

OKLAHOMA ABSTRACTORS BOARD
MINUTES OF REGULAR MEETING
September 20, 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. 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 August 16, 2022, were reviewed. A motion was made by Ms. Ringo to approve the minutes as presented. The motion was seconded by Mr. Lower. 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 had nothing to report.
5. **Administrator's Report (Board Report):** Ms. Smith reported that she attended a leadership meeting with the agency's Cabinet Secretary. Discussions covered several topics such as FY24 budget preparation and that the OAB is not the only agency having issues getting online licensing implemented.
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 \$52,977.93, which gives us a total Year-To-Date Encumbrances and Expenses of \$86,665.79 and a variance of \$211,397.21. The revenue for the month of June was \$28,810.00 and expenses were \$19,498.12 which leaves us with an ending cash balance of \$909,074.93. After review and discussion, a motion was made by Mr. Mapes to approve the report as presented. Second by Ms. Yates. 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 2 people take the test and both passed since the last board meeting. The next testing date is November 2nd as part of the OLTA's Basic Abstractors School and on November 17th at the testing center.
 - d.) **Inspections-Katherine Smith:** Ms. Smith reported that there had been five 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. 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, Scott Ward, and Sue Ann Loggains. Nos: None

Abstention: Mr. Mapes abstained from voting on the report related to his business interests.

Consent Orders: Ms. Smith reported that there is a consent order in the packet, related to inspections reviewed at a previous board meeting. The Respondent has agreed to the order, signed it and returned it 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 Ms. Loggains. Second by Mr. Ward. 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.

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 Great Plains Investments dba Bailey's Abstract & Title (Jackson), Delaware County Title, LLC dba Smith Brothers Abstract, LLC, University Land Title Services, Inc. (Payne). A motion was made by Mr. Ward on behalf of the Enforcement Committee to approve the applications. Second by Mr. Mapes. 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.

Abstention: Mr. Koller abstained from voting on the renewal related to his 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 SCA Title, LLC dba Haskell County Abstract and Title. 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, Jeff Mapes, 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 approval was an application for a New Certificate of Authority by Mod Marshall, LLC dba Modern Abstract & Title. 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.

Ms. Smith then 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 Marshall County, as well as all Certificate of Authority holders in Marshall County.

Comments were received from the existing COA holder as well as the County Clerk.

Payment of the applicable fees have been made in the correct amount of \$800.00. E&O Insurance in the sum of \$1,000,000.00 and a County records bond of \$15,000.00 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 Marshall.

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 Mod Marshall, LLC dba Modern Abstract & Title be approved. Dated September 20, 2022.

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 & Abstract of Rogers and Wagoner Counties, LLC (Wagoner). 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 Arbuckle Closing & Escrow Service, LLC dba Arbuckle Title & Abstract (Carter). 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.

Complaints OAB-2022-W138: Ms. Smith reported that the complaint was regarding the exclusion of documents in an abstract and unnecessary inclusion of other documents. After review, the Enforcement Committee states that there is no evidence of: Documents left out of an abstract; unnecessary documents included in an abstract; breach of duty to furnish a true and correct abstract; or aiding and abetting forgery and fraudulent conveyance of title. There is no part of the complaint that involves an abstractor or the abstracting process. Therefore, the OAB has no jurisdiction to act on this complaint. The recommendation of the Enforcement Committee is closure of the complaint. 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. 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.

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, October 18, 2022, at 10:00 a.m., 421 NW 13th 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 continuance of the Administrative Hearing was commenced. Mr. Ashbaker opened by stating that the Board had not been giving the opportunity to ask questions of both the previous witnesses. Mr. Johnston raised the point that he had not found in the Administrative Procedures Act (APA) or in the Board's Rules that empowered the Board to call back a witness who has already been dismissed. Mr. Ashbaker asked in what way it would

possibly prejudice the defense if the Board was given the opportunity to ask questions of every witness. Mr. Johnston stated that they were worried about anything the witness might say but that arguments had been made that pertained to allowances of the APA and certain things were barred based upon that so if those grounds were held up for one issue, they should be held up for another. Mr. Ashbaker stated that one was procedural and the other was substantive.

Mr. Johnston said he didn't agree and felt there was no merit to the argument that unless some procedural step was specifically set forth in the APA, it could not be taken, specifically referencing a previous motion to dismiss and demur. Mr. Ashbaker stated that the Supreme Court had decided that an action, such as a motion for summary judgment, was not allowed because it wasn't contained in the APA. He asked Mr. Johnston if he agreed. Mr. Johnston stated that he felt it depended upon what it was. Mr. Ashbaker stated that the Board is entitled to ask questions of witnesses without question, however, they are not entitled to do a demur because there's nothing that grants them that authority. If necessary, prosecuting counsel could call the witness back in rebuttal at the end and they could ask questions then, so he's going to allow the Board to ask questions and the objection has been noted. No questions were asked, and the point was then moot, and Mr. Johnston was allowed to proceed with the case.

Mr. Johnston called Chase Pollard to the witness stand and he was sworn in. Mr. Pollard stated that he was an insurance agent and was employed with Arbuckle and also was in charge of marketing. He is Luke and Lisa Pollard's son. He works full time and does some abstracting but mostly marketing and business development. He stated that approximately four people worked for Arbuckle Abstract and being a smaller company, he essentially did whatever needs to be done. He has worked for the abstract company since 2008 and has participated with the build of the abstract plant and participated in the application process for the certificate of authority and in the operations since. Upon reviewing the application, Mr. Pollard stated that his role was negligible with regards to putting the application together. That activity primarily fell to another employee, Wes Womack. He did, however, review the rules to ensure the information presented on the application was accurate as that was the company's overall goal.

Mr. Johnston asked Mr. Pollard about the company existing in Love County and Mr. Pollard stated that they were ruthless, and his company couldn't do anything without catching a lawsuit. The existing company required pre-payment on orders, and he claimed that the company was involved in steering and if someone even came close to stepping out of bounds, they were on you. Mr. Johnston asked if the existing COA holder had sued Arbuckle and the witness answered yes and alleged that the company had worked with the public officials to deny Arbuckle access to the public records and entered into a lawsuit with the county against Arbuckle.

Mr. Pollard stated that the application for a certificate was contested by the competitor who also later filed a lawsuit with the district court. Mr. Pollard stated that because of those reasons, he worked to ensure the validity of the application and says there were no questions about the application or requests for additional information from the Board.

Mr. Johnston asked Mr. Pollard if he found anywhere in the statutes that referred to an actual physical presence. He stated that there was nothing in the statutes, but it was mentioned in the rules. He said he did some research and said he couldn't find a solid definition outside of a PO Box for a salesman or a phone number for states to collect sales tax if you have a presence so that the state would be entitled to sales tax. Mr. Johnston asked if he thought that if they had done everything to submit an application and ensure that the information was correct that it would then be up to the Board to determine that actual physical presence. Mr. Pollard answered yes. Mr. Johnston asked him if he or anyone he was aware of at Arbuckle made any statements that were a misrepresentation or an intent to deceive the Board. Mr. Pollard answered no.

Mr. Johnston asked whether before the certificate of authority was issued there was an inspection by Ms. Smith. Mr. Pollard agreed there was. Mr. Johnston asked what his participation in the inspection was. Mr. Pollard stated to be ready to answer any questions. He claims that when Ms. Smith showed up, she was in a hurry because she has seventy-seven counties to deal with. He said he didn't like the location as far as the access because of the steps on the 108. Mr. Johnston cut him off and said they would take it a step at a time. He asked whether Mr. Pollard's participation with Ms. Smith was to be prepared to provide whatever information she needed. He answered that was correct. Mr. Johnston stated that we understand that there were buildings and the certificate itself was going to be or Love County. Mr. Pollard agreed. Mr. Johnston asked where he met Ms. Smith. Mr. Pollard claims he met her in Carter County at Arbuckle's closing offices. Mr. Johnston asked Mr. Pollard if he was there for the visit in Marietta and Mr. Pollard confirmed he was not there.

Mr. Johnston asked if one of the buildings being looked at was 108 and Mr. Pollard said it was. He also confirmed that it was the building behind the dentist office that had the stairway. Mr. Johnston asked him to address the suitability of the building and Mr. Pollard stated that from a marketing standpoint, you want the best, you want your customers to be as unencumbered as possible. He didn't like that location because in rain, sleet, snow, it presented a possible risk. Mr. Johnston asked if his father was looking for a more suitable home for the abstract company and Mr. Pollard said they already had one at that point.

Mr. Johnston asked about conversations he had with Ms. Smith about the 108 location. Mr. Pollard claims that he had to stop Ms. Smith because she was busy and claims that they had a conversation about the steps and asked if they could have a drop box at the bottom of the steps. He claims Ms. Smith responded that she didn't care what they did as long as people have a place to pick up and drop off abstracts. Mr. Johnston asked if a drop box was a staffed location and Mr. Pollard said that it wasn't necessarily and asserted that Ms. Smith said that was an acceptable way of doing business and he stated that informed his thoughts about what actual physical presence meant. Mr. Pollard claims that it meant that she didn't care what they did as long as they had a place for people to pick up and drop off abstracts. Mr. Pollard claims that Ms. Smith was in a hurry and rushed and didn't say anything about having employees at the location. When asked if

Ms. Smith was paying attention to him and his concerns, he stated that Ms. Smith heard his question and answered it.

Mr. Johnston asked about whether there was the acquisition of another property at 114 Main in the time leading up to the meeting where the application would be reviewed, and Mr. Pollard stated that to be correct. Mr. Johnston handed out photographs and asked Mr. Pollard if he knew when the photographs were taken and Mr. Pollard said he did not because he had not taken them but guessed it might have been in the April timeframe. Mr. Johnston stated that Mr. Pollard's father had taken some photos immediately after Ms. Smith's visit or phone call and Mr. Pollard said yes. Mr. Johnston asked if they were true and correct depictions of what the office looked like at that time and Mr. Pollard said yes.

Ms. Scimeca objected based upon there being no statement of the year and that the witness didn't actually take the pictures therefore it hasn't been proven when the photos were really taken and who they were taken by. Mr. Ashbaker asked if she was claiming there was lack of foundation and Ms. Scimeca said yes because Mr. Johnston had said April and it was clarified that they were referring to April 2021. Mr. Ashbaker overruled the objection and exhibit 14 was admitted.

Mr. Johnston asked the witness to verify that the pictures didn't depict what it looked like at the time of the application but that the location at 114 was being prepared and Mr. Pollard confirmed. Mr. Johnston asked whether in September of 2020, there was a hearing where the certificate of authority was granted and Mr. Pollard confirmed there was and that he was involved in the preparation of the office. Mr. Pollard said they started trying to get phone service in place the afternoon the certificate was granted. Mr. Pollard stated that the internet was the difficult part because of COVID and an appointment had to be requested. The phone was easier to acquire and they were given a local number and they had difficulty getting a specific local prefix, but they were able to gain one through a VOIP provider. They thought that was important to be viewed as a local company. Mr. Pollard stated that when the building was purchased, it had been a boutique and had to have all the remaining boutique items removed then had to get internet and phone and furniture to have it as a presentable location to have for customers. Mr. Johnston pointed to a page in exhibit 14 and asked whether it depicted the furnishings that were put into the building and Mr. Pollard said it did and claimed it was in the location September immediately after the granting of the certificate of authority along with a laptop and internet service. When asked how long it took to get the internet and phone hooked up, Mr. Pollard stated that they started dealing with Sparklite for the internet on September 11th, but he wasn't sure when it was installed, but when Mr. Johnston asked whether it was within a month or two, Mr. Pollard agreed.

Mr. Johnston asked Mr. Pollard about the efforts to obtain signage and Mr. Pollard stated that they started immediately with social media efforts, but for the signage of the building they put a vinyl sign to direct people where to go and where to meet with them and then ordered the sign shown in exhibit 14 after artwork and all that was submitted. He also stated that Wes Womack was in charge of submitting the artwork and ordering the sign.

Mr. Johnston pointed to a sign in the photo that stated temporary home of Arbuckle which Mr. Pollard confirmed. When asked when they started to work on getting the sign up, Mr. Pollard said it was immediately and that there was a vinyl sign that got windblown, so they decided to put up a more permanent sign while they were remodeling another location at 304. The new sign was ordered sometime before January 15th, because they'd hoped to have it in place by an event they had planned, but he didn't give an exact date. He thinks it was finalized on January 25, 2020. Mr. Pollard said that by January, a sign had been ordered and phones and internet were in place along with office equipment and Mr. Pollard confirmed that.

Mr. Johnston asked whether Mr. Pollard had seen a rule that stated that having a location with phone, internet and a sign does not indicate an actual physical presence. Mr. Pollard said no. Mr. Johnston asked who was typically at the office and Mr. Pollard said it was Luke, Wes, himself, or a realtor that offices there. Mr. Johnston asked whether they also maintained an office at the courthouse and Mr. Pollard said they did and that Wes mainly staffed that office that had a desk and scanners.

Mr. Johnston asked whether Ms. Smith had stated that what was needed was a place to transact business and Mr. Pollard claims she said that all that was needed was a place to pick up and drop off abstracts. Mr. Johnston asked how the picking up and dropping off of abstracts happened in Marietta and Mr. Pollard said that it was however the customer wanted and they advertised through door-to-door marketing, social media, chamber meetings, and realtor meetings that they were available twenty-four hours a day, seven days a week because they wanted to be as available as humanly possible to service their customers. Therefore, if someone wanted to transact business, drop off an abstract or pick up an abstract and no one was at the office, they could call and it would be picked up wherever the customer was. Mr. Johnston asked if there were ever any issues that arose with customers and Mr. Pollard said no, they'd only received high praise because they knew what price they were going to pay and there wouldn't be an issue getting an abstract turned out which was vastly different from what customers had experienced with the existing company. He stated that there were no problems with getting abstracts out and they were proud of it.

Mr. Johnston asked whether anyone at Arbuckle had ever operated an abstract business before and Mr. Pollard answered no and that they were starting from scratch. Mr. Johnston returned to the subject of the location at 108 S Second and its suitability and the desire to use the location at 114 W Main. He asked whether there was any thought given to notifying the staff at the Abstractors Board. Mr. Pollard answered yes. Once the 114 location was cleaned out, he asked Wes Womack, because he deals with the Board and paperwork to the Board, whether he had contacted the Board. He stated that Mr. Womack told him there were no forms on the OAB website and that he would call Ms. Smith and check. Mr. Pollard claims that Mr. Womack called Ms. Smith and was told it was fine.

Ms. Scimeca began her cross examination by repeating the statement he made about his belief that Mr. Womack called Ms. Smith. Mr. Pollard agreed that was correct. Ms. Scimeca pointed out that Mr. Pollard had not made any phone call so he couldn't be sure

what the actual conversation was. He agreed. Ms. Scimeca pointed out that he couldn't even be sure there was a conversation. Mr. Pollard replied that Wes is pretty thorough.

Ms. Scimeca asked about the photos in exhibit 14 and whether they were taken well after the certificate of authority was granted. Mr. Pollard stated that he believed they were taken when they realized there might be a problem. Ms. Scimeca stated that the realization of a potential issue was not until April of 2021 so that was significantly after the time when the certificate of authority was issued. Mr. Pollard affirmed that was correct. Mr. Pollard claims there was a vinyl sign put up a short period after the certificate of authority was granted. He stated that he did not have a picture of that sign but could maybe find one.

Ms. Yates asked the witness about exhibit 6 shows a photo taken by Mr. Luttrull in April 2021 depicting the sign on the window that stated that the company was open for business but until phone and internet could be installed, the company could be contacted at...and gave their email and phone number. She asked if it was at 114 W Main and Mr. Pollard stated it was. She asked why, if they got their phone and internet right before they received their certificate of authority why was there still that sign on the window in April of 2021. Mr. Pollard claimed that he couldn't say that sign was still on the window of 114 at that time. Mr. Pollard claimed that once the local number was obtained, the sign at 114 was changed but may have still be present at 108 and 304 because they weren't doing anything at those locations.

Ms. Yates asked about the location at 304 and Mr. Pollard stated that it was under remodel at the time because it needed extensive renovation and would be their permanent location. She asked whether the Board would be notified immediately upon its implementation. Mr. Pollard said that would be taken care of by Mr. Womack.

Mr. Johnston followed up by pointing out that the photos taken by Mr. Luttrull were only taken at 108 and 304 and that he didn't go to 114 and take a picture. Mr. Pollard agreed that was accurate.

Ms. Scimeca asked Mr. Pollard to review exhibit 7 which is the email from Ms. Smith to the Enforcement Committee in April 2021 and asked him to read the first few sentences where Ms. Smith states that she went to Marietta and visited all three locations confirming the same sign was on all three locations.

Mr. Johnston asked Mr. Pollard whether just because Ms. Smith said the same sign was at all locations, was that true. Mr. Pollard said he thought that was incorrect. The witness was excused.

Wes Womack was called to the stand and sworn in. Mr. Johnston asked Mr. Womack about his employment. Mr. Womack stated that he is employed with Arbuckle Title and that he is a licensed abstractor and takes care of numerous other things in the office. He stated that he had worked with them since spring 2008 long before there was an application for certificate of authority turned in. He confirmed that he has no familial

relationship to the Pollards, but is only an employee. Mr. Johnston asked whether in the summer of 2020, the application for certificate of authority was submitted. Mr. Womack stated it was. Mr. Johnston gave him exhibit 3 and asked Mr. Womack to identify it to be the certificate of authority and the application which was submitted along with the attachments to the application. Mr. Womack stated that he put the application together as he was instructed by Mr. Luke Pollard and to get it done quickly and correctly. Mr. Womack said he did and that they'd been working on it for over a decade and wanted to be sure it was right because of challenges they had faced leading up to the time of the application.

Mr. Johnston asked Mr. Womack if he prepared for the application, and he confirmed he read the statutes and rules several times. Copies of the statutes and rules were submitted as exhibits. Mr. Johnston asked if Mr. Womack is an attorney and he said he was not but that he understood that there should be no misrepresentation in the application.

Mr. Johnston asked about the requirement of a physical presence and Mr. Womack stated that it occurred one time in the rules under the items considered for the issuance of a certificate of authority and that it is not defined as anything but a requirement. There are no requirement spelled out for hours to be posted or staffing to be present. He confirmed he understood that Arbuckle had several buildings in the county.

Mr. Johnston asked Mr. Womack whose responsibility it was to figure out whether Arbuckle had an actual physical presence. Mr. Womack said he wasn't sure, and that he wasn't an accountant either, but for taxation purposes if a traveling salesman comes through and sells some knives, he has to pay taxes and that's considered an actual physical presence but that's the extent of his knowledge. He said there was no clear explanation of what that meant in this context of an abstract company.

Mr. Johnston asked what the address was on the application. Mr. Womack responded that it was 108 S Second at the time they submitted the application because at the time, that was the building they had, and they didn't have the location at 114 W Main when the application was submitted. They had the 304 location, but it was still in the process of remodeling. Mr. Johnston asked if it was still in the process of remodeling and Mr. Womack stated that the remodel had been completed. Mr. Johnston stated that from Mr. Luke Pollard's reaction, he might have a different view of that.

Mr. Johnston asked whether at the time the application was completed, was it true and accurate in every detail. Mr. Womack stated it was and that at no time did Mr. Pollard instruct him to hide anything or attempt to deceive the Board with anything in the application.

Mr. Johnston asked about the inspection performed by Ms. Smith and that she looked at some properties. Mr. Womack stated he wasn't there, but that's what he was told because he was in the office in Ardmore or in Marietta. He claims he had brief, passing contact with Ms. Smith on the day of the inspection and that he didn't remember anything specifically about the encounter. Mr. Johnston asked if Ms. Smith told him over and over

again about needing staff at the location. Mr. Womack said she did not. Mr. Johnston asked if she ever explained anything about what an actual physical presence was according to her or and interpretation of the Board. Mr. Womack said she did not and that he didn't see any emails from her stating what actual physical presence was.

Mr. Johnston asked if he disagreed with any of the claims made by Chase Pollard in his testimony about the efforts to prepare their locations and Mr. Womack said he did not. Mr. Johnston asked about the signage on the location. Mr. Womack said he was involved in the placement of a temporary sign and a more permanent sign at the temporary location. Mr. Johnston gave Mr. Womack exhibit 19 and asked him to identify it. He stated that it was a proof for the sign that went up at 114. The proof was produced in late January 2021. Ms. Scimeca objected on the basis of relevance to the case. Mr. Ashbaker asked whether she believed there wasn't a sign. Ms. Scimeca stated that the COA was issued in September of 2020 but wasn't sure how a proof was relevant during the timeframe of September 2020. Mr. Ashbaker overruled her objection.

Mr. Womack stated that the proof was received on January 22nd of 2020 and once he authorized the printer to move forward. He claims that the printer was very fast, and he would have had the sign back in the next day or two once approval was given. Once the signs were received, he says they were driven to Marietta and installed at 114. Mr. Johnston pointed out the photo in exhibit 14 and asked if the sign depicted matched the proof from January. Mr. Womack affirmed it did. Mr. Johnston asked the purpose of putting up a sign to which Mr. Womack answered so their customers could find them.

Mr. Johnston asked who was at the 114 location most often and Mr. Womack stated that was probably him. Mr. Johnston asked about their location at the courthouse and Mr. Womack stated it was there for the purpose of obtaining documents that they don't have copies of or new documents. Mr. Womack claims he was at the courthouse every day and spent time at the location at 114 every day and was there if someone wanted to come by and drop off an abstract. Mr. Johnston asked him about the level of walk-in traffic at the location. Mr. Womack said he never had anyone come in unless they were looking for the tag agent. Mr. Womack asked about staffing every day and Mr. Womack confirmed that after Ms. Smith's visit, they had staff there every day but that walk-ins were still seldom to none and that most abstracting business is pre-arranged. Mr. Womack stated that things are prearranged through phone calls, emails and such from customers or title companies. Mr. Johnston asked if that was more convenient for customers and Mr. Womack asked for clarification. Mr. Johnston asked whether from a customer standpoint it would be more convenient to send an email or make a phone call and have the abstract company come pick up the abstract or whether he thought it was easier from a customer standpoint for them to come down to the office. Mr. Womack stated that when the customer has it, it's easier for them if they come pick it up and meet them at their office or place of employment or other convenient location. Mr. Womack confirmed that he'd performed that service. Mr. Johnston asked whether that was the only way for Arbuckle to get abstracts and Mr. Womack stated that they also received abstract via delivery services or by realtors bringing them in or getting them from other abstractors. Mr. Johnston asked whether any customer ever had difficulty arranging for their abstract to be

picked up. Mr. Womack said that if they did, they didn't make the company aware of it and they never received complaints but that they had only received compliments on their speed of service.

Mr. Johnston asked what was going on in the world in April 2021. Mr. Womack answered COVID and stated that there was several business closed with signs on their doors for customers to call for service which wasn't different from what Arbuckle was doing at the time and that even the courthouse at times during that period.

Mr. Johnston asked about the competing company in the county and how they were operating. Mr. Womack stated that you never would know if they were open or not and that often the door would be locked with no note or anything posted saying where they were or when they'd be back or any way to get in touch with them. Mr. Johnston asked about staffing at Marietta Abstract and Mr. Womack stated that he believed only their niece was working and she was who he would occasionally see at the courthouse. Mr. Johnston stated that the other company was operating the same was as Arbuckle and Mr. Womack stated that he thought that was a fair depiction.

Mr. Johnston brought up testimony from Chase Pollard regarding Mr. Womack notifying the Board of the change of location between the time the application was submitted and when it was reviewed by the Board. Mr. Womack stated that he didn't remember the details because it was in the process of making sure the application was right and the inspection and he can't remember if it was an email or a phone call asking what was needed. He said he wasn't sure if he talked to Ms. Smith or Mrs. Harper but it was along the lines of they were aware of it and it wasn't an issue. Mr. Johnston clarified that the Board was aware of the change of address from 108 to 114. Mr. Womack confirmed that was correct.

Ms. Scimeca asked him to confirm that he called the Board and spoke to Ms. Smith regarding the change in address. Mr. Womack said that it was either her or Mrs. Harper or it might have been an email but he couldn't be sure because it was a long time ago.

Mr. Coffman asked Mr. Womack about testimony given by Mr. Pollard that stated that the day after the COA was granted that's when they began to establish phone and internet service for the location and Mr. Womack confirmed that was correct.

Ms. Lisa Pollard was called to the stand and sworn in. Mr. Johnston asked how she was employed, and she stated that she was the loan closing officer and owner of Arbuckle Closing which is a separate entity from the closing company. She confirmed that she is a licensed abstractor but otherwise doesn't participate in the abstracting side of the business other than part ownership.

Mr. Johnston asked about her involvement with the abstract company and the application process. Ms. Pollard stated that there are meetings between the owners and employees but it was pretty much left up to them unless she was asked for something specific. She confirmed that she was mostly on the closing side of the business although she was aware

of the application. She stated the intention was for it to be exact, correct and approved. He asked if there was an intention to deceive the Board or mislead them and she replied not at all and there would be no good reason to do that.

Mr. Johnston asked whether she had experience dealing with the existing COA holder in Love County, Marietta Abstract. She said yes. He asked her if there was ever any difficulty working with and dealing with Marietta Abstract. Ms. Pollard stated that she heard a lot of complaints from customers and realtors to that affect and that she herself had problems dealing with them and contacting them even during regular business hours. Mr. Johnston asked her about the company's vacation schedule and Ms. Pollard said that they bragged about taking four to five two-week vacations per year and there would be no one there running the office while they were out. Mr. Johnston asked if there were any complaints about that and she replied oh yes. He asked if she had heard Ms. Smith's testimony about no complaints ever coming out of Love County and whether was true. Ms. Pollard claimed that was not true. He asked how she knew that wasn't true. She stated that customers would come in, realtors would come in and ask how to get a complaint form and that she had some printed and laying there and she would provide the form to them and tell them to follow the instructions. This occurred for many years and wasn't just recent. He asked if anything was ever done as a result of the complaints, and she said no, not that she was aware of.

Mr. Johnston gave her exhibit 18 for review. She identified herself in the photograph in her office at the closing office in Ardmore and verified it depicted the layout of her office. Mr. Johnston recalled the testimony of Ms. Smith where she stated that during a phone call with Luke she looked at her in the corner of her office to see her saying some phrase. Ms. Pollard verified she remembered that testimony and that Ms. Smith had stated that Ms. Pollard was saying something to the effect of she tried to tell him. When asked if it was true by Mr. Johnston, she claimed it was not. Mr. Johnston asked whether Ms. Smith had testified how she had seen Ms. Pollard saying that. Ms. Pollard stated that the testimony said that Ms. Smith had said she saw Ms. Pollard out of the corner of her eye and that was true because she was in one location and Ms. Smith was in another. When Mr. Johnston recalled that Ms. Smith stated that she saw Ms. Pollard in the corner, he asked if there was a corner where she could go sit and Ms. Pollard stated that she did not.

Mr. Johnston asked about Ms. Smith's visit to the office and her demeanor. Ms. Pollard stated that she got up to welcome her and that Ms. Smith was aggressive and rude and asked where Luke was. Ms. Pollard stated that she could get him by phone and Ms. Smith told her to do that. She got him on the phone and traded places with Ms. Smith so she could sit behind the desk for access to the phone and then Ms. Pollard sat to a specified chair and there was no place with a corner for her to sit in and there was no way Ms. Smith could have seen her out of the corner of her eye because she would have been looking directly at her. Mr. Johnston asked what Ms. Smith's demeanor was with Luke on the phone. Ms. Pollard said that Ms. Smith was very aggressive, and very condescending, and she remembered thinking that she had hung up on customers for less

than that and that Ms. Smith was very rude, very ugly, and very unprofessional. He asked again if she had told Luke “I told you so” and she said she had not.

Ms. Scimeca clarified that when discussing complaints that the question had been about complaints against Marietta Abstract and not Arbuckle and it was confirmed against the transcript provided by Mr. Johnston. Ms. Scimeca pointed out that the current hearing is regarding Arbuckle, not regarding Marietta and Ms. Pollard verified that was correct. Ms. Scimeca asked about the case that was filed against Arbuckle by Marietta Abstract and asked if Ms. Pollard was aware of anything filed by the Board with regard to that case. Ms. Pollard said she thought that the Board was named as a party. Ms. Scimeca asked for judicial notice of the case in which the Board filed a motion to dismiss, and it was granted by the court.

Ms. Loggains asked Ms. Pollard whether at any time from January through April if she felt they were not represented enough and should have more people there or a better phone number or more accurate service. Ms. Pollard stated that she had more calls to the closing office than ever before congratulating them and complimenting their service. Otherwise, it didn’t enter her mind because her office was closed because of COVID and was open by appointment only and Marietta was pretty well shut down, so it never entered her mind that there was a need for anyone to sit there. The witness was dismissed.

Mr. Johnston called Luke Pollard to the stand, and he was sworn in. Mr. Pollard stated that he is an owner of Ardmore Title and Arbuckle Closing and Escrow Services, LLC. Mr. Pollard stated that they had first applied for a permit to build an abstract plant in 2008 and formed the entity that applied for the permit in Love County. Mr. Pollard stated that the closing company was started two years prior to that.

Mr. Johnston asked whether the existing COA holder was helpful in the long journey to obtain a COA. Mr. Pollard responded that they were not but fought them every step of the way, even suing them a number of times. Mr. Pollard claimed that they had worked with the county clerk to prevent Arbuckle from being able to copy documents at the courthouse but there was a lawsuit that went to the Supreme Court that affirmed Arbuckle’s right to copy documents.

Mr. Johnston asked whether at the end of the long process there was a decision to submit an application and Mr. Pollard affirmed there was and that their intention was for the application to be totally accurate with no slip ups. Mr. Johnston gave the witness exhibit 3 and asked Mr. Pollard to review it. Mr. Pollard confirmed that it was the application submitted by Arbuckle and that Wes Womack was the one tasked with putting the application together because he is a meticulous person. When asked if any instructions were given to Mr. Womack, Mr. Pollard stated that he really didn’t need any instructions other than to get it done right. Mr. Pollard confirmed that he reviewed the application before it was signed and notarized and by signing before a notary he affirmed that he believed everything in the application was true. Mr. Pollard stated that there was no intent to deceive or mislead the Board nor did he have any reason to do so.

Mr. Johnston asked whether the application uses the term actual physical presence in any way. Mr. Pollard stated that he didn't believe so. He confirmed that the form did ask for a business address and stated the address listed was 108 S Second, Suite A, Marietta. He stated that the address in the application was used because at that time it was the only one they had that could have been appropriate and it was the only property they had access to.

Mr. Johnston gave the witness exhibit 17 and asked him to identify the photos which were confirmed to be the location at 108 S Second. Mr. Pollard claimed that he took the photos after he got the call from Ms. Smith which was approximately April of 2021. He stated that they were a true and accurate representation of the scene depicted in them. Mr. Johnston asked to have the exhibit admitted and it was without objection. Mr. Johnston pointed out the stairway and asked whether it caused any concerns. Mr. Pollard confirmed that it did because the stairway wouldn't have been ideal, and he wanted it to be ideal but that's all he had right then. Mr. Johnston asked whether the stairway posed any potential problems with access during weather and Mr. Pollard said they did if it was wet, or icy, or raining, there are just a lot of reasons, but 304 couldn't possibly be ready.

Mr. Johnston gave the witness exhibit 16 and asked him to identify it. Mr. Pollard confirmed that the photos depicted 304 W Main. Mr. Pollard stated that he took the photographs and that they showed a before and after representation of 304 W Main. He wasn't sure when the first photograph was taken. It was a photo in his phone and he claimed it was from when they first got the building but that it was likely in 2019. He stated the second photograph was taken right after he got the call from Ms. Smith and claimed it accurately depicted what the property looked like that that time. The third photograph of the exhibit was identified by Mr. Pollard as being the sign that was on the window directing people to 114 because although the building might have appeared to be ready, it was an ongoing project and still wasn't but 95% complete on the date of testimony. Mr. Johnston asked to have the exhibit admitted and it was without objection.

Mr. Johnston stated that the company had 108 which had some flaws and Mr. Pollard answered yes. Mr. Johnston stated that they also had 304 which, at the time of submitting the application was essentially a shell and in no condition to suit their customers. Mr. Pollard answered yes. Mr. Johnston asked the witness what he did to deal with that circumstance. Mr. Pollard stated that he found another building at 114 which was between the courthouse and the tag agency and the post office. He identified a photo of the building in exhibit 14. He confirmed he purchased the building at 114 between the time the application was submitted and when it was reviewed at the Board Meeting. Mr. Pollard stated that he knew they wanted to use the location at 114 as opposed to the one on Second Street. He stated that the application was filed July 30th and the date on the deed for 114 was August the 7th or 3rd, something like that and that the building had previously been used as a gift shop that had contents that needed to be dealt with. He stated that it didn't look bad and that he could have left everything in it and open for business, but he didn't do that. He let employees and others take out what they wanted and gave what was left to a church. He confirmed that he cleaned out the building so that if he was granted a COA, he was ready to go.

Mr. Johnston asked whether at that time it was a certainty that a Certificate of Authority would be granted, and Mr. Pollard stated that it was not because there had been so many problems and he knew that Marietta Abstract and the Court Clerk were protesting the application. He stated he was trying to put himself in a position so that if the COA was granted, he was ready to move forward.

Mr. Pollard confirmed that Chase, his son, and Wes Womack were in charge of getting the location ready and he encouraged them to get it done as quickly as possible even though there were difficulties.

Mr. Johnston asked Mr. Pollard whether he read the statutes in preparation for submitting the application for COA. Mr. Pollard stated that for thirteen years he'd read the statutes and rules over and over again through the years so that he could understand what they meant and how they applied.

Mr. Johnston asked about the issue of actual physical presence and whether it's in the statute. Mr. Pollard answered that it was not. Mr. Johnston asked whether it was anywhere in the rules. Mr. Pollard answered that it was, just in the application part as one of the criteria for the Board to consider. He confirmed that there was no definition of what actual physical presence means but that he had an opinion. His opinion was defined by the sales tax issue when all the states, the internet companies were mailing out their products and weren't paying sales tax, it was on the news constantly there for a while and there were a number of ways you could have an actual physical presence and if you had an actual physical presence, the states could charge you sales tax. It was a big issue and a big issue to him because it helped Oklahoma. It could have been a number of things and when this came up, he researched it some more and saw that you could have a building, you could own a building, you could have a traveling salesman, and including you could have somebody employed and sitting in an office. Any one of those things was an actual physical presence as far as the definition went. The issue might have been dubbed the Amazon tax as suggested by Mr. Johnston, but he wasn't sure.

Mr. Johnston asked whether, considering all that information, whether the application when it was submitted was accurate and true. Mr. Pollard stated that it was the best that he and Wes could tell it was true and he didn't think there was anything wrong with it.

Mr. Johnston asked about Ms. Smith going down to Marietta for a pre-hearing inspection and Mr. Pollard confirmed he recalled that. Mr. Johnston pointed out that Ms. Smith talked about the visit and claimed that she said she was miffed because no one was there to meet her. Mr. Pollard said that she wasn't but that they didn't know she was coming. Mr. Johnston said that was his question, did she make any arrangements with them to be on site for the visit. Mr. Pollard claimed she did not but that she showed up at a place before they had a Certificate of Authority but that she called and asked him to meet her at a place. Mr. Pollard answered yes but that he couldn't remember where he met her but that it was not at any of the buildings.

Mr. Johnston asked Mr. Pollard to talk about the meeting. Mr. Pollard claimed that Ms. Smith was in a really big hurry and that he asked her if she needed to go to the courthouse, but she had already done that. He claimed that it kind have seemed like they were in front of the courthouse but that he wasn't sure. He claims he asked whether there would be any instructions about how to open the abstract plant because they'd not done it before. They'd done business with abstractors but had never operated an abstract company. He claims he asked Ms. Smith about 108 and that he'd gotten a better building that he was proud of because it was built by Overland Love whom the county was named after, and it was built prior to statehood, and he thought that was fitting for an abstract company. However, he claims she didn't have time to go look at that and that she didn't want to look at any of them. When asked what she did say about buildings, Mr. Pollard claimed that she told him all they had to have...but actually, her words were that what other companies like theirs had done was rent a room in the county and that's all that was needed. Of course, they had done that. They had four locations and a good location where the gift shop was located, and he was proud of that because even in the threshold it has O Love on it.

Mr. Johnston asked whether during the pre-hearing inspection whether Mr. Pollard tried to conceal anything from Ms. Smith, or withhold any information. Mr. Pollard said that he did not. He claimed that he told Ms. Smith that 114 was where they intended to go because of the issues with 108. He stated that she absolutely did not tell him then or at any time over and over again that there needed to be staff present. Nor did she send an email, memo, letter, or any communication to that affect. He claimed that all she said was that four walls were all that was needed. He claimed that she said that's all people in their situation needed because they'd be operating principally as far as doing the abstracts in Ardmore at first.

Mr. Johnston asked whether Mr. Pollard was at the meeting where the application for Certificate of Authority was heard. Mr. Pollard confirmed he was. When asked about the discussion regarding the actual location of the office would be, Mr. Johnston gave the witness exhibit 5 which was a copy of the Board minutes. Mr. Johnston asked that the exhibit be admitted into evidence, and it was admitted without objection. On page 8 of the minutes, he points out the section where the question was asked by Mr. Luttrull regarding where the location would be. Mr. Pollard stated that he said 114 W Main which was ready for the public which was a true statement. He claims that by that he intended to tell the Board that 114 was where they were going to be and that he was not trying to withhold anything or mislead the Board. He claims that 114 was where they put their office just as quick as they could after receiving their COA and that speed was a big deal because they had not had it in Love County.

Mr. Pollard stated that he believed their office in Love County was an actual physical presence. He stated that there were no complaints regarding an inability to reach Arbuckle but claimed there were nothing but compliments. When asked about the attitude of customers, he stated that there had been a problem in Love County for 15 years about them being closed and not being able to get abstracts for two or three months. He stated that people were afraid to say anything about it because they were afraid they'd be totally

unable to get their abstracts. The typical thing was that that an order would go on the bottom of the stack if you call one time. He didn't hear it, but says it's the comments they heard from realtors and that if customers didn't like it, they could go somewhere else.

Mr. Johnston asked about the location in April 2021 and asked if Wes had been staffing the office part of every day and whether Mr. Pollard had been there. Mr. Pollard claimed he was in Marietta most every day because of the build out at the 304 location acting as General Contractor in addition to overseeing the abstract company. He stated he engaged in picking up abstracts and going to talk with owners and realtors and title companies and people to work out getting abstracts. He stated that they wanted people to know that there was another source to get abstracts.

He confirmed that he was aware of an inspection performed by Ms. Smith in April 2021. Mr. Johnston asked him what was going on in the world at that time. He stated that he was working on building the Carter County plant so he had gone to Idaho. Mr. Johnston clarified that he was asking in a larger sense and pointed out that the timeframe was during the COVID outbreak and Mr. Pollard agreed and said there was a picture he took that next Monday and that he remembered he took it at about 9:15 or 9:30 when it should have been the busiest time of the week and there weren't any cars on the street. Mr. Johnston handed him exhibit 15. Mr. Pollard pointed out his car and said he's the one who took the photographs and said they depicted Main Street in Marietta on Monday after talking with Ms. Smith. He stated that it was dead and most people had notes on the doors with or without phone numbers. Mr. Johnston made a comparison saying that traffic conditions were different comparing Tulsa to Woodward to Marietta but that they were showing the conditions in Marietta. Mr. Johnston showed another photo in the exhibit and Mr. Pollard first thought it might also be showing his car but decided it wasn't and said it might belong to someone who lived in one of the buildings. When asked about any cars on the street, Mr. Pollard agreed with Mr. Johnston that they probably weren't customer cars and Mr. Pollard added that they were probably parked there all night. Mr. Johnston asked to admit exhibit 15 and it was admitted without objection.

Mr. Johnston asked whether Mr. Pollard had heard from his son and Mr. Womack about how the other buildings in town were operating and Mr. Pollard stated that was correct. He stated that in their Ardmore office they kept the doors locked and only allowed the people who were closing into the office. He stated that part of the time, the courthouse was closed during that time. When asked about the other abstract company he stated that he didn't see anyone over there but that he didn't know that there wasn't because they sometimes park behind the building in the alley.

Mr. Johnston asked about the conversation with Ms. Smith when she spoke to him in Idaho and asked Mr. Pollard to tell how the conversation went. Mr. Pollard said she was mean, then laughed and said she jumped on him hard. He didn't expect it. He claims she told him why don't you have anybody in Marietta to which he replied that she didn't tell them they needed to and asked why it was a problem. He says that they replied that she told them over and over and over again, which he claims is not true, that they needed to

have someone there. He claims that she said that even though it's COVID, they're exempt from that. He stated that he replied that they'd get someone there and went on to say that if she'd told him they needed 3 people there, he would have gotten 3 people there. Mr. Johnston asked whether, upon receiving the call, they tried to fuss or fight about it. Mr. Pollard answered no but that he got someone there to sit in the office until Monday.

Mr. Johnston asked whether if there had been something in the statutes or the rules saying that there had to have staff there what he would have done. Mr. Pollard stated that he would have had someone there but that there is nothing in the rules about staff.

Mr. Johnston asked if this was some thing that they had tried to fight or be opposed to the staff and the Board as to how Arbuckle operates in Love County. Mr. Pollard stated that he didn't understand the question. Mr. Johnston clarified by asking if they'd tried to be a team player. Mr. Pollard said yes, he'd done whatever was necessary even if he didn't agree. Mr. Johnston asked whether Ms. Smith had ever asked him to charge for abstracts in a particular way. Mr. Pollard claimed that because Marietta Abstract charged on a page basis and the abstract that they had in their closing office ranged between \$3,000 and \$5,000 an abstract and they've closed on less than 100 acres with a \$10,000 or \$11,000 abstract because of the page base. Some of the pages had copies of Lowe's receipts that he put in the abstracts. He claims that his wife complained about it one time and that Ms. Smith said there was nothing the Board could do about it. He went on to claim that Ms. Smith told him that when they opened, they'd like to have it on a time-based system so that's what they did and their maximum charge is \$1,400 after he, his son, and Wes looked at all the rates around them. Mr. Johnston stated that they could have charged the same as their competitor on a page-based rate but in response to an ask by the Board, he said no, they would do what the Board wanted. Mr. Pollard claimed that was correct and said that they thought it was good so people would know, they never knew what they were going pay. He could have made more money and done as much business even if they'd done it the other way because of the problems they'd had in Love County with Marietta Abstract in terms of the speed of service.

Mr. Johnston asked the witness why he was fighting the charge made against his company by the Board. Mr. Pollard answered that he was fighting because it was wrong. He claimed he didn't do anything wrong, he did everything right. No one ever told him he was doing anything wrong, and they did it right. He claims that you can see that from the number of abstract they did in the county at that time and he had never heard of anyone getting put on probation. He didn't see that it was fair. He stated that Mr. Johnston had told him that he'd spend the money with him if he didn't pay the Board which has been true.

Mr. Johnston asked whether the problem could have been fixed with a phone call. Mr. Pollard stated that's all it would have taken and that he doesn't understand why there's not some kind of orientation for a new abstractor. Then he addressed the Board and said he thinks there needs to be.

Mr. Johnston asked whether Mr. Pollard felt he was being treated fairly and Mr. Pollard said he didn't because he didn't think it was fair because it's not in the statutes and it's not in the rules and that they'd done everything they were supposed to. No one had said or explained why they have the complaint. He stated that he didn't feel they were being treated equally within Love County. When asked why he felt he wasn't being treated equally, he stated that everyone knows that realtors and lenders are afraid to file complaints because they feel like they won't abstract at all in a single abstract county so they don't file complaints. He stated that he was telling the Board that they could go down and talk to any realtor and they would reply that they couldn't get abstract and that it was common for it to take 2 or 3 months to get an abstract. He also stated that it didn't do any good. He said he knew that people took a lot of complaint forms out of his wife's office but that according to Ms. Smith, they didn't file them and that probably if they didn't, they were afraid to because it was a common problem in Marietta. He stated that he knew they had a fix for that problem so there wasn't any reason...they did everything. They picked up abstracts from anywhere. He stated that he felt the way they were operating was totally different from Marietta and that people down there will tell you that. They liked the way Arbuckle was operating. Mr. Pollard stated that they did everything possible to increase the time and speed for people to get abstracts. He stated that they didn't have someone sitting in the office all the time, but that they were there most every day, he knows.

Mr. Johnston asked if he had seen any action or complaint brought against Marietta for the time they were closed. Mr. Pollard said he had not but that it was common knowledge that they closed 4 times a year for 2 weeks to go to Florida. Mr. Johnston asked about the Abstract Company in Carter County and whether they were having trouble with the company there. Mr. Pollard stated they made it as hard for them as they could to get abstracts. Mr. Pollard stated they were hard on them, too. Arbuckle was their biggest customers. Mr. Johnston asked if there was any Enforcement action against Stewart. Mr. Pollard claimed that they did less to Stewart than they did to them for what they were sure was a good job. When asked if he thought that was fair, Mr. Pollard answered no. Ms. Scimeca objected on the basis that what was being referenced was a totally separate matter and separate circumstances. There was no ruling on the objection because Mr. Johnston said he was just going to sit down.

Ms. Scimeca brought up exhibit 16 and asked Mr. Pollard if he remembered that he'd said it was taken in April 2021. Mr. Pollard stated that he believed that was correct. Ms. Scimeca asked about the obvious Christmas decorations and why they might have been up in April. Mr. Pollard stated that when he said that, he noticed it but that he's not sure because it happened a long time ago and that they started decorating it but that in the back it wasn't ready. The girls decorated it so it would look nice even though the back part wasn't ready. He stated that maybe it was in December or after the first of the year. Ms. Scimeca asked him if by December he was referring to December of 2021 or January of 2022. Mr. Pollard stated that it might have been in 2020, but he's not sure. He stated that it was a picture he had with the Bennett building finished but that he's not sure if it makes any difference. He admitted that it could have been a mistake to say it was in April 2021.

Ms. Scimeca gives him exhibit 6 from April 2021 with the pictures on page 57 showing the same building but that it doesn't look like the same building as depicted in exhibit 16 and he affirmed that it did not.

Ms. Scimeca had no further questions. Mr. Johnston asked about the photos of 304 and Mr. Pollard confirmed that they were just to show progress.

The witness was dismissed, and the defense rested.

Ms. Scimeca called Ayla Harper as a rebuttal witness. The witness was sworn in. Ms. Harper stated that she works for the Oklahoma Abstractors Board as an Executive Assistant. She affirmed that she answered the phones when she was in the office. Ms. Scimeca asked what Ms. Harper's response would have been if someone would have called and asked about changing an address. Ms. Harper stated that she may or may not have known it at the time, but if she did, she would have told the caller that the information needed to be sent in an email but if she wasn't aware of it needing to be in an email, she would have referred them to Ms. Smith but she would have never told someone that they didn't have to do anything.

Mr. Johnston asked Ms. Harper whether she had stated what she generally would do and Ms. Harper affirmed that. He asked if there were any record that could be shown to identify a call from Wes Womack at about that time. She affirmed that was correct and that she had no recollection of talking with Mr. Womack and that she had answered hundreds of calls and might not remember every one.

The witness was excused.

Mr. Ashbaker asked for short closings from each of the counsels.

Ms. Scimeca stated that the hearing had been going on for a long time and that it had been a while since the original complaint. She asked the Board Members to review the complaint in their booklet of exhibits provided by the prosecution. She stated that the Board had reviewed the specific section which stated that the defendant had violated the provisions of the act and rules by failing to maintain an actual physical presence in Love County during the period of September 15, 2020 through, and including, April 29, 2021 and by misrepresenting to the Board that they had an actual physical presence in the county in their application for COA. Therefore, it is a two-part, there is the matter of their actual physical presence at the time of issuance of the COA up and through the 29th of April 2021 and that there was a misrepresentation to obtain the Certificate of Authority because they lacked that physical presence.

She pointed out where the requirement is located in the rules and pointed out the page in the exhibits and read that one of the factors that should be considered when reviewing an application for a new Certificate of Authority includes an actual physical presence.

Ms. Scimeca referenced Title 1 Section 32 C regarding the statement that abstractors are considered common carriers. She stated that if there was not an actual physical presence and they were not there to actually interacting with the public then their actions as a common carrier are questionable. She pointed out that the Board has the ability to take actions and assign penalties for violations according to Title 1 Section 35 and directed the Board Members to the page in their exhibits. She then read the section pertaining to the attempt to gain a Certificate of Authority through fraud or misrepresentation.

She stated that a rule has the force of law according to the Administrative Procedures Act. The fact that something is in rule and not in statute does not matter because the rule has the force of law and is currently in place.

She pointed out that there had been a lot of discussion about the three different addresses, and which one was actually being used, but what it boils down to is that none of them were an actual physical presence, open to the public, for someone to walk in and order an abstract. None of them were open in September of 2020 when the COA was issued and none of them were open in April of 2021 when Mr. Luttrull went to two of them and took photos. Additionally, none of them were open when Ms. Smith went in April of 2021 and visited all 3 locations. None of them were open. No one was present. None of them had phones. None of them were functional.

The misrepresentation enters in because on their application they had one address and never changed that address. They never called. Never sent an email and never changed that address through the process. Ms. Smith visited all the locations when she did her in-person inspection as required but was never told the address should be changed from the one on the application. She pointed out the Board Meeting minutes where it was never clearly identified that the 114 address was going to be functional. The response was a convoluted statement. However, none of them were open and it was not clear which one was being used. There were several photos shown during the proceedings but with the exception of possibly one, they were all taken way after September of 2020. They could have been taken in April of 2021 but only the photos shown by Mr. Luttrull are undeniably taken at that time.

She asked that the Board find that Arbuckle Abstract, the Respondent in the case, has, in fact violated rule and statute of actual physical presence, common carrier with regard to actual physical presence, and misrepresentation to the Board in order to obtain a Certificate of Authority. All the witnesses for the Respondent have a vested interest and had an interest in obtaining the Certificate of Authority to be able to start functioning so that if there was an issue with their address, they'd want to try and show there wasn't.

Although there were statements made by the Respondent's witnesses saying that previous witnesses were lying, those witnesses don't have the same type of interest as the Respondent's witnesses so please take that into consideration as to whom might have more incentive to lie or be completely truthful.

She asked for the maximum penalty to be assessed which can be up to \$10,000. Ms. Scimeca thanked the Board for their time.

Mr. Johnston thanked the Board saying he knew it had been a long trip. He said he wished it could have been simpler but that they are where they are. He said he'd try and keep his comments brief. He instructed the Board that their job in this situation is to act as fact finders and apply the law to those facts that have been presented. There is a specific legal framework that is supposed to be applied which is...then he stated that Ms. Scimeca had referred to the original petition, the complaint that brought the matter to the Board and they had filed a response to the complaint which he believed was in the exhibits. He said he'd go through that in a quick way and just give them the signposts. When there is an enforcement action like this, the courts are very clear in that it is considered a penal action. Therefore, what that means, when you are construing the law, we have to think about the legal framework first, when you are construing the law, you have to do it strictly.

You have to look at the letter of the law, make sure the letter of the law is clear and unambiguous and then apply that clear and unambiguous law constructing it narrowly to the facts of the situation. He stated that it was improper for a Board in a situation like this, in an enforcement situation to look at the law and think, well it says this, but we think it might have been this, or it should have meant this, and it could have meant this, too. That's not the way you do it. You look at the letter of the law, and that's what you apply.

Secondly, before you can find against Arbuckle in this case you have to find considering the letter of the law and construing it narrowly that there is clear and convincing evidence that they have violated that law, whatever it is. That's in both the statutes and in the Board's statutes and in Oklahoma Supreme Court cases, so that's the legal framework that they're to apply in this case.

So where do we get to? The two main complaints being dealt with are 1. Was there a misrepresentation in the initial application? 2. What about this actual physical presence? Was it there or was it not? Let me take the first one, so when we're talking about a misrepresentation, there is case law in Oklahoma that he showed the Board earlier that means there's not some accidental, I said the wrong thing, it means that you made an intentional misstatement with the intent to deceive someone else. So, looking at the application that was filed in this case and at the time it was filed, has there been clear and convincing evidence that there was some misrepresentation, some intent to deceive. We have evidence from...Well, Ms. Smith looked at this application and stated that there was no issue with it except for the address that was put on the initial application. He stated it was unrefuted that at the time the application was submitted and signed, that was the only location, that was the only place that Arbuckle had. So when they put 108 on the application, they didn't own 114 and you couldn't go into 304. So that's what they put on there. They put the truth on that application. So when you think about whether there was an intent to deceive, how could they deceive someone about some...you know, they wanted to put the office here, but then they were actually going to put it here, and they

wanted to fool the Board about where it was actually going to be. That makes no sense. There's no reason for anyone to do that. There's no incentive for anyone to do that.

We've heard from the people who put these applications together, there was no intent to deceive anyone. There's no misstatement. That is a claim that has no basis at all in fact. What we do know is that we had some change in circumstances. We have, and he showed exhibit 17 to the Board, then stated this was the 108 property with the stairs and he thinks everyone agreed and even the Board, as business people could say that would not be the best place to put an abstract office. You could find a better, more convenient, more safe place to put an office which is exactly what Mr. Pollard thought. So he bought a separate property, 114, and put it into a condition where if he was granted a Certificate of Authority, Arbuckle could come in there, set that place up, and have a legitimate office in the downtown area off the main street.

Would he have any motive to try and fool anybody about that? Do you think that he tried to...I mean it makes no sense that he would go to the trouble of buying this other building then try and mislead the Board and make the Board think he was up on that attic behind the dentist's office instead of a place down on Main Street. That makes no sense. Of course, you know, when the inspection came, when Ms. Smith showed up for the preliminary inspection he said, yeah, I've got this place and I've got this place so you have a difference of recollection of testimony where Ms. Smith says that he never told her that it was going to be the place, and Luke says that he did, but she was just in a hurry and didn't want to listen. Which makes more sense? He's not trying to hide anything. How can you know that? Because he shows up at the Board Meeting and when the direct question is put to him, he says the location will be 114. Now we have the volunteer inspector who says, well, I was confused when he said that. He says 114 Main. I mean, if you're trying to deceive somebody, you don't blurt out and say it's going to be 114 Main. You try and hide it and you try to do something. He was trying to answer that question and he was trying to say 114 because that's what he was doing. He had the building and he had cleaned it out and he was getting it ready in case he was granted a Certificate of Authority. I keep saying he, but Arbuckle is who I should be talking about.

He claimed there was no evidence, there was nothing clear and convincing. There's nothing that makes any sense about contending that there is some sort of intent to deceive. It doesn't exist. It's not there.

So the second thing we're going to talk about, of course, oh wait, there was one other point. Regardless, that was on the initial application and a year later, he submits a renewal application which has 114 W Main as the property address because 114 is what it is, 114 is what it always was since he bought that building. He's not trying to hide it then. He wasn't trying to hide it before. But that application is approved by the Board. There's no objection because at that time he has that he has an office there, he has the equipment there, he has staff there, all the time. Whatever issue there was, confusion with respect to the initial application, and I don't think really there was any, there's not any evidence to show that, but whatever there was, it was all taken care of, it was cured, it was done by

the time the renewal application came around and they were granted the renewal Certificate of Authority.

Now we get to the issue of actual physical presence, and I know we've been here long enough for you to say, oh my God, he's going to say actual physical presence again. But we went through this with every witness and if you look at the statute, if you look at the rule, there is nothing that defines it and tells you what actual physical presence is. If you strictly construe that, what does actual physical presence mean? Well, we've had various kind of contentions about what that means. Mr. Pollard says from the tax perspective, well, you know, it means any kind of presence there. We've heard from Ms. Smith and what she said is that what that means is that you have to have some place for customers to transact their business. I asked her about hours and employees, and she agreed that there was nothing in the rules about that. There's nothing that says anything about that. There is no black letter law that you can look at and say there was a violation of that. What she says is that you have to have the ability to transact business with your customers.

What's the evidence here been? That's exactly what Arbuckle did. They transacted business with their customers. Their customers had no problem reaching them. There's no evidence of that. Their customers had no issue with the folks that would come and pick up their abstracts. It was a convenience, and the community was happy, and the community was served. So, if you apply Ms. Smith's test, that they have to have the ability to transact business with their customers, that's exactly what Arbuckle did. If you apply her test, they've met that test. If you apply Mr. Pollard's test that he's got some contact out there, he meets that test. If you look at the facts, there is no dispute that there was an actual physical office at 114. There's no...the evidence is undisputed that once they obtained a Certificate of Authority, they began to outfit that building by putting phones and equipment in it. They've got the photographs showing the office equipment. They've got the photographs showing the routers and the electrical phone equipment. We have no issue that there was an actual brick and mortar location there. It was equipped. There were people in it, during COVID, not all the time, that's true. But there's no evidence that was ever an issue for the people in Love County. There's no evidence that it's any different from how the other company was conducting their business. You've got the other abstract company there that's closed down part of the time. You've got the courthouse that's closed. You've got the other businesses up and down Main Street which are, which have the same type of signs of let's make an appointment, let's get together.

Given the circumstances, there's nothing wrong with what Arbuckle and the Pollards did, with how they conducted their business. You know, you go through this, you should've had somebody there. Well, what's the point? Right? There's no evidence that anyone ever was unable to reach Arbuckle. You saw what the conditions were at the time. There's no foot traffic out there. There's no walk-ins coming up there. You heard the testimony of the people who were in that office at this time. There was no walk-ins. There was no foot traffic. You heard about the experience after they started having someone there full time two days after they were first notified of an issue. There aren't any walk-ins. So this whole issue makes no sense. It hasn't hurt anyone. It hasn't hurt the

community. In fact, it's exactly what's going on with other competitors and Mr. Pollard feels as if he hasn't been treated equally or fairly. I sympathize with him.

Now, Ms. Smith doesn't want you to believe these pictures are really accurate, that they really depict what it was like because what she says is that she went there that day and she looked in the window and there wasn't any furniture there and there wasn't anything there but a table and a chair. At first, she said there wasn't any internet there but she backed up as well saying she didn't know if there was or wasn't. And she said there was no sign there so when you think about the credibility, you know, we've already talked about the sign, we went through it, the emails, we had the date of it in January. So, months later when she shows up and says, oh my God, there was no sign there, are you sure? No, there was no sign. I don't know what kind of attention she was paying, but you know, if that's your clear and convincing evidence that there wasn't any kind of actual physical presence at this location, you know, that's not going to cut it.

You know, you guys are the Board and if you want to pass a clearer rule, a rule that says this is what someone has to do to give them some kind of notice so outline some kind of procedure to let them know or you don't even have to have a rule, you could have a policy or some sort of memo or something that could go out to people who are starting new abstract companies for the first time and don't have a big company. Who don't have departments that are going to be doing this. You know, that's something you could do and that would be a different case if you had that written instruction out there. What you have is Mr. Pollard pouring over the rules and his staff pouring over the statutes and they can't see that they violated anything. From the state side, well they must have violated something, there must have been a misrepresentation there. You know, you guys are going to go back there and deliberate and if someone said well, they should have just known, that's not the standard here.

The standard is, where is it in the statute. Point me to it. Let's be done with it. It isn't there. You can't find it. There's no statutory guidance about that and there's no misrepresentation here by Arbuckle. So we would ask that this whole thing be dismissed. You know, it's obvious that there was no misrepresentation and that should have been dismissed a long time ago. It shouldn't even have been brought. This issue about the actual physical presence, you know, people can argue about which side of this it is, which side of that it is but when you're in a situation where you have to argue about it, the thing Ms. Smith said is I know what the rule says but I'm bringing something else into it. That's not what you get to do in a strict construction type situation. So, when you go back and deliberate, you need to look at that specific rule and see if there is anything in there specifically that has been violated. I'm going to submit to you that that rule is so vague, then he laughed. An actual physical presence, there's a building there. I don't want to repeat myself, I want to say thank you and I appreciate your attention. It's taken a long time. We're sorry it's taken so long but we've all had some uncontrollable delays that have put us past where we could be done but we're finally going to give it to you guys and hope that you come back to tell us and to tell the Board that there's no misrepresentation here. There's nothing so clear that we can find clear and convincing evidence that there has been anything violated. When you do that, there's no monetary

penalty to be applied. If you find that we think he did violate this, you know, take into consideration the response of Arbuckle and Mr. Pollard. Once they were alerted to the problem, they had someone out there the next day to do what it is that they thought was required and right. If you find that they made a mistake or they didn't do it right, I mean, \$100 just to say you shouldn't have done that. But they didn't do anything wrong. So, with that we'll leave it with you, thank you for your time and attention.

Ms. Scimeca rebutted by asking that the Board consider all the filings that are relevant at this point, the complaint, response to complaint, and motion to dismiss. There was also the Oklahoma Abstractors Board's response and objection to the Respondent's motion to dismiss and she asked that all three of those be considered by the Board.

Mr. Ashbaker asked if exhibit 18 had been admitted. It was affirmed that it had been and it was readmitted without objection to be sure.

Mr. Ashbaker recommended that the Board move to Executive Session 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. Ms. Loggains made that motion. Second by Mr. Koller. Motion passed.

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

Mr. Kent made a motion that the defendant was not by clear and convincing evidence guilty of misrepresentation and that plaintiff did, through clear and convincing evidence prove that the defendant did not maintain an actual physical presence from September 2020 through April 2021. Second by Ms. Yates. Motion passed.

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

Mr. Kent made a motion that the defendant be set to pay the penalty of \$2,750.00 to be paid within sixty days. Second by Mr. Koller. Motion passed.

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

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

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