought up a second time. He affirmed that it was and read the minutes where he asked the applicant if he was granted a COA on that day, where would he be open for the business the next day for customers to use for the receiving of orders. The Respondent stated he has a location but has since purchased another building, 114 W Main, which is ready for the public but also have the building on 2<sup>nd</sup> Street. They're currently remodeling a building on Main as well, but it is not ready, so they purchased 114 W Main for the interim.

She asked him if he found the printed version in the minutes to be confusing. He stated that he found both the printed version and the verbal answer to be confusing at the time because the 108 S Second is what was listed in the documentation to review. At the time he believed there would be an actual physical presence somewhere.

She asked him if he later became concerned that there wasn't an actual physical presence in Love County to which he answered yes because he heard a comment in the hallway after the April 20<sup>th</sup> meeting that Arbuckle was not open for business in Marietta. He does not know who made the comment because he was talking to someone else, and the comment was made behind him, and he didn't turn to look. He drove to Marietta the next day to look. He went to 108 S. Second because it was the address listed on the documentation and on the rate sheet on the OAB website. She presented the rate sheet for Arbuckle, which was approved September 15, 2020, and admitted it to evidence. The address on the rate sheet shows 108 S Second, Suite A.

When he went there, he found the dentist's office and he could not locate Suite A. He took photos which Ms. Scimeca entered into evidence. He walked around the office but saw no signs of the abstract company but did not talk to anyone at the dentist's office.

While he was in town, he saw a sign on a building at 304 W Main Street, so he went there, as well. It was not open. He checked the door, but it did not open. There was a sign at the top of the building as well as a sign on the door. She had him identify the photo he took of 304 W Main Street as well as a picture of a sign on the door and asked him to read the sign. The sign read Arbuckle Abstract bonded abstractors for real estate situated in Love County Oklahoma. We are open for business and 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](mailto:orders@arbuckletitle.com) or by calling 580-223-0111. Thank you and we appreciate the opportunity to serve. Fast and friendly service. Open year round.

Those were the only locations he went to while he was there and after he visited those locations, he went back home then emailed Ms. Smith, the State Administrator of Abstracting, the photos noted the concern and asked her to look into the situation and if she found the same thing, could she pass it along to the Enforcement Committee. She had him verify a printout the email and asked that it be admitted into evidence.

She asked him whether based upon what he observed if the Respondent was operating on like footing with that as a common carrier. He responded no because they did not have a business open in the county. Upon discovering no locations open in the county during his visit, he had concerns about the Board having approved the Certificate of Authority to the Respondent. He felt that the Board had approved an application with an address listed on it, but that address was not an actual abstract company and could not serve the public. Therefore, there was no actual physical presence at that time and likely was not when the COA was issued. At 108 S Main, there was only one door that didn't look like a public entrance, so he didn't go up there. He only happened to see the sign on 304 W Main, and it was incomplete when he was there so was incomplete when the COA was issued, as well.

Mr. Johnston began his cross examination by asking Mr. Luttrull about common carrier. He asked whether Mr. Luttrull felt that abstractors had a duty to act as a common carrier which Mr. Luttrull affirmed and agreed that common carriers have a duty to provide services on an equal basis with regard to rates and order processing and such. He agreed that there were not questions of the Respondent charging customers or completing orders differently.

Mr. Johnston stated that there was no evidence that the Respondent didn't act as a common carrier because they treated everyone the same, but Mr. Luttrull stated that they didn't have a business open to receive customers. Mr. Johnston asked whether the only concern Mr. Luttrull had pertaining to common carrier was that the Respondent didn't have an open office. Mr. Luttrull said yes, that was correct.



Mr. Johnston pointed out the application in evidence was stamped as submitted in July and asked whether things could have happened between July and when the matter came before the Board in September which Mr. Luttrull affirmed they could. He also affirmed that he was not aware of any information regarding the Respondent not having a location at 108 S. Second, Suite A. Mr. Johnston asked whether he had evidence of the Respondent trying to deceive the Board by not having a location at that address. Mr. Luttrull responded that the critical part of the application is that it is completed, signed, and filed under oath. He confirmed that the application was signed on July 30, 2020.

Mr. Johnston stated that Mr. Luttrull was not in the mind of the Respondent and therefore, could not say that they were trying to deceive the Board to which Mr. Luttrull agreed. Mr. Johnston asked Mr. Luttrull to review the Inspection Report and confirmed that it was prepared by Ms. Smith and not by the Respondent.

Mr. Johnston asked Mr. Luttrull to review the same minutes previously reviewed by Mr. Luttrull and Ms. Scimeca. Mr. Johnston stated that because the Inspection Report was prepared by Ms. Smith, the Respondent was not at fault for the information in the report and because they showed her multiple locations, she should have listed every one of those locations in the report.

Mr. Johnston pointed out the second mention of location in the minutes previously covered by Ms. Scimeca and read them again where Mr. Luttrull asked the applicant if he was granted a COA on that day, where would he be open for the business the next day for customers to use for the receiving of orders. The Respondent stated he has a location but has since purchased another building, 114 W Main, which is ready for the public but also have the building on 2<sup>nd</sup> Street. They're currently remodeling a building on Main as well, but it is not ready, so they purchased 114 W Main for the interim.

Because it was Ms. Smith who prepared the minutes, it wasn't the Respondent's actions that put that information into the minutes. The Respondent stated that they had several properties, so it seems apparent that they were ready to do business in Marietta to which Mr. Luttrull states that it was very confusing. Mr. Johnston asked what Mr. Luttrull should have done if he was confused. Mr. Luttrull stated that he could have asked more questions which he did not.

Mr. Johnston asked whether the phrase "actual physical presence" is in the statutes and Mr. Luttrull confirmed that it is not. It is only mentioned in the rules and there is not a memorialized definition of the phrase. Mr. Luttrull confirmed that the expectation for an office to be open set business hours was his interpretation of the rule.

Mr. Johnston asked again about the instigating issue that caused Mr. Luttrull to drive to Marietta to look into the situation and Mr. Luttrull confirmed again that he didn't know who made the statement about the company not actually being open in Love County. He affirms again that he took it upon himself to check it out before submitting any information to Ms. Smith in the office.

Mr. Johnston showed Mr. Luttrull some pictures and asked him to identify them. One was a photo of the stairs going up to a space behind the dentist's office. Mr. Luttrull affirmed that he didn't know it was Suite A and didn't go up the stairs to see whether there was a sign on the door. Mr. Johnston states that Mr. Luttrull should have known that 108 S 2<sup>nd</sup> wasn't where they were going to have their office because of a statement Mr. Pollard had made in the meeting several months earlier. Mr. Luttrull states that at that point he was still not clear on where the Respondent actually intended to have their office.

Mr. Johnston asked if the build-out location on the 300 block of west Main had a sign saying "Future home of Arbuckle Abstract." Mr. Luttrull stated that he didn't remember if it said future home or not. Mr. Johnston presented photos representing 114 W Main and whether they were an accurate representation which Mr. Luttrull stated he didn't know because he didn't go there and didn't know whether there was anyone there or not. Mr. Ashbaker asked if Mr. Johnston was admitting the photos into evidence and he affirmed he was.

Ms. Scimeca on redirect asked Mr. Luttrull was asked why he didn't call the Respondent and Mr. Luttrull said it was something he needed to find out for himself.

She directed him back to the Board minutes where Ms. Smith stated that the physical location and asked if Mr. Pollard disputed her statement at that time. Mr. Luttrull stated that he did not. She asked whether, as a Board Member at the time, whether he felt there was a misrepresentation by the Respondent. He affirmed that he did.

Ms. Scimeca called Katherine Smith as a witness, and she was sworn in by Mr. Ashbaker.

Ms. Smith stated that she is an employee of the Oklahoma Abstractors Board and her title is State Administrator of Abstracting and had been in that position since September 28, 2015. Prior to working for the Board she oversaw the Oklahoma Land Title Association for 7 ½ years. She stated that she had sat through Basic Abstractors training at least twice per year for those 7 ½ years as well as attending Intermediate and Advanced Abstractors schools, but not as often. She confirms that she has never been an abstractor and does not hold a license and does not currently have and has not previously had any ownership interest in any abstract companies.

Ms. Scimeca asked about the process for obtaining a new Certificate of Authority. Ms. Smith stated that when a permit holder believes their plant is ready, they file an application for a new COA. The applicant is sent a list of legal descriptions, 25 are for preparing chains of title and 10 are for complete abstract to be prepared on. Notices go out within 10 days of receipt of the application to the Clerk's offices in the county as well as any existing COA holders and the comment period is opened and run for 20 days. Once the comment period is closed and the chains and abstracts are received from the applicant, an in-person visit is arranged. She verifies the chains at the courthouse, as well as their physical location and accesses their system to run several searches. Once that is

complete, she prepares an inspection report that goes to the Enforcement Committee for review and if they approve everything it goes before the Board for a vote.

She affirmed that the Respondent completed the application for a COA for Love County and that she was the Administrator when the application was received. She confirmed that the Respondent does not have any other COAs in other counties and that they do have a Permit in Carter County.

Ms. Scimeca asked her what address was listed on the application for a new Certificate of Authority in Love County. Ms. Smith answered 108 S 2<sup>nd</sup>, Suite A. She confirmed that she performed the inspection and went to the location on 108 S 2<sup>nd</sup>, Suite A first but no one was there and she had to call. Mr. Pollard came and let her into the space which was set up as an apartment. It was messy but there was a table and chair there so she told him that it would be fine, but it needed to be cleaned up and there needed to be signage put in place because there was no clear path to the door to the space. There was no signage or indication at all that there was or would be an abstract office there. She was asked if there was a phone, but she didn't recall seeing one there.

She stated that when they left that location, Mr. Pollard stated that he wanted to take her to where they were going to have their permanent office and took her to the 300 block of west Main where there was a build out occurring, but it was in raw shape with bare drywall and wiring to be done and therefore not ready to service the public.

After showing Ms. Smith that location, the Respondent took her to the 100 block of west Main. The space had previously been a gift shop and he said they had purchased it and was full of gift items at the time. Then he wanted to take her across the street to a fourth location which was a previously condemned building he purchased from the city for \$1. She told him she didn't need to see any other locations, but she told him repeatedly that he needed to let her know for sure which one he was going to use and have ready for the public so that the Board would know where customers could go to transact their business.

Ms. Scimeca confirmed that Ms. Smith went to 108 S Second. Ms. Smith said she went there because it was on the application and in her opinion, it was the most viable location at the time. She also went to the 114 W Main Street location but at the time, Mr. Pollard only spoke of it as another building he purchased and also at the time, it was still full of gift shop items and the Enforcement Committee meeting was only about a week away.

She also went to the 304 W Main location second, before the gift shop and that's the location that Mr. Pollard stated would eventually be their permanent location but there was no way it would be ready in a week.

Ms. Smith confirmed that none of the three locations were open for business at that time. She also confirmed that she completed the inspection report and was present at the meeting when the application was considered.

Ms. Scimeca asked if any of the locations had computers in them and Ms. Smith stated that they did not. She confirmed that the Respondent had a permit for the plant prior to receiving the application for COA and that no changes of address were sent to the office regarding a change of location and that the COA was granted to the applicant at the September 15, 2020 meeting.

Ms. Scimeca asked that Ms. Smith verify a copy of the COA which was issued and the cover letter. She did.

Ms. Smith confirmed that the in-person inspection was performed on September 2, 2020, the corresponding report was prepared on the 3<sup>rd</sup> and went to the Enforcement Committee on the 8<sup>th</sup>. She also confirmed that the physical address she listed for the applicant was 108 S. 2<sup>nd</sup>, Suite A because it was the address listed on the application and they had not received notice of any change in address.

Ms. Scimeca asked her about the email received from Mr. Luttrull. Ms. Smith stated that she forwarded the email to the Enforcement Committee and stated that she was of a mind to drive down and investigate. Mr. Robert Getchell, chair of the committee at the time, asked some questions then after a phone conversation with Mr. Getchell, Ms. Smith drove down to Marietta. She went to the 108 S. 2<sup>nd</sup> location first. There was still no clear path to the door, and there was no clear signage. She went up the stairs and opened a storm door and saw the same paper sign Mr. Luttrull had referenced stating that the company was open for business but said that until email and phones were installed, customers needed to call or email, etc. She said she believed he phone # rang to their closing office in Ardmore. The sign was not visible without going up the stairs and opening the storm door which was unlocked. The entry door was locked and there was no one there.

Ms. Smith went to the location at the 300 block of west Main to find a similar sign on the door and the entry door was locked. It was not apparent that there was anyone there and the windows were covered over at the time.

Ms. Smith went to the former gift shop at 114 W Main next. There was the same sign on the door, but the door was locked. She could see inside and there was a desk and a chair, but nothing else.

After visiting the three locations she went to the closing office in Ardmore and asked to speak to Mr. Pollard, but he was in Idaho and unavailable. There was staff working and his wife was there and took Ms. Smith to her office where she got Mr. Pollard on the phone. Lisa Pollard was in the office when Ms. Smith spoke on the phone to Mr. Pollard. She asked Mr. Pollard to help her understand why they didn't have a physical presence in Love County to which he said they did. When she pointed out that there was no one there, he responded that he didn't understand that they had to have people there. She pointed out that his response didn't make sense and of course he had to have people there because she told him over and over and over again that he had to have a location where people could come to do their business. Consumers had to be able to do their business

with him and she repeated it to him at every location. He stated that he didn't understand that, but they'd have someone down there right away. She clarified that she made those statements to him during the in-person visit so many times because he kept taking her to buildings and she kept telling him that she didn't care which one he used but that they needed to know for sure which one so that the Board would know where to tell consumers to do their business.

Ms. Scimeca asked if he indicated the 108 S. 2<sup>nd</sup> location and Ms. Smith said no, they went to the 2<sup>nd</sup> Street location, and she told him he needed signage up so consumers could know where to go to do their business. He then took her to the 300 block location and walked her all through that one and she told him again they needed to know for sure which one so that the Board would know where to tell consumers to do their business. Then he took her to the gift shop and she repeated again that it would be fine, but they would have to get the stuff out of there and put up signs so and let them know so that the Board would know where to tell consumers to do their business. Then he wanted to take her across the street to the condemned building at which point she said she didn't need to see anymore buildings but just needed to know for sure which one so that the Board would know where to tell consumers to do their business.

She confirmed that the 108 S 2<sup>nd</sup> address was used because that's what was on the application and on the rate sheet and no actual communication outside of him showing her buildings was received to say otherwise.

Ms. Scimeca asked Ms. Smith if Lisa Pollard said anything while Ms. Smith was on the phone with Luke Pollard after revisiting the sites in April. Ms. Smith stated that she didn't say anything out loud but that while Ms. Smith was talking to her husband, Mrs. Pollard was looking down at her hands, shaking her head, and appeared to mouth the words, "I tried to tell him" but it wasn't loud enough to be heard. She then returned to the office and sent an email to the Enforcement Committee which she identified in the exhibits. The email was submitted for admission to evidence and accepted.

Ms. Smith stated that she went back and drove by when she was nearby doing inspections in other counties and verified they did have someone present at 114 W Main. The space is being shared with a realtor. Because the realtor had filed a complaint, she went inside and visited with the realtor and there was another woman at a separate desk who was a representative for the Respondent. The young woman had no computer for phone other than her cell phone and there was an abstract sitting on the table. Ms. Smith confirmed that she considered that to be in compliance with having an actual physical presence because there was a person there and the building was open.

Ms. Smith verified that Certificates of Authority have to be renewed every year and that the Respondent renewed their Certificate of Authority then verified the renewal application in the exhibits. The renewal was received on July 13, 2021 and the address on the renewal application is 114 W Main. Ms. Scimeca asked that the exhibit be accepted into evidence, and it was accepted.

Ms. Smith confirmed that the renewal application was approved by the Board. Ms. Scimeca asked that the minutes of the September 21, 2021 Board Meeting be accepted into evidence and they were accepted. Ms. Smith confirmed that a COA for their renewal was approved and issued and verified the copies of the certificate and cover letter. Ms. Scimeca asked that the exhibit of the COA and letter be accepted into evidence, and it was accepted.

Ms. Scimeca asked how often a company can change their rates. Ms. Smith stated that they can change their rates with their renewal and one additional time per year. She confirmed that a new rate sheet was submitted with their renewal and identified it in the exhibits. Ms. Scimeca asked that the exhibit of the rate sheet be accepted into evidence, and it was accepted. Ms. Smith verified that the rate sheet had the address of 114 W. Main.

Ms. Scimeca asked if there had ever been an occasion for a company to not have an actual physical presence at the time of renewal. Ms. Smith said no. Ms. Scimeca asked if locations are visited at the time of renewal and Ms. Smith said that physical locations are visited during inspections which are required by law at least once every 3 years, but are typically done every other year, but not for renewals. Because of the timing of the issuance of their COA, Arbuckle had not been inspected since then but would be coming around for inspection soon.

Ms. Scimeca asked if having an office with nothing in it was enough for physical presence. Ms. Smith said no in her opinion because, as she tells companies, the consumer needs to know where to go to do their business. If there's no one there and nothing on the door letting customers know when someone will be there, the consumer is not being serviced. None of the locations she visited in Love County had any information regarding hours of operation on the door. The only thing she saw on the doors was the sign telling them to email or call.

Mr. Johnston began his cross examination by asking Ms. Smith to look at the application for new Certificate of Authority. She verified that there is one location for business address. He asked if there was any misrepresentation on the application. She said no.

She verified again that the address on the application was 108 S. 2<sup>nd</sup>, Suite A. He asked if things could happen between the application and the Board Meeting, and she said yes. Mr. Johnston stated that Mr. Pollard told her that he intended to use another location because the 2<sup>nd</sup> street location was not good enough. Ms. Smith stated that that was not something Mr. Pollard ever verbalized to her. He showed her the 2<sup>nd</sup> street location then took her to the build-out location on the 300 block of west Main. She verified the photo of the 2<sup>nd</sup> street location and there was not easy access to the location. Mr. Johnston pointed out the stairs leading up to the door. Ms. Smith stated that the day she was there it had been raining and had to leap through puddles to even get to the sidewalk to get to the stairs.

Mr. Johnston stated that even with that, she had told him the 2<sup>nd</sup> street location was okay. She clarified that it was okay to use if they directed people upstairs with signage and created easy access. That was a statement made to Mr. Pollard that was not included in the inspection report. He stated that Mr. Pollard had a concern about the location because of the stairs. Ms. Smith stated that she felt that was a valid concern.

Mr. Johnston stated that Mr. Pollard had told Ms. Smith that's why he was looking at another location. Ms. Smith stated that Mr. Pollard never stated that's why he wanted another office. He simply took her to the location on the 300 block and said it would be their permanent location, but it was currently being built out and took her inside.

Mr. Johnston stated that he tried to take her to other locations. She verified that he took her to one other location and tried to take her to a fourth location. She confirmed that he took her to 114 W Main.

Mr. Johnston stated that the 114 W. Main was the location he converted into office space. She confirmed that he cleaned it out and put a desk in it. He showed her a photo of 114 W. Main and asked her to verify the address. She confirmed the address. He stated that it didn't look like the first time. She confirmed that it did not look like the photo the first time however, it also didn't look like that the second time she visited but it did the third time when she went inside and visited with the realtor.

She verified that Mr. Pollard took her to the location on her first visit and told her that he wanted to take her to another building that he'd purchased but at no point did he say that it was for sure the location they intended to use and even though she asked him to be sure to tell them the location he intended to use, she received no update from him from the time she did the on-site visit until she went to the Enforcement Committee. He stated that regardless, she didn't care. She stated that she told him that she didn't care which location he intended to use but that the Board needed to know for sure which location he planned on using. He asked if that was in her inspection report, and she said no. He asked if she had told Mr. Pollard over and over about the need to have hours posted and she said no, she never mentioned hours but that he needed to have a location where consumers could come to do their business. He asked if there was a rule that stated that a company had to have hours posted. She said that she never told him he had to have hours posted and verified that there is no rule about posting hours.

He went through the application and said that there was an address on the application but that she didn't care what the address was as long as there was signage and furniture and such. She confirmed that was part of the process. She confirmed that he showed her multiple locations including the location at 114 W Main. He went back to the minutes where she stated that she had visited multiple locations, two of which were shown as office locations, the temporary space on 2<sup>nd</sup> and the build out location on the 300 block of west Main. Then he said, oh, by the way, let me show you this other building I just bought and took her to the gift shop. He never referenced that location as a possible location for the abstract office. Mr. Johnston points out the second question about

location in which Mr. Pollard talks about all three locations. Ms. Smith confirms that he mentioned it and she later went down and visited that location.

Mr. Johnston asked if there was anything in the rules which says an abstract company can't change its location. She confirmed that there was not. She confirmed again that she did not care what a company's location was but that the Board needed to be informed. She confirmed that Mr. Pollard mentioned the 114 W Main location in the Board meeting where the COA was approved but pointed out that his response was such that even one of the Board Members was confused by his statement. She also pointed out that things are said all the time, but that until some sort of official communication is received in the office, it's not real.

Mr. Johnston asked what kind of deception was involved by him saying that 114 was a possible location and she said there was no deception in that.

Mr. Johnston asked if there was anything in the statute about physical presence. She said no. Mr. Johnston stated that since it wasn't in statute, it wasn't something the legislature thought was important. Ms. Smith stated that although it wasn't in statute, it was still something reviewed and approved by the legislature. She confirmed that the requirement for an actual physical presence was in the rules in one place under the items to consider when reviewing an application for a new Certificate of Authority. She also confirmed that actual physical presence isn't defined or doesn't include any requirements about office hours. She confirmed that her opinion was that to her it meant that someone would be there in the office when the public would come to conduct business.

Mr. Johnston stated that Mr. Pollard and Mr. Wes Womack were at the location for some part of every day during the time period in question. Ms. Smith stated that he said that, but she showed up during normal business hours and there was no one there so how is the public supposed to know when there is someone there. They could have been there for five minutes and said they were there for part of every day. Mr. Johnston asked if there were every any complaints from someone who couldn't get in touch with or be serviced by Arbuckle. Ms. Smith said no.

He asked if there was any proof that Arbuckle's lack of business hours caused any harm to the public. Ms. Smith said no. He asked if there was any rule about allowing a realtor to drop off an abstract at a different office if that's easier for them. Ms. Smith said no. he asked if there was any rule about an abstractor picking up an abstract from a home or place of business if that's easier for them. Ms. Smith said no.

He stated that just having a building is an actual physical presence. Ms. Smith answer that was not according to her understanding. He stated that there was a sign when she did her inspection that said temporary home of Arbuckle. She answered no, there was not. The only signage in April was the one that said to call or email until phones and internet were installed. He said that she didn't put anything in the email to the Enforcement Committee about there not being a sign. She said she reported that there was the sign on the window. He said she didn't have any problem with the sign. She stated that she was



reporting what she found which was an 8 ½ by 11 inch piece of paper on the window which said to call or email and they'd come get your stuff. She stated that was no adequate signage in her opinion. He asked if they should have a big sign at the top which said temporary home to which she responded they could have had one but did not at that time.

Mr. Johnston asked about the new COA Inspection and whether any of the locations were open for business and she confirmed they were not. He stated that it would have been a problem if they were open and accepting orders for abstract and she confirmed that it would have been illegal. She also confirmed that it not being open was not a problem until the company receives its Certificate of Authority.

Mr. Johnston asked about the email received from Mr. Luttrull where he stated he could not find an open location. She confirmed that it was two days later that she went to Marietta. Mr. Luttrull didn't go to the 114 W Main location, but Ms. Smith confirmed that it was the last location she went to. He read the portion from Ms. Smith's email to the Enforcement Committee where she states that the gift shop had been all cleaned out and just needed to have someone there. She confirmed that was correct. He said that there was an office and equipment, so the only issue was that there wasn't someone there. She said there was only a desk and chair, no other equipment, but otherwise that's correct.

Mr. Johnston showed her a photograph to which she replied that there was one desk and one chair. Other items in the photo were not there including the realtor's area the room was completely empty except for one desk and one chair. When he mentioned equipment in the back, she stated that she did not see any equipment in the back because the building was locked but there was no computer and no phone. He asked if the people inside the building would have more knowledge about the equipment inside than her to which she responded that there was no one inside the building. She repeated again, that the building was dark and all that was visible from the window was one desk and one chair.

Ms. Scimeca redirected by stating that all of the talk about locations boils down to whether one was open. She asked Ms. Smith whether the location on 2<sup>nd</sup> street was open when she visited after the concern email from Mr. Luttrull to which Ms. Smith responded no. She asked Ms. Smith whether the location 114 west Main was open to which Ms. Smith responded no. She asked Ms. Smith whether the location 300 west Main was open to which Ms. Smith responded no. She asked whether any of the locations were ever open to which Ms. Smith stated that none of them were open when she was there. She asked whether the 114 W Main location could have been open to the public a week after the New COA inspection. Ms. Smith stated it was possible if they put an enormous amount of effort into clearing all the stuff out and were able to get the location furnished. Possible, yes. Probable, not likely.

Ms. Scimeca asked when a location was open that would have qualified as an actual physical presence to Ms. Smith to which she replied not until after she went down after the concern when she spoke to Mr. Pollard on the phone and he said they'd have someone down there as soon as possible.

Ms. Smith confirmed that the application has both a business address of 108 S 2<sup>nd</sup>, Suite A and a mailing address of 1405 W Broadway in Ardmore which is the location of their closing office. Ms. Scimeca asked if there were any businesses holding Certificates of Authority that did not have locations open to the public. Ms. Smith answered no.

Ms. Smith confirmed that there were 3 COAs in Love County. One belonging to Mr. Pollard and the other two belong to a competitor who only does business under one of the COAs. She stated, when questioned, that a company holding more than one COA is not uncommon. Perhaps the company bought out a competitor and they continue to hold the COA for their own reasons. With more than one company in the county, a consumer has a choice of which company they wish to use.

Ms. Scimeca asked Ms. Smith what the phrase common carrier means as it appears in the statute. Ms. Smith stated that to her it means that a company acts in a like manner with the other abstract companies in the state, treat customers the same across the board by handling orders the same and charging everyone the same rate.

Mr. Ashbaker asked if any members of the Board had questions for the witness.

Mr. Johnston said he had a couple more questions. He repeated that Ms. Smith stated that none of the offices were open when Ms. Smith was there to which she replied, no. He said that the office could have been open before or after she was there to which she answered possibly. He stated that when she talked to Mr. Pollard he stated that he didn't understand that he had to have people there all the time and she said yes. She says that she never mentioned specific hours. Mr. Johnston asked if after the call whether Mr. Pollard had people at the location full time. Ms. Smith replied that he said he did but that she didn't go back until months later and at that time, there was someone there.

Mr. Johnston said that Ms. Smith had stated that there was a competitor in Love County, and they were open all the time. Ms. Smith responded that she hadn't said that. He stated that the competitor in Love County is Marietta Abstract Company, which she confirmed. He stated that the company had a persistent problem with taking off two weeks four times a year. She answered that she had no knowledge of that and had never received a complaint. He said that it was a fact that there had been many complaints forwarded to the Board about Marietta not being open and not being on time. She replied that no, there were not multiple complaints but that she didn't have any complaints about them not being open.

Mr. Ashbaker asked again if any members of the Board had questions for the witness.

Mr. Kent asked the dates of the various site visits. Ms. Smith answered that the original new COA inspection was September 2, 2020. The second visit occurred was after Mr. Luttrull had gone and the date was April 29, 2021. The third visit when she went back in the spring because she was in the area doing inspections, but she doesn't have an exact

date. She explained that inspections aren't done with renewals but are required to be done at least every three years.

Ms. Yates asked about the renewal and why there wasn't any mention of anything going on with Arbuckle in the minutes related to the renewal. Ms. Smith stated that it went to the Enforcement Committee, and they were dictating how the issue was handled. When asked why, Ms. Smith stated that a consent order had been sent out, modified and eventually refused. She confirmed that Enforcement Committee may have felt that the renewal and the question of a violation were separate issues because the possible violation had been resolved.

When the question of continuing was presented, Mr. Johnston renewed his motion to dismiss claiming there was no evidence of misrepresentation regarding the location and that it had not been proved that there had been a violation of the requirement of an actual physical presence.

Mr. Ashbaker asked Mr. Johnston whether a demur was a motion for summary judgment and Mr. Johnston said no, it was more of a motion of directed decision.

Ms. Scimeca stated that there is nothing in the Administrative Procedures Act or the Board's rules that allow for them to accept a demur or motion to dismiss. She also claimed that the requirements for a demur or motion to dismiss have not been met. She stated that the testimony of the witnesses support there was a violation of the rule and that the Board can only rule after the completion of a hearing.

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. Mr. Kent made that motion. Second by Ms. Yates. Motion passed.

Yeas: Darin Kent, Darla Ringo, Lisa Yates, Randy Coffman, Rex Koller, and Sue Ann Loggains. Nos: None.

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

Yeas: Darin Kent, Darla Ringo, Lisa Yates, Randy Coffman, Rex Koller, and Sue Ann Loggains. Nos: None.

Mr. Coffman asked for a motion regarding the ruling for the motion to dismiss. A motion was made by Ms. Yates to deny the motion to dismiss. Second by Mr. Koller. Motion passed.

Yeas: Darin Kent, Darla Ringo, Lisa Yates, Randy Coffman, Rex Koller, and Sue Ann Loggains. Nos: None.

Mr. Coffman asked for a motion to continue the Administrative Hearing. A motion was made by Mr. Kent to deny the motion to dismiss. Second by Ms. Yates. Motion passed.

Yeas: Darin Kent, Darla Ringo, Lisa Yates, Randy Coffman, Rex Koller, and Sue Ann Loggains. Nos: None.

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

Yeas: Darla Ringo, Darin Kent, Lisa Yates, Randy Coffman, Rex Koller, and Sue Ann Loggains. Nos: None.