

**OKLAHOMA ABSTRACTORS BOARD  
MINUTES OF REGULAR MEETING  
November 15, 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: Darla Ringo, Jeff Lower, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Mr. Kent arrived late due to an unavoidable delay.
3. The Minutes of the Regular Meeting of the OAB, conducted on October 18, 2022, were reviewed. A motion was made by Ms. Ringo to approve the minutes as presented. The motion was seconded by Mr. Ward. Motion carried.  
Yeas: Darla Ringo, Jeff Lower, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Nos: None.
4. **Chairperson's Report-Randy Coffman:** Mr. Coffman had no report but stated that he'd have items later on the agenda.
5. **Administrator's Report (Board Report):** Ms. Harper stated there was no report.
6. **Committee Reports.**
  - a.) **Budget and Finance – Jeff Mapes:** Mr. Mapes was unable to attend due to weather and Ms. Yates was unable to give the report and only said the documents were in the packet. A motion was made by Mr. Lower to approve the report as contained in the packet. Second by Mr. Koller. Motion carried.  
Yeas: Darla Ringo, Jeff Lower, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Nos: None.
  - b.) **Rules and Regulations – Randy Coffman:** Mr. Coffman reported that the Committee had met and were proposing changes to a couple of sections of Title 5.

He discussed that there were changes suggested by the OLTA that they thought were necessary. The Rules and Regulations Committee met to review the requested changes. Changes to Title 5 have to go through the Rulemaking process with the OAB and changes to Title 1 will be handled through the legislative process.

To the definitions section of Title 5, there is a desire to add a definition for an actual physical presence because there appeared to be some lack of clarity as to what that phrase means even though the vast majority of abstractors around the state have no issue with the common understanding of what actual physical presence means. He paused for questions.

Ms. Loggains asked why the word website was used rather than contact information as required to be posted on the door.

Ms. Scimeca clarified that the intention is to have the company's hours posted on their door as well as on their website rather than requiring the website information be posted on the door.

Ms. Yates stated that she understood it the same way as Ms. Loggains and suggested the addition of the word on to read "and on its website" and made a motion to do so. Second by Ms. Loggains. Motion passed.

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

The second definition is a definition for common carrier. There is a mention of common carrier stating that abstracting stands on like footing as a common carrier and because there have been attempts to define the phrase, but nothing has ever been refined. This is an attempt to fill out what common carrier means in relation to abstracting.

Mr. Lower said that he has a question about the use of the word unreasonable in relation to discrimination. Mr. Coffman said that he believed it came from the idea that if there was a customer that was in arrears and never paid that the company would be under no obligation to process their orders which would be an example of reasonable discrimination.

Ms. Dishman with the OLTA stated that she felt Mr. Coffman's assessment was accurate. Mr. Ward said that an instance of non-payment was something entirely different and that he felt it didn't need to be included for that purpose. Ms. Mittasch with OLTA stated that the decision to leave it in came from caselaw viewed by Monica Wittrock to establish the definition of common carrier. It had nothing to do with race or other protected class, but that a private businessperson could make the business decision hold back an order based upon non-payment. Ms. Loggains agreed that using the word discrimination in relation to treating someone different made sense. Mr. Kent stated that he felt that would be a valid reason for including the term.

Ms. Scimeca stated that she hadn't read the caselaw being referenced but that she didn't think there was an issue having that statement included.

Ms. Yates stated that she had the information that the Rules and Regulations Committee reviewed which is different from what's being reviewed in the Board Meeting. Mr. Coffman explained that there have been several versions, but that what's being looked at today is a somewhat final version.

Mr. Lower stated again that he believes that as it is written, it would appear that the Board would be implementing a rule that allows for discrimination. Mr. Ward agreed.

Ms. Scimeca stated that it could go back to the Committee. Mr. Coffman replied that it could go back but that would endanger being able to meet the deadlines for completing the Rulemaking process.

Ms. Loggains read the definition of discrimination and said that she thinks that if someone understands the definition of the word then they should be able to understand what it means in the rules and the term is being used correctly. Mr. Koller stated that discrimination against protected classes is already addressed in Federal law and therefore, it shouldn't be assumed that the Board is trying to overrule that and allow that type of discrimination.

Mr. Ward made a motion to remove the word "unreasonable" from the phrase "unreasonable discrimination." Second by Ms. Yates.

Mr. Kent stated that he felt the removal of the word unreasonable undermines the intent of the phrase. Ms. Parrish with OLTA agreed that the word should not be removed.

Ms. Yates said that when the definitions were looked at during the committee meeting, those definitions also appear in Title 1 and would be part of legislation put forward by OLTA. She wanted to know why they were taken out. Ms. Dishman answered that in discussing the language with Monica Wittrock, the Committee Chairperson for OLTA's Government Affairs Committee, she explained that definitions should not be in both places, but that Title 5 was the appropriate location for the definitions.

Mr. Lower withdrew his objection. Mr. Ward agreed and withdrew his motion and Ms. Yates withdrew her second.

Mr. Coffman stated that the last definition was for an electronic abstract plant. Ms. Loggains asked whether there should be the addition of the term "but not limited to" but as she talked through it, she decided that it should not be added.

Ms. Yates stated that she thought it was a big deal and was putting the cart before the horse. She said that it should wait until there was a requirement in the law for electronic abstracts. The legislation is yet to be presented and if it fails, there would be a requirement for electronic abstracts. Ms. Mittasch stated that she didn't think it would be passing a rule, it would only be passing a definition of what an electronic plant would be. Ms. Yates said that she didn't think that we should be requiring electronic abstract plants before legislation is passed and that it should be in purview of the legislature.

Mr. Kent made a motion to approved the amended rules under 5:2 Definitions. Second by Ms. Ringo. Motion passed.

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

Mr. Coffman asked for a motion to enter the Rulemaking process for 5:2 Definition. Ms. Loggains made the motion. Second by Ms. Ringo. Motion passed.

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

Mr. Coffman brought up the next proposed rule changes to 5:11-7-1. Toward the end, there is a #3 Criteria. Previously, we had a letter A and numbers 1 – 5. Under A it says the Board share require the following in arriving at its decision whereas before it said the Board shall consider the following in arriving at its decision. The rest of the 5 items remain the same but a sixth item was added to require that the plant must be an electronic abstract plant.

This is only speaking to permits to build new plants and is not about existing plants and nothing will be retroactive. In some ways this is a moot point because all the plants that have been built in the past several years have been electronic.

He asked for discussion and comments. Laura Dishman with OLTA commented that the request for this from OLTA stems from meetings with legislators and is something they specifically asked for. They wanted improvements within the industry and initially wanted the digital requirement to be implemented retroactively. However, it was explained to them that it was cost prohibitive to go retroactive but for new plants, it's a more reasonable requirement and much more cost effective. Based upon their request, even if we didn't put that into the Rules and Law, the legislature would probably do it for us and word it how they wanted.

Ms. Yates asked Ms. Dishman items removed from the original language proposed by OLTA. Ms. Dishman explained that the language has gone back and forth to their Government Affairs Committee and there has been much discussion about the language and it was tweaked and changed. The first presentation was an initial draft which has been reviewed and adjusted several times.

Ms. Yates pointed out that after all that, all that's left was language regarding electronic abstracts. Ms. Dishman stated that there was also a section with fine increases and extenuating circumstances is still in there.

Ms. French added that due to time constraints there wasn't a lot of time to flesh things out to be perfectly perfect. Ms. Yates asked how they felt the legislature would react. Ms. French replied that she felt the topics they most wanted addressed were included.

Ms. Loggains points out that the item for unnecessary delay is still included and has been addressed so it didn't need to be included in other places. Mr. Koller added that there was other redundant language that was left out in the draft presented.

There was more discussion regarding the passing of rules prior to having legislation passed. Ms. Dishman stated that the legislature was adamant that they wanted these changes and informed OLTA that if they did not propose these changes in the rules and statutes, that they would do it.

Ms. Loggains asked the OLTA representatives whether the legislature would at some point push for requiring all plants to be digitized. Ms. Mittasch stated that she felt like they might. Ms. Parrish said that's exactly what they want to do because their perception is that digitized plants can produce abstracts faster.

Mr. Ward stated that typically legislation exists then rules are enacted and also feels like we might be putting the cart before the horse. Ms. Yates added that we don't know what will happen because the legislature is unpredictable and legislation is unpredictable. Therefore, we may start with one thing and end with something else and ultimately, we have to pass rules on legislation that's already passed and it seems premature to pass these rules before we know what the final legislation will be.

Ms. Loggains stated that to her it seemed proactive. Mr. Lower agreed. He stated that the purpose for the board is to set the rules and that if the Board wanted to put into the rules that a new plant had to be electronic, that's part of their purpose. Ms. Parrish pointed out that the rules are to define the statutes and is the common practice. She also cautioned that if the legislature doesn't see that the Board is being proactive that we don't stand a chance because it's necessary in the legislature's mind for us to move forward. Ms. Loggains added that by doing it this way, there is a definition they can reference to be able to see clearly the Board's intentions rather than them passing a law wondering what we'll come up with in response.

Ms. Scimeca stated that the consideration is whether the rule goes beyond what is allowed in the statutes or if it can simply stand in support of the statutes and falls within the allowed prescriptions of the law.

Ms. Loggains asked whether the definition would be contrary to that statutes and Ms. Scimeca responded that she did not believe so. However, under 5:11-7-1, it is changing things beyond a definition. Mr. Coffman stated that he didn't believe that the change there stepped beyond the scope of the statute. Mr. Lower agreed and said he felt that it was the duty of the Board to define those things in statute. He also pointed out that the Board doesn't operate in a vacuum. There are political considerations and realistic considerations. If we don't make these changes, we stand in disfavor with the legislature and in reality, no one is going to submit a permit for a plant that's not electronic.

Mr. Ward stated that all he was asking is to make sure we have the authority to do it. Ms. Scimeca responded that she felt it could be argued both ways but that if someone feels the Board has overstepped, they can always file for a declaratory action.

Mr. Lower and Ms. Ringo both stated that they can't see anyone even considering filing a permit to build a manual plant.

Mr. Ward made a motion to approve the proposed language for 5:11-7-1. Second by Mr. Kent. Motion passed.

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

Mr. Coffman asked for a motion to enter the Rulemaking process for 5:11-7-1 Application for Permit to Develop an Abstract Plant. Mr. Ward made the motion. Second by Ms. Loggains. Motion passed.

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

Mr. Coffman pointed out to the Board that the proposed language for Title 1 is in the packet and only for informational purposes. The legislation will be presented by OLTA. There is the addition of electronic abstract plant as well as an increase to fines. The fines have not changed since the creation of the Board so the legislation will increase the minimum fine from \$100 to \$250. Under Section 34, it inserts any person wishing to develop an electronic plant which helps to set the foundation that plants must be electronic. There is another note about acquiring instruments electronically whereas it used to only say mechanically. And there is a note about the prohibition of relying on the county indexes added. The final change is regarding the release of abstracts in Section 43 and the releasing of title insurance policies which adds language from Title 36 Title Insurance Law to Title 1.

Ms. Loggains asked if it was addressed as to whether a company could charge for copies of those policies and Mr. Coffman stated there was not. He said that there have been questions about charges for owner's policies but the committee felt that if something needed to be one with regards to owner's policies, it needed to be addressed in Title 36 and not in Title 1. This Board has no authority to propose a bill to that end.

- c.) **Licensing and Testing-Rex Koller:** Mr. Koller reported that there have been 35 people take the test and 30 passed since the last board meeting. The next testing date January 19<sup>th</sup> at the testing center.
- d.) **Inspections-Ayla Harper:** Ms. Harper reported that there had been no inspections.
- 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, 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 Albright Abstract & Title Guaranty Company (Kay), Bailey Hans, LLC dba Garfield Abstract Co. (Garfield), Bailey Hans, LLC dba Guarantee Abstract Co. (Garfield), Bailey Hans, LLC dba Humphrey Abstract Co. (Garfield), Buffalo Land Abstract Company (Johnston), Grant County Abstract Company, Jackson County Abstract Company, Jelsma Abstract Company dba Logan County Abstract Company, Modern Abstract and Title, LP (Bryan), Oklahoma City Abstract & Title Co. (Oklahoma), Old Republic Title Company of Oklahoma (Cleveland), Old Republic Title Company of Oklahoma (Canadian), Old Republic Title Company of Oklahoma (Oklahoma), and Sovereign Abstract & Title of Okfuskee County. A motion was made by Mr. Ward on behalf of the Enforcement Committee to approve the applications. Second by Ms. Loggains. Motion passed.

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

Abstention: Ms. Yates abstained from voting on those applications relevant to her company's business interests.

**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 Fairview Abstract Company (Major). A motion was made by Mr. Ward on behalf of the Enforcement Committee to approve the applications. Second by Mr. Kent. Motion passed.

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

**Rate Changes Only:** Presented to the Board for approval were amended rate sheets by Washington County Abstract dba Southern Abstract Company. A motion was made by Mr. Ward on behalf of the Enforcement Committee to approve the amended rate sheet. Second by Ms. Ringo. Motion passed.

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

**Application for NEW Certificate of Authority:** Presented to the Board for discussion was an application for a NEW Certificate of Authority with their rate sheet by Chicago Title Oklahoma Co. (Logan). Mr. Coffman stated that an application had been made by Chicago Title in August to build a plant in Logan County and the permit was granted. There was a previous permit granted in October of 2020 for Smith Brothers Abstract in Logan County. An application was received for a NEW

COA by Chicago Title in the last couple of weeks which was three months after their permit was granted.

Ms. Scimeca asked if there was anyone who needed to recuse themselves. Mr. Lower and Mr. Koller stated that they would abstain because they're both employed by owners in the group making application.

Upon investigation, it was discovered that the plant build was a joint effort between them. The Board was not aware of that because it was not disclosed when the permit was granted that it would be a joint effort with the organization already holding a permit other than a statement in the application that indexing would be done by Smith Brothers employees.

Therefore, the question to be discussed is whether the application is in order. There are plants now that exist in Oklahoma and Tulsa Counties with a shared plant, but they were already in existence when the board was formed. We have not had two COA applications coming from the same plant before. Because of circumstances, it was deemed that it should be discussed by the Board as a whole.

Ken McBride with Chicago Title Company was given the floor by Mr. Coffman. Mr. McBride stated that they entered into an agreement to share the cost of the plant as independent companies prior to the change in the ownership structure of the Smith Brothers group. It was also agreed that both companies would have a totally independent plant. Each company would have an electronic plant on their own servers that each company could do with as they like, and each company would have their own software license, but they would share the cost of construction. Since then, Fidelity, who is the parent company for Chicago Title, has acquired 80% ownership of the parent company of Smith Brothers.

Chicago Title intends to fully comply with the agreement and share the cost of the construction. Their thought is to share the cost but that the result is the same as if Smith Brothers built a plant and sold them a copy. It's the same result. He repeated that each company would have its own version of the plant on their own servers to do with as they will.

Mr. Coffman asked whether that intention had been in place when Smith Brothers originally filed for their permit to build. Mr. McBride said it was, but that they wanted to wait to file their permit to see what progress was actually made. Mr. Coffman stated that the disclosure of their intent in the very beginning with the Smith Brothers application for permit.

Ms. Loggains asked whether there was a written agreement. Mr. McBride confirmed there was. Ms. Loggains asked if it was a partnership and Mr. McBride stated that it



was not but is a services agreement. Chicago Title hired Smith Brothers to build the plant for them and once it was delivered, the plant belonging to Chicago Title was released from all control and rights by Smith Brothers. There is now an intent to have a joint maintenance agreement implemented so that the plants can be updated ongoing.

Ms. Yates stated that the application simply states that an abstract plant must be available for use and points to 1-28 in the statutes which says that someone wishing to enter the business of abstracting must have for use an independent set of records. However, there is no requirement for them to have built it, just that they have it. Ms. Loggains stated that most companies being built now don't build it themselves.

Ms. Ringo asked whether both companies would be open for abstracting. Mr. McBride stated they would and would be competing against each other. He stated that their intent for filing for the permit was to be more transparent rather than waiting until it was complete and presenting a purchased version of the plant.

Mr. Kent stated that he didn't see an issue with it. Mr. Coffman also asked for a copy of the agreement with Smith Brothers be submitted.

A motion was made by Mr. Ward to proceed with the application. Second by Mr. Kent. Motion passed.

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

Abstention: Jeff Lower and Rex Koller abstained from voting.

**Application for NEW Certificate of Authority:** Presented to the Board for approval was an application for a NEW Certificate of Authority with their rate sheet by Smith Brothers Abstract & Title Co., LLC (Logan). A motion was made by Mr. Ward on behalf of the Enforcement Committee to approve the applications. Second by Ms. Ringo. Motion passed.

Ms. Harper read the Director's Report into the record.

Comes now Katherine Smith, State Administrator of Abstracting of the Oklahoma Abstractors Board, and states:

The application for certificate of authority has been received in proper form and reviewed.

Proper notification was made by posting on the OAB website, notifying the Court Clerk and County Clerk of Logan County, as well as all Certificate of Authority holders in Logan County.

No comments were received from any party.

Payment of the applicable fees have been made in the correct amount of \$1,200.00. E&O Insurance in the sum of \$10,000,000.00 and a County records bond of \$25,000.00 have been posted.

Inspections have been performed by the Inspectors on behalf of the OAB and all have found an adequate abstract plant available for use.

The name of the company is not deceptively similar to other certificate of authority or permit holders, and the company has an actual physical presence in the county of Logan.

According to the foregoing, the application for a Certificate of Authority is in compliance with Title 1 of the Oklahoma Statutes and 5:11-9-1 of the Permanent Rules of the OAB.

As the State Administrator of Abstracting of the Oklahoma Abstractor's Board, I hereby recommend that the Application for Certificate of Authority submitted by Smith Brothers Abstract & Title Co., LLC be approved. Signed Katherine Smith dated November 3, 2022.

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

Abstention: Jeff Lower and Rex Koller abstained from voting.

7. **New Business:** Mr. Coffman asked for new business. There was none.
8. **Report Legal Counsel-Whitney Herzog-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, December 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. **Adjournment:** Mr. Coffman asked for a motion to adjourn the meeting. Motion was made by Ms. Ringo. Second by Mr. Ward. Motion passed.  
Yeas: Darin Kent, Darla Ringo, Jeff Lower, Lisa Yates, Randy Coffman, Rex Koller, Scott Ward, and Sue Ann Loggains. Nos: None.