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2016 OK 98



**ORIGINAL**

**IN THE SUPREME COURT OF THE STATE OF OKLAHOMA**

**FILED**  
SUPREME COURT BAR DOCKET  
STATE OF OKLAHOMA

SEP 20 2016

**MICHAEL S. RICHIE**  
**CLERK**

IN RE: THE APPLICATION OF JAMES M. GREEN )  
FOR ADMISSION TO THE OKLAHOMA BAR )  
ASSOCIATION, )

Appellant, )

v. )

OKLAHOMA BOARD OF BAR EXAMINERS, )

Appellee. )

SCBD #6327

For Official  
Publication

**BAR ADMISSION PROCEEDING**

¶10 The appellant, Major James M. Green (Major Green) appeals from a determination of the appellee, Oklahoma Board of Bar Examiners, (the Board) that he does not meet the reciprocity requirements to be admitted to the practice of law in Oklahoma without taking the Oklahoma Bar Examination. We hold that he is entitled to reciprocity. Accordingly, the attorney is admitted to practice law in Oklahoma pursuant to Rule 2 of the Rules Governing Bar Admission. 5 O.S. Supp. 2015 ch. 1 app. 5.

**ATTORNEY ADMITTED.**

James M. Green,  
Fredericksburg, Virginia,

Patrick H. Kernan  
Tulsa, Oklahoma

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Publish	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no

*Pro Se.*

For Appellee.

**KAUGER, J.:**

¶1 The only issue presented is whether a lawyer who has been practicing law in the military since 2007 may be admitted to the Oklahoma Bar Association without examination pursuant to Rule 2 of the Oklahoma Rules Governing Admission to the Practice of Law, 5 O.S. Supp. 2015 ch. 1, app. 5.<sup>1</sup>

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<sup>1</sup>Rule 2, of the Rules Governing Admission, 5 O.S. Supp. 2015 ch. 1, app. 5 provides in pertinent part:

... Admission Upon Motion Without Examination.

For purposes of this Rule, the term "reciprocal state" shall mean a state which grants Oklahoma judges and lawyers the right of admission on motion, without the requirement of taking an examination and whose requirements for admission are similar to Oklahoma's admission upon motion without examination standards.

The following persons, when found by the Board of Bar Examiners to be qualified under Section 1 and 2 of Rule One, may be admitted by the Supreme Court to the practice of law in the State of Oklahoma upon the recommendation and motion of the Board, without examination:

Section 1. Persons who are graduates of an American Bar Association approved law school, have been lawfully admitted to practice and are in good standing on active status in a reciprocal state, and have engaged in the actual and continuous practice of law in a reciprocal state for at least five of the seven years immediately preceding application for admission under this Rule. The years of practice earned in multiple reciprocal jurisdictions cannot be combined.

For the purposes of this section, "practice of law" shall mean:

- (a) Private practice as a sole practitioner or for a law firm, legal services office, legal clinic or similar entity, provided such practice was subsequent to being admitted to the practice of law in the reciprocal jurisdiction in which that practice occurred;
- (b) Practice as an attorney for a corporation, partnership, trust, individual or other entity, provided such practice was subsequent to being admitted to the practice of law in the reciprocal jurisdiction in which the practice occurred and involved the primary duties of furnishing legal counsel, drafting legal documents and pleadings, interpreting and giving advice regarding the law, or preparing, trying or presenting cases before courts, executive departments, administrative bureaus, or agencies;
- (c) Practice as an attorney for the federal, state, local government (including a territory, district, commonwealth or possession of the United States), branch of the armed services, or sovereign Indian nation with the same primary duties as described in Section 1 (b) above;
- (d) Employment as a judge, magistrate, referee, or similar official for the federal, state or local government (including a territory, district, commonwealth or possession of the United States); provided that such employment is available only to attorneys;

We hold that the applicant meets the qualifications for admission without examination and is hereby admitted to the Oklahoma Bar Association, effective immediately.

### **FACTS AND PROCEDURAL HISTORY**

¶2 The facts are agreed by the parties. The appellant, Major James M. Green (Major Green) grew up in Muskogee, Oklahoma, and graduated from high school there in 1991. He then served on active duty in the United States Marine Corps for nine years. After an honorable discharge, he obtained an undergraduate degree from Northeastern State University in Tahlequah, Oklahoma, and a law degree from Thomas M. Cooley Law School in Lansing, Michigan. Major Green was admitted to the Florida Bar Association in May of 2007. Florida is not a reciprocal state with Oklahoma.

¶3 In June of 2007, Major Green returned to the Marines as an attorney and on March 21, 2008, he was designated a Judge Advocate after having attended the Naval Justice School in Newport, Rhode Island. Since that time, he has served in a

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(e) Full time employment as a teacher of law at a law school approved by the American Bar Association; or

(f) Any combination of the above.

The period of the "practice of law" as defined above in subparagraphs 1(a) through 1(f) shall have occurred outside the State of Oklahoma in a reciprocal state. Applicants for admission without examination shall furnish such proof of practice and licensing as may be required by the Board. No applicant for admission without examination under this rule will be admitted if the applicant has taken and failed an Oklahoma bar examination without having later passed such examination . . . .

variety of roles. He is currently Regional Victims' Legal Counsel for the National Capitol Region, which includes the eastern United States and Europe.

¶4 Major Green has been stationed at the United States Marine Corps Base at Quantico, Virginia since approximately the beginning of 2001. Most of his work occurs at his office provided by the military at Quantico. In January of 2014, he became a member of the Virginia Bar after taking the Virginia bar examination. [Virginia has reciprocity with Oklahoma.] Seeking to retire from the military and return to Muskogee to practice law and be near his family, Major Green filed an application for admission on motion under Rule 2 of the Rules Governing Admission to the Practice of Law in the State of Oklahoma, 5 O.S. Supp. 2015 ch.1, app. 5.<sup>2</sup>

¶5 On March 13, 2015, the Board denied his application because he had not engaged in the practice of law in a reciprocal state for five of seven years immediately preceding his application. There were no other aspects of his application which were disputed, ie. good moral character, due respect for the law, and fitness to practice law. Major Green then asked for a hearing under Rule 11, 5

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<sup>2</sup>Title 5 O.S. Supp. 2015 ch.1, app. 5.

O.S. Supp. 2015 ch.1, app. 5.<sup>3</sup> On September 4, 2015, Major Green appeared *pro se* before the Board for a hearing regarding his eligibility for admission under Rule 2 of the Rules Governing Admission, 5 O.S. Supp. 2015 ch.1, app. 5. On October 19, 2015, the Board denied his application. Apparently, a majority of the nine board members voted to deny Major Green's application but no vote was recorded.

¶6 The Board agreed that he had engaged in the practice of law for five of the last seven years, but determined that serving and practicing law in the military was not a "reciprocal state" under Rule 2. The Board commended Major Green for his service, but offered no sympathy and advised him to take the Oklahoma Bar Exam. The Board also admitted that our rules make it difficult for any military lawyer to

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<sup>3</sup>Title 5 O.S. Supp. 2015 ch 1, app. 5, Rule 11, Rules Governing Admission to the Practice of Law provides in pertinent part:

Section 1. If the Board of Bar Examiners decides to deny an application to take the bar examination or to deny an application for admission to practice law on any ground except failure to pass the bar examination, written Notice of Denial shall be mailed to the applicant citing the Rule upon which the denial is based. The Notice of Denial must adequately inform the applicant of the nature of the evidence upon which the denial is based. The Notice of Denial may be modified by the Board prior to any hearing on the denial as long as the applicant has sufficient notice. Subject to the foregoing, the Notice of Denial places in issue all matters that may relate, directly or indirectly, to the applicant's eligibility to practice law in the State of Oklahoma.

Section 2. The Board of Bar Examiners shall have the power to order a hearing on its own motion before making a decision on any application. Written notice of such a hearing shall be given to the applicant. The hearing procedures set forth in this Rule Eleven shall apply both to hearings ordered by the Board and to hearings requested by an applicant.

Section 3. An applicant, who receives a Notice of Denial without a prior hearing before the Board of Bar Examiners, may take issue with the denial and request a hearing before the Board. The hearing request must be written and shall be delivered to the Board within twenty (20) days after the Notice of Denial was mailed to the applicant. Delivery to the Administrative Director of the Board shall be considered delivery to the Board for purposes of this Rule Eleven. . . .

ever qualify for reciprocity, but concluded that was no justification to grant admission.<sup>4</sup>

**UNDER THE FACTS OF THIS CAUSE,  
THE APPELLANT IS ENTITLED TO RECIPROCITY.**

¶7 Green argues that the military “jurisdiction” is a reciprocal jurisdiction for purposes of Rule 2. He contends that: 1) the language in Rule 2 refers to both reciprocal jurisdictions and reciprocal states; 2) military courts grant Oklahoma lawyers and judges the right of admission on motion without the requirement of an exam and their exam requirements for admission without examination are similar to

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<sup>4</sup>We are puzzled by the fact that the findings of fact and conclusions did not include the votes of the members of the Board. The only mention of the vote is found in the transcript of the hearing which states:

We are back on the record and the board has deliberated and we are in agreement. And I am sorry to report the majority have determined that you do not meet the requirements of Rule 2.

Courts in every jurisdiction record and disclose each judge’s vote. Our own administrative code recognizes that due process requires a showing of the votes. For example, the Oklahoma Administrative Code 120:10-13-17 requires that appeals to the Capitol-Medical Center Improvement and Zoning Commission “shall keep minutes of its appeal proceeding showing the vote of each member on each question.” When an administrative board such as the Board of Bar Examiners acts in an adjudicative capacity, it functions much like a court and is bound by minimum standards of due process. Arbuckle Simpson Aquifer Protection Federation of Oklahoma, Inc. v. The Oklahoma Water Resource Board. 2013 OK 29, ¶11, 343 P.3d 1266. We cannot even discern if the Chairperson participated in the vote. Pursuant to Rule 11 of the Rules Governing Admission to the Practice of Law in the State of Oklahoma, 5 O.S. 2011 ch.1, app. 5, the Chairperson is not a voting member. Rule 11 provides in pertinent part:

...Section 6. For hearings held under this Rule Eleven, a quorum shall be five (5) members of the Board of Bar Examiners. The Chairperson or his or her designee shall preside as the hearing officer. The decision on the application must be made by a majority of the Board members present, excluding the Chairperson, who is not a voting member except in the case of a tie vote.

Section 7. The decision of the Board of Bar Examiners following a hearing conducted under this Rule Eleven shall be reduced to written form and mailed to applicant or applicant's counsel. All denial decisions shall include findings of fact and conclusions of law. . . .

The best practice to ensure due process in these proceedings would require the Board to record and disclose the vote of each member in its written decision.

Oklahoma; and 3) alternatively, if he does not qualify for admission, the Rule should be amended to clarify that no military attorney who has practiced law on active duty can be admitted on motion to the Oklahoma Bar as military service members are ordered to move every four years.

¶8 The Board agrees that practicing law as an attorney for the military since at least 2008 satisfies the requirement that he has been engaged in the practice of law for five of the last seven years.<sup>5</sup> Nevertheless, because: 1) the right to practice law in the military depends upon his admission to a state bar, he must be licensed and practicing in a reciprocal state; and 2) neither the military nor the federal government are primary bar licensing authorities, so admission to practice remains dependent upon prior admission to a state bar. The Board also acknowledges that many lawyers who practice in the federal and military arena are required to move frequently to work and serve their country, and while it may be unfair, Major Green overstates the burden imposed on such military lawyers. According to the Board, those lawyers must practice within the borders of a reciprocal state. Major Green had clients in Russia. If he had been a member of the Virginia Bar for five years,

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<sup>5</sup>In R.J. Edwards, Inc. v. Hert, 1972 OK 151, ¶20, 504 P.2d 407 the Court noted that:

Our decisions definitely spell out the concept of the practice of law: the rendition of services requiring the knowledge and the application of legal principles and technique to serve the interests of another with his consent. This is a concept applied over and over again in other jurisdictions. . . . In view of our own prior statements, and of this long line of like statements elsewhere, it was unnecessary that we should otherwise have defined "practice of law" to include specific acts as a prerequisite to the exercise of the proper jurisdiction of the judicial department. . . . (citations omitted)

would he also be required to subtract from his five years any time he spent outside of the borders of Virginia?

¶9 The responsibility for the due administration of justice and regulation and control of the Bar is vested in the Supreme Court,<sup>6</sup> including the right to define and regulate its practice.<sup>7</sup> In exercising our inherent power to organize, regulate and control the Oklahoma Bar Association, we established the Rules Governing Admission to the Practice of Law in Oklahoma, 5 O.S. Supp. 2011 ch.1, app. 5. This Court has exclusive jurisdiction over the licensing of attorneys.<sup>8</sup>

¶10 Rule 2 of the Rules Governing Admission to the Practice of Law in Oklahoma concerns admission to the Bar on motion, without examination. The

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<sup>6</sup>The Oklahoma Constitution, art. 7, §1 provides:

The judicial power of this State shall be vested in Senate, sitting as a Court of Impeachment, a Supreme Court, the Court of Criminal Appeals, the Court on the Judiciary, the State Industrial Court, the Court of Bank Review, the Court of Tax Review, and such intermediate appellate courts as may be provided by statute, District Courts, and such Boards, Agencies and Commissions created by the Constitution or established by statute as exercise adjudicative authority or render decisions in individual proceedings. Provided that the Court of Criminal Appeals, the State Industrial Court, the Court of Bank Review and the Court of Tax Review and such Boards, Agencies and Commissions as have been established by statute shall continue in effect, subject to the power of the Legislature to change or abolish said Courts, Boards, Agencies, or Commissions. Municipal Courts in cities or incorporated towns shall continue in effect and shall be subject to creation, abolition or alteration by the Legislature by general laws, but shall be limited in jurisdiction to criminal and traffic proceedings arising out of infractions of the provisions of ordinances of cities and towns or of duly adopted regulations authorized by such ordinances.

Archer v. Ogden, 1979 OK 130, ¶¶7-8, 600 P.2d 1223; Ford v. Board of Tax-Roll Corrections, 1967 OK 90, ¶26, 431 P.2d 423; In re Integration of State Bar of Oklahoma, 1939 OK 378, ¶6, 95 P.2d 113.

<sup>7</sup>Archer v. Ogden, 1979 OK 130, ¶16, 600 P.2d 1223

<sup>8</sup>In re Application of Bodnar, 2016 OK 12, ¶14, 367 P.3d 916; In re Reinstatement of Kamins, 1988 OK 32, ¶18, 752 P.2d 1125.



current version of Rule 2, Section 1, provides in pertinent part that:

Persons who are graduates of an American Bar Association approved law school, have been lawfully admitted to practice and are in good standing on active status in a **reciprocal state**, and have engaged in the actual and continuous practice of law in a reciprocal state for at least five of the seven years immediately preceding application for admission under this Rule. The years of practice earned in multiple **reciprocal jurisdictions** cannot be combined. (Emphasis supplied).

The Rule does refer to **reciprocal states**, and **reciprocal jurisdictions**. In Section 4, the terms “**former jurisdiction**,” “**nonreciprocal jurisdiction**,” and “**reciprocal jurisdiction**” are also used. It provides:

Section 4. It is the purpose of this rule to grant reciprocity to qualified judges and lawyers from other **jurisdictions** and to secure for Oklahoma judges and lawyers like privileges. If the **former jurisdiction** of the applicant does not grant to Oklahoma judges and lawyers the right of admission on motion, then this Rule shall not apply and the applicant must, before being admitted to practice in Oklahoma, comply with the provisions of Rule Four. If the **former jurisdiction** of the applicant permits the admission of Oklahoma judges and lawyers upon motion but the Rules are more stringent and exacting and contain other limitations, restrictions or conditions of admission and the fees required to be paid are higher, the admission of applicant shall be governed by the same Rules and shall pay the same fees which would apply to an applicant from Oklahoma seeking admission to the bar in the applicant's **former jurisdiction**. If the applicant's actual and continuous practice for the past five of seven years is from a **nonreciprocal jurisdiction** that does not grant Oklahoma judges and lawyers the right of admission on motion, the professional experience from the **former jurisdiction** will not be considered, and any professional experience from a **nonreciprocal jurisdiction** cannot be combined with the professional experience from a **reciprocal jurisdiction** to meet the requisite five of seven years of actual and continuous practice. (Emphasis supplied).

¶11 Furthermore, under section 1, the Rule defines the “practice of law” without referring to a state at all, but rather to **reciprocal jurisdictions**. The Rule specifically honors the practice as an attorney for the federal, state, local government (including a territory, district, commonwealth or possession of the United States), branch of the armed services, or sovereign Indian nation. It states: For the purposes of this section, “practice of law” shall mean:

...**(c) Practice as an attorney for the federal, state, local government (including a territory, district, commonwealth or possession of the United States), branch of the armed services, or sovereign Indian nation with the same primary duties as described in Section I (b) above;**

**(d) Employment as a judge, magistrate, referee, or similar official for the federal, state or local government (including a territory, district, commonwealth or possession of the United States);** provided that such employment is available only to attorneys;

**(e) Full time employment as a teacher of law at a law school approved by the American Bar Association; or**

**(f) Any combination of the above. . . . (Emphasis added.)**

None of these examples are “reciprocal states, but rather “jurisdictions.” The inconsistent use of these terms have apparently led to confusion. We agree with Major Green, that the Rule should not have used the words “reciprocal state,” but rather “reciprocal jurisdiction.”

¶12 Without this subtle clarification the Rule would lead to an absurd result. For example, if Major Green had been sent to Oklahoma by the military, and if his

spouse were also a lawyer who accompanied him here, under Rule 2, the spouse would qualify for admittance to practice law in Oklahoma without an examination and without having practiced or been licensed in any reciprocal state.<sup>9</sup> However,

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<sup>9</sup>Rule 2, of the Rules Governing Admission, 5 O.S. Supp. 2015 ch. 1, app. 5 provides in pertinent part:

Section 7. A person who is the current spouse of a service member in the United States Uniformed Services and who meets the following requirements may, upon motion, apply to the Supreme Court for a Special Temporary Permit to be admitted to the practice of law in the State of Oklahoma, without the requirement of taking an examination, if the applicant would otherwise be fully qualified to take the bar examination in Oklahoma under the rules of the Supreme Court. An applicant shall:

- a. Apply under this rule upon forms prescribed by the Board of Bar Examiners;
- b. Be at least 18 years of age;
- c. Hold a Juris Doctorate degree from an American Bar Association approved law school;
- d. Be lawfully admitted to practice law in any other state, territory or commonwealth of the United States or in the District of Columbia;
- e. Submit evidence of a passing score on the Multistate Professional Responsibility Examination;
- f. Establish that the applicant is a member in good standing in all jurisdictions where the applicant was previously admitted;
- g. Have good moral character, due respect for the law, and fitness to practice law;
- h. Provide at his or her expense a background investigation to determine character and fitness from the National Conference of Bar Examiners, pursuant to Rule Four, Section 2(e);
- i. Take the oath of attorneys which is set forth in Rule One, Section 4, of the Rules Governing Admission to the Practice of Law in the State of Oklahoma and file the same with the Clerk of the Supreme Court;
- j. Sign the Roll of Attorneys; provided, however, that if the applicant is unable, by reason of absence, to sign the Roll, applicant may grant the power of attorney to the Administrative Director of the Board of Bar Examiners to sign said Roll of Attorneys for applicant;
- k. Submit evidence which is satisfactory to the Supreme Court of the State of Oklahoma that the applicant is the current spouse of a service member in the United States Uniformed Services. This provision shall not be construed to apply to former military spouses; and
- l. Submit evidence that the service member is on military orders within the State of Oklahoma.

No applicant for admission without examination under this section shall be admitted if the applicant has taken and failed an Oklahoma bar examination within the last five years without having later passed the examination.

Upon termination of the military status of either the dependent or the service member; or, in the event of a

Major Green, the person who is actually sacrificing his life, and civilian career to serve, and defend this Country and the State of Oklahoma would not be allowed to practice law in Oklahoma under the Board's interpretation of Rule 2. Recently, as reported by the Military Spouse J.D. Network, a military spouse attorney who was licensed in Puerto Rico (which is not a "state") was sworn into the Oklahoma Bar Association without having to take the bar exam under the military spouse provisions, which the Court, including myself, agreed with and approved.<sup>10</sup> She was not from a "state" but rather a "jurisdiction" which is part of the United States of America. If this is good enough for the United States of America, it is good enough for Oklahoma. The Court could not and would not endorse such an absurd consequence which could preclude Major Green from being licensed in Oklahoma - -- especially for someone serving in the armed services.

- 1) Major Green cannot appear in the Courts of the State of Oklahoma, but his spouse could.

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military transfer outside the State of Oklahoma, the right of such person to practice law in the State of Oklahoma shall terminate unless such person shall have been admitted to practice law in the State of Oklahoma pursuant to some other rule.

A person admitted under this section will not incur an application fee pursuant to Rule Seven (f) of these rules.

Any person admitted under this section must comply with the Rules Creating and Controlling the Oklahoma Bar Association as set forth in Title 5, Chapter 1, Appendix 1, Article 2, Section 5.

Any person admitted under this section will be subject to the provisions of Rule Ten of these rules.

<sup>10</sup>The Article celebrating the First Military Spouse JD Network member as being the first such spouse to be sworn in under the Oklahoma rule is found at: [www.msjd.org/2015/09/admission/](http://www.msjd.org/2015/09/admission/).

- 2) Major Green cannot do pro bono work in the State of Oklahoma, but his spouse could.
- 3) Major Green cannot do anything connected to the law in the State of Oklahoma without being engaged in the unauthorized practice of law, but by being married to the Major, his spouse could.

¶13 Major Green's nearly 10 years of practicing law in the United States military qualifies as having worked in a reciprocal jurisdiction under Rule 2. The military provides reciprocity to Oklahoma lawyers under similar circumstances for admission. Pursuant to 10 U.S.C. 827(b), Oklahoma attorneys qualify for military appointment if: 1) they graduated from an accredited law school or is a member of the highest court of the state; and 2) they are certified as competent to perform the duties as a military attorney.<sup>11</sup> No time requirement of five years is imposed. Major Green should be admitted under Rule 2.

### CONCLUSION

¶14 Major Green has with his service, represented the United States of America. Whether it is called a jurisdiction or a country, it is a conglomerate of all the states. Some of the purposes of letting military spouses practice law where their

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<sup>11</sup>10 U.S.C. §827(b) provides:

(b) Trial counsel or defense counsel detailed for a general court-martial—

(1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

spouse is deployed is to eliminate the need for an additional bar examination, relieve a significant portion of stressors for family, expedite job search efforts, and allow them to contribute to their families. Major Green has passed the bar examination in two of those states. Surely, that is more than sufficient. Major Green stated at the hearing that:

... I think it's you [who] are prejudicing the military, those of us that go and fight for our country, and I have huge sacrifices I made being a military member, and to not be able to apply that service as my tour of duty comes to an end, I think that is unfair. I don't think that the drafters of the rules contemplated that. . . I think we would have a different case if it was some sort of some different law that we practiced in the military. . . It is different from military justice, but it's – it's the same type of statutes, same types of crime, burglary, rape, robberies, larceny. It's the same stuff. It's just under a different code. . . . The rule is about being fair. About being fair to jurisdictions that are fair with Oklahoma. And it would be unfair to not provide reciprocity to service members. . .

We agree with Major Green. He has met the requirements for Rule 2 of the Rules Governing Admission to the Practice of Law in Oklahoma<sup>12</sup> and should be admitted *instanter*.

**ATTORNEY ADMITTED.**

REIF, C.J., COMBS, V.C.J., KAUGER, WINCHESTER, EDMONDSON,

TAYLOR, JJ., concur.

WATT (by separate writing), COLBERT, GURICH, JJ., dissent.

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<sup>12</sup>Rule 2, of the Rules Governing Admission to the Practice of Law in the State of Oklahoma, 5 O.S. Supp. 2015 ch.1 app. 5.