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The B&B - Bench & Bar (ISSN-1521-6497) is published bi-monthly by the Kentucky Bar Association, 514 West Main Street, Frankfort, KY 40601-1812. Periodicals Postage paid at Frankfort, KY and additional mailing offices.

All manuscripts for publication should be sent to the Managing Editor. Permission is granted for reproduction with credit. Publication of any article or statement is not to be deemed an endorsement of the views expressed therein by the Kentucky Bar Association.

Subscription Price: \$20 per year. Members subscription is included in annual dues and is not less than 50% for the lowest subscription price paid by subscribers. For more information, call (502) 564-3795.

POSTMASTER

Send address changes to:
B&B - Bench & Bar
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t h a n k y o u

for Allowing Me to Serve as KBA PRESIDENT



By: Douglas C. Ballantine

Okay, before we go on, let's get the cliché out of the way: This year has gone by incredibly fast. The funny thing about clichés, though, is that they are usually true, and it is certainly true as to this past year. I would like to thank you for allowing me to serve as

president. As you might expect, I am a strong believer in the Kentucky Bar Association ("KBA") and it has been an honor to work with so many of you over this past year. Throughout our Commonwealth, lawyers contribute many, many hours of service to the KBA, and to their communities. My experience as president this past year has been nothing but positive, based in great part on the professional excellence and commitment to the profession that our lawyers and judges show throughout the Commonwealth. Thank you for that service, and thank you for the support you have shown me, and the KBA, throughout the year.

I also would like to thank all of you for your condolences and kind words about the passing of my father, John T. "Jack" Ballantine. I could write an entire column and more, but as the sting of tears fills my eyes, I will stop there, other than saying that every day, he taught me how little I know, but in a very nice way.

In my most recent president's page, I mentioned the many benefits of a mandatory bar, but failed to mention a couple of benefits contained in the KBA website. Specifically, under Resources--Ethics, there is a complete copy of the KBA Ethics 2000 Committee Report, which provides a wealth of information about how our current Rules of Professional Conduct were developed. Also, under Resources for Lawyers—Practice Management, there are two helpful checklists: one for lawyer engagement letters; and one on how to obtain client informed consent. These are just two of the many resources available on the KBA website. Thanks to KBA Ethics

Committee member Sheldon "Shelly" Gilman for mentioning these to me, and thanks to the entire KBA Ethics Committee for all they do.

Let's talk about this past year and some of the more significant activities and accomplishments of the KBA.

WITHDRAWAL FROM KENTUCKY EMPLOYEES RETIREMENT SYSTEM.

One of the most significant accomplishments of the KBA this year was its withdrawal from the Kentucky Employees Retirement System (KERS) and substantial savings resulting to the KBA. To be clear, credit goes to KBA Executive Director, John Meyers, Director of Accounting and Membership, Michele Pogrotsky, and because I recused from any discussion or voting due to conflicts, President-Elect, Steve Smith and other members of the Executive Committee and the Board of Governors. (Perhaps my lack of involvement was what caused this to go so well!) Although the withdrawal process was very long and complicated, an overview may prove helpful.

Prior to 2000, the staff at the Kentucky Bar Association participated in a defined contribution retirement plan. At that time, the KBA's payment to the fund was a sum equal to 10 percent of each employee's salary. In 2000, the Board of Governors voted for the KBA to start participating with the KERS. By joining the KERS, the KBA's contribution was reduced to only 6.5 percent of salary and the employees could purchase credit in the KERS at a reduced rate for time employed by the KBA. This was in addition to the KBA's being able to participate with the state for the KBA's health insurance. The decision to join the KERS was a sound business move at the time, especially considering that the KERS was at or near full funding for future liability.

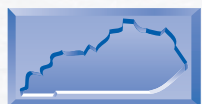
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Fast forward to preparing for the 2018-2019 KBA budget, when the proposed percentages from KERS were estimated at 83.43 percent for the employer. To be clear, the 83.43 percent figure meant that the KBA would have to pay to KERS 83.43 percent of the total salaries paid to KBA employees. During the 2017-2018 fiscal year, the KBA paid 49.47 percent based on employees' salaries to the KERS. The impact on the KBA budget was substantial. Retirement plan contributions would increase from a projected budget total of \$1,361,046 for the then-current fiscal year to \$2,329,245 for FY 2018-2019, an increase of \$968,199. Expenditures of this level were unsustainable and were having a detrimental effect on the KBA's ability to not only provide the basic services necessary for our members but would make impossible any efforts to enhance resources for the membership.

The KBA Board of Governors voted on Nov. 17, 2017, to withdraw from the KERS. The statutory and regulatory framework for a quasi-governmental agency such as the KBA to do so is established by KRS 61.522 and 105 KAR 1:145. On Feb. 28, 2018, the Board of Trustees of the Kentucky Retirement Systems approved the KBA to start the withdrawal process. In December 2018, the KBA received the actuarial numbers from KERS for the unfunded liability for the current employees, retirees since 2000, and some inactive former KBA employees. The KBA also hired actuaries to verify the calculations. The total cost would be \$12,034,016. On Feb. 21, 2019, final approval was given from KERS. A \$4 million bond at 3.75 percent from Kentucky Bond Corporation financing Program Revenue Bonds and investments from the General Fund and CLE Fund were used for payment in March 2019.

The KBA has set up a 401 (a) plan for the employees with an initial annual employer contribution of 5 percent. This will save the KBA \$970,973 compared to what was paid in the 2017-2018 fiscal year for employee retirement. A health insurance plan with Humana was also established for KBA employees at a cost comparable to the state employees' plan. The Kentucky Supreme Court approved the withdrawal from KERS. Thanks to all who worked on behalf of the KBA to accomplish this, including KERS, which consented to the KBA's withdrawal.

DIVERSITY SUMMIT.

On March 22, 2019, the KBA held its Diversity and Inclusion Summit in Covington, with over 125 attendees. Speakers included Paulette Brown, former president, and the first African American woman president, of the American Bar Association. Speakers addressed a wide variety of topics from why diversity initiatives are important to our profession, to how to implement diversity programs such as the Mansfield Rule. This was the third Summit, which has been held every other year since its inception. The reviews for this year's summit were virtually all positive. Special thanks to Roula Allouch and Ken Gish for their great job as co-chairs of the event.

KLEO TASK FORCE.

The Kentucky Legal Education Opportunity program ("KLEO") provides economic and readiness support to UK, Brandeis, and Chase first-year law students who are from populations that are

underrepresented in the legal profession. The program includes scholarship support and a two-week residential Summer Institute to help prepare the students for the rigors of law school and the legal profession. In 2018, the program lost state funding and, for the first time in almost two decades, the Summer Institute did not take place and no new KLEO Scholars were named. Thanks to the great work of the KLEO Task Force, including co-chairs Charles "Buzz" English, Jr., and Douglass Farnsley, we are well on our way to rejuvenating KLEO. The task force and the deans of Kentucky's three law schools are on track to secure funding for this important program, to reinstating the Summer Institute in 2019, and to funding modest scholarships for the KLEO Scholars. KLEO Scholars have enjoyed success in law school and in the profession, and we look forward to continuing to provide opportunities for underrepresented portions of our population to attend and thrive in law school.

With *pro bono* assistance from Stites & Harbison (thanks to Doug Farnsley), the task force is creating a 501(c)(3) corporation to oversee KLEO going forward. A KLEO alumni group, headed by Soha Saiyed, will work with the new KLEO Board to raise funds. The KLEO Board has applied for grants for the program. There is a lot of momentum for KLEO, and with the continuing help and support of the law schools and the Task Force, we anticipate that the KLEO Program will be back in operation this summer and for years to come. Stay tuned for more news on the KLEO Program.

KENTUCKY LAWYER ASSISTANCE PROGRAM ("KYLAP").

We all know the stresses of practicing law. Lawyer well-being must be an ongoing focus of the KBA and we are working to improve our services to KBA members, and to make sure our own KYLAP staff are not subjected to undue amounts of stress themselves. As you may recall, a KYLAP Task Force has been examining the needs of KYLAP in order to assess what needs KYLAP has, and how best to meet those needs. KYLAP Executive Director Yvette Hourigan, and her assistant, Ashley Cooper, do yeomen's work for KYLAP and we want to give them the support they need. With the help of an outside human resources company, the KBA has conducted an examination of the tasks on which Yvette spends her time and how KYLAP services may be enhanced. As a result of the Task Force's efforts, the KBA plans to hire a licensed clinical social worker in the near future to alleviate some of the workload on Yvette and Ashley.

CLIENT SECURITY FUND.

Limited space does not allow an in-depth discussion of Client Security Fund ("CSF") here, but let's remember what the CSF is. The CSF is a fund to help compensate clients who suffer losses because of a Kentucky lawyer's dishonest, fraudulent, or unethical acts, such as stealing from the client. The CSF does not address claims of negligence. A portion of dues paid by Kentucky Lawyers each year is allocated to CSF. Lawyers are members of one of the few professions—if not the ONLY profession—members of which contribute to a fund to compensate victims of dishonest behavior of members of that profession (a very small percentage in the case of Kentucky lawyers). No taxpayer funds are used to fund CSF. The

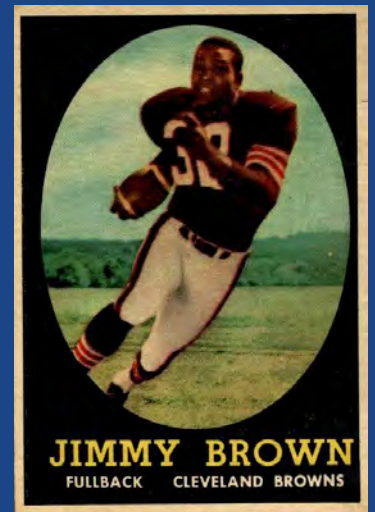
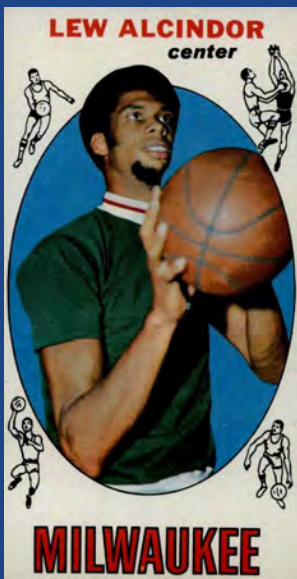
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fund currently has a per claimant limit of \$50,000 and a limit of \$150,000 that can be paid for any one lawyer's misconduct.

The KBA has been in discussions with the Kentucky Supreme Court concerning funding of the Client Security Fund, and ways to increase that funding. The KBA, the CSF Board of Trustees, and the Court all want to increase the amount of money in the CSF, to try to improve chances that victims can be adequately compensated for losses they suffer.

As ways to increase funding to CSF—without raising dues—the KBA will likely begin allocating a larger amount of dues paid to the CSF, with an equal reduction in the dues going into the KBA General Fund. Currently, \$7 of a member's dues goes toward CSF; the Court has authorized doubling that amount to \$14 per member per year. Along with the Court, we are examining other possible ways to increase funding to CSF. Also, we are looking at the possibility of obtaining insurance, similar to an excess or umbrella policy, that might apply when a particular client's losses are above the current limits of \$50,000 per client.

The CSF is one of the most significant steps we take as a profession to help members of the public. As we look to increase the funding available for CSF, it is very important to remember that lawyers self-fund this program, and it is an admirable effort by lawyers to help when help is needed.

STATE-WIDE JUDICIAL EVALUATIONS.

The Task Force on Judicial Evaluations completed its work and developed a written evaluation to be sent out in the next few months. We received comments from judges raising concerns about portions of the evaluation process and revised the process to address those concerns. Several judges who have previously undergone an evaluation process by the local bar associations in Louisville or Lexington have said that they initially had concerns about the evaluations, but subsequently felt that the evaluations are a good way to assess how judges are viewed by those who come in front of them, and what their strengths and weaknesses are, and most important, how to improve the delivery of justice by our courts. We are finalizing a committee of lawyers and retired judges to oversee the evaluation process and once that is done, we anticipate sending out the survey. Thanks to Amy Cubbage for overseeing this effort.

BAR LEADERSHIP CONFERENCE.

Planning for the next Bar Leadership Conference—to be held on Oct. 22, 2019, in Frankfort—has already begun. Last year's conference was a great success and we are looking forward to making our next

conference even better. Several attendees from last year's conference have already become active in various bar activities. This year's planning committee is working to put together another fine program, aimed at explaining how attorneys can become involved in bar association activities, at whatever level they choose, and become effective leaders. Assuming continued interest in the future, we anticipate that the conference will be held in the fall of each year, to avoid conflicting with KBA staff demands for the KBA's annual convention.

2019 KBA ANNUAL CONVENTION JUNE 12-14, 2019 GALT HOUSE HOTEL, LOUISVILLE.

We are very excited about the annual convention in Louisville this year. The theme for this year's convention is "PASSION WITH RESPECT," reflecting the fact that it is possible to advocate with passion and with respect.

The convention will offer **over 65 CLE programs**, on many different topics. It is a great opportunity to secure any remaining CLE credits—including ethics credits—you may need before the end of the CLE year (June 30).

The roster of speakers is exciting as well: Former U.S. Deputy Attorney General Rod Rosenstein, U.S. Senator Rand Paul, Tarana Burke, Rachael Denhollander, and many others. The convention is always a great place to renew acquaintances and make new ones. It

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is also a great opportunity to develop referral sources for matters that might arise in your geographic and practice area. I encourage you to attend the convention; we think it will be a strong lineup of programs and speakers.

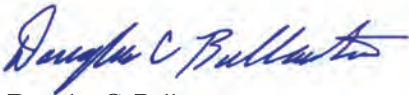
I end with some thanks. Most important, I want to thank my wife Mariam for her support and understanding throughout this past year. She and our kids have been very patient about the demands on my time this year.

Also, I want to thank the KBA Board of Governors. The governors put in untold hours volunteering their time for the lawyers and general public in an effort to improve the legal profession and the delivery of legal services in Kentucky. I will always cherish my time spent with board members; they are some of the finest lawyers in Kentucky and show the ability to advocate with passion and respect. Thanks also to my law partners, for their support and understanding for the time I spend on KBA matters.

Finally, I must thank the KBA staff for all of their incredibly hard, conscientious work. Starting with John Meyers and Melissa Blackwell and extending all the way through all departments of the KBA, the staff is incredibly positive, and committed to the mission of the KBA. On a selfish level, they have made my work as president as easy as is possible, and I will be forever grateful for that.

Thanks again to all of the lawyers and judges of Kentucky; I have loved my time as president and am humbled to have been able to serve.

All the best,



Douglas C. Ballantine
KBA President

Address or e-mail changes?! Notify the Kentucky Bar Association

Over 18,000 attorneys are licensed to practice in the state of Kentucky. It is vitally important that you keep the Kentucky Bar Association (KBA) informed of your correct mailing address. Pursuant to rule SCR 3.035, all KBA members must maintain a current address at which he or she may be communicated, as well as a physical address if your mailing address is a Post Office address. If you move, you must notify the Executive Director of the KBA within 30 days. All roster changes must be in writing and must include your 5-digit KBA member identification number.

Members are also required by rule SCR 3.035 to maintain with the Director a valid email address and shall upon change of that address notify the Director within 30 days of the new address. Members who are classified as a "Senior Retired Inactive" or "Disabled Inactive" member are not required to maintain a valid email address on file.

There are several ways to update your address and/or email for your convenience.

Online: Visit www.kybar.org to make changes online by logging into the website and editing your profile.

Form: Complete the **Address Changes/Updates** form found at www.kybar.org, under the **For Members** tab, **Members Request, Address Changes/Updates**. Email completed form to kcobb@kybar.org
OR mail to:
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*Announcements sent to the Bench & Bar's Who, What, When & Where column or communication with other departments other than the Executive Director do not comply with the rule and do not constitute a formal roster change with the KBA.

Terms Expire on the KBA Board of Governors

On June 30 of each year, terms expire for seven (7) of the fourteen (14) Bar Governors on the KBA Board of Governors. SCR 3.080 provides that notice of the expiration of the terms of the Bar Governors shall be carried in the Bench & Bar. SCR 3.080 also provides that a Board member may serve three consecutive two-year terms. Requirements for being nominated to run for the Board of Governors are contained in Section 4 of the KBA By-Laws and the requirements include filing a written petition signed by not less than twenty (20) KBA members in good standing who are residents of the candidate's Supreme Court District. Board policy provides that "No member of the Board of Governors or Inquiry Commission, nor their respective firms, shall represent an attorney in a discipline matter." In addition, any member of the Bar who is considering seeking or plans to seek election to the Board of Governors or to a position as an Officer of the KBA will, if elected, be required to sign a limited waiver of confidentiality regarding any private discipline he or she may have received.

Any such petition must be received by the KBA Executive Director at the Kentucky Bar Center in Frankfort prior to the close of business on the last business day in October. Please visit the KBA website at www.kybar.org/petition to obtain a petition.

The current terms of the following Board Members will expire on June 30, 2020:

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	Paducah	Bowling Green
<i>3rd District</i>	<i>4th District</i>	<i>5th District</i>
MELINDA G. DALTON	BOBBY SIMPSON	EILEEN M. O'BRIEN
Somerset	Louisville	Lexington
<i>6th District</i>	<i>7th District</i>	
GARY J. SERGENT	JOHN VINCENT	
Covington	Ashland	

Passion with Respect

2019 KBA Annual Convention



6.12-14.2019
Galt House Hotel
Louisville



The Kentucky Bar Association invites its members to the **2019 Annual Convention** scheduled for **Wednesday, June 12 through Friday, June 14**, at the **Galt House Hotel** in downtown **Louisville**. This year's event will offer **over 65 CLE programs** and provides up to **18.5 CLE credits**, including **9.0 ethics**. The convention has many activities for members to attend throughout the three-day event. Annual convention events and other information regarding how to register, as well as CLE speakers and sessions, visit www.kybar.org/2019AC. We look forward to seeing you in June!

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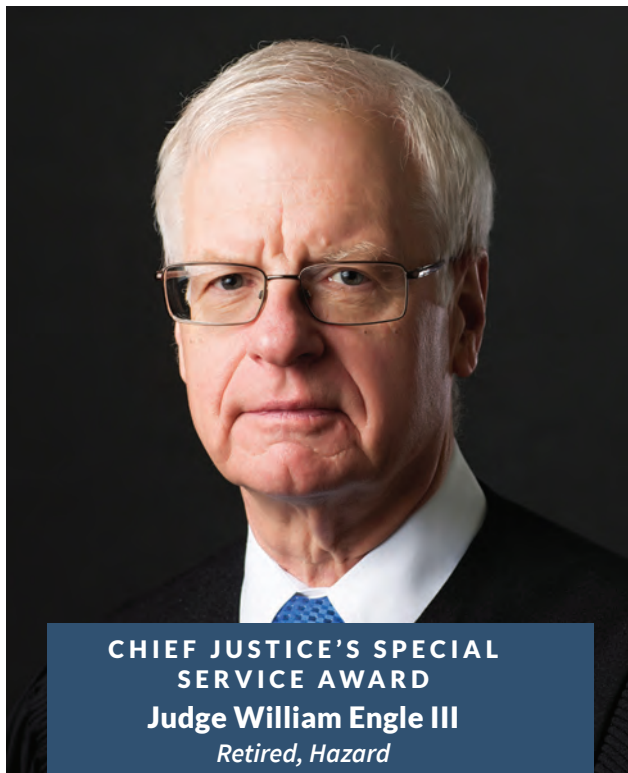
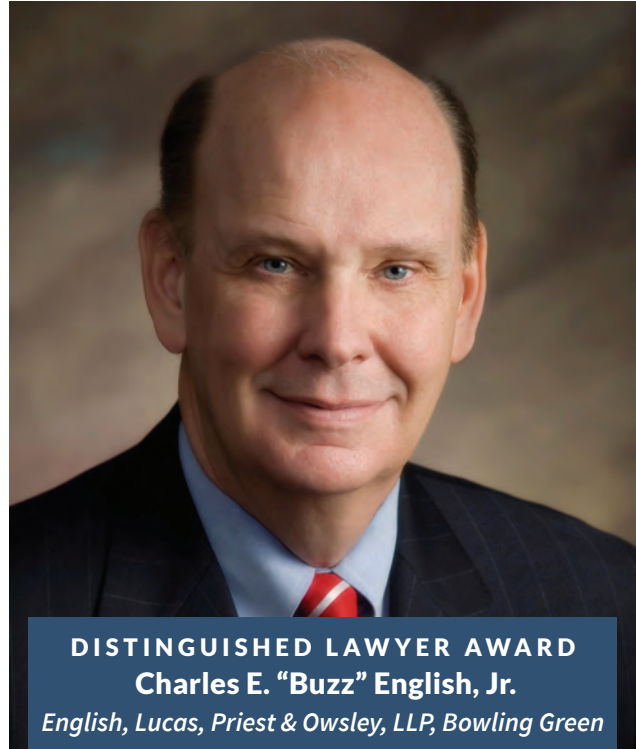


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| KBA Business Law Section | KBA Public Interest Law Section | |
| KBA Ethics Committee | | |
| KBA Elder Law Section | | |

2019 KBA OUTSTANDING AWARD RECIPIENTS

The Kentucky Bar Association (KBA) is excited to announce the 2019 Outstanding Award Recipients. These awards will be presented during different events throughout our three-day convention. Make plans now to attend and support the outstanding members of the Kentucky Bar Association. Here are the award recipients who will be presented at our annual banquet on Thursday evening, June 13, at the Galt House Hotel.



The following awards will be presented on Friday, June 14, at our membership luncheon at the Galt House Hotel.



BRUCE K. DAVIS BAR SERVICE AWARD
Roula Allouch
Liberty Mutual, Cincinnati



DONATED LEGAL SERVICES AWARD
Margaret E. Keane
Bingham Greenebaum Doll LLP, Louisville



NATHANIEL R. HARPER AWARD
Daniel P. Murphy, Jr.
*Assistant Dean of Community Engagement & Diversity
at the University of Kentucky College of Law, Lexington*



THOMAS B. SPAIN CLE AWARD
Madison T. Sewell
*Assistant United States Attorney for the U.S. Attorney's
Office in the Western District of Kentucky, Henderson*

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Friday, June 14th - First Race at 12:45PM
www.churchilldowns.com/calendar/2019-06

Evan Williams Bourbon Experience

Tours every hour starting at 11AM
Last tour at 4:30 p.m. (20 per tour)
www.evanwilliams.com/visit.php

Frazier History Museum

Monday - Saturday: 9AM - 5PM
Sunday: Noon - 5PM
<http://fraziermuseum.org/>

Kentucky Kingdom and Hurricane Bay

Kentucky Kingdom:
Wednesday (6.12) & Thursday (6.13): 11:00AM - 7:00PM
Friday (6.14): 11:00AM - 8:00PM

Hurricane Bay:

Wednesday (6.12) & Thursday (6.13): 11:00AM - 6:00PM
Friday (6.14): 11:00AM - 7:00PM
<https://www.kentuckykingdom.com/>

Louisville Mega Caverns

Variety of events (zip line, ropes course, tour, BMX Bike track)
www.louisvillemegacavern.com

Louisville Slugger Museum

Monday - Saturday: 9AM - 5PM
Sunday: 11AM - 5PM
<http://www.sluggermuseum.com/>

Muhammad Ali Center

Tuesday - Saturday: 9:30AM - 5PM
Sunday: Noon - 5PM
Last admission is at 4:15PM each day.
<http://alicenter.org/>

Peerless Distillery

Tours Monday - Saturday
Every hour; first tour 10:30 a.m.
Last tour 3:30 p.m.
www.kentuckypeerless.com

Speed Art Museum

Wednesday, Thursday, Saturday: 10AM - 5PM
Friday: 10AM - 8PM
Sunday: 12PM - 5PM
Monday & Tuesday: Closed
www.speedmuseum.org



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Louisville Mega Caverns



Speed Art Museum

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Unpaid Trust Fund Taxes *Bring Steep Penalties*

BY: JENNIFER GATHERWRIGHT

THE TAX GAP

Albert Einstein once said that the hardest thing in the world to understand was the income tax.¹ No doubt this is an opinion still shared by many. Although the GOP's 2018 Tax Cuts & Jobs Act² promised to make taxes simple enough to fit onto a postcard,³ it did not significantly address the government's inability to collect all of the taxes that are due. The difference between what the government is owed in terms of tax dollars and what it actually collects is called the tax gap. The most recent Internal Revenue Service ("IRS") statistics show the gross federal tax gap as composed of three components: (1) non-filing, (2) underreporting, and (3) underpayment. The estimated gross federal tax gaps for these components are \$32 billion, \$387 billion, and \$39 billion, respectively.⁴ The gross tax gap estimates can also be grouped by type of tax. The estimated gross tax gap for individual income tax alone is \$319 billion.⁵

As an attorney who has represented distressed taxpayers for nearly 20 years, I am occasionally asked whether a national sales tax combined with elimination of the income tax would fix the tax gap and put me out of a job. My answer is always the same—my clients still won't pay. This response verges on smart-alecky, and I am often entertained by the reaction it gets. However, it is rooted in a deep and serious understanding that business taxpayers are not necessarily more tax compliant than individual taxpayers. In fact, the estimated gross federal tax gap for employment taxes, commonly referred to as "payroll taxes," is \$91 billion.⁶ In many respects, shifting the responsibility to collect taxes to retailers would simply shift the tax gap away from individuals and onto businesses.

TRUST FUNDS

As a general rule, Kentucky employers are already required to withhold, report, and

remit both federal and state payroll taxes for their employees. Kentucky retailers are also required to collect, report, and remit Kentucky sales tax. However, many cash-strapped companies fail to remit sales and payroll taxes owed to the government because unlike other creditors, taxing authorities are not knocking on the door demanding their money until months or years after the payment due date. I have had only a few clients park their Ferraris out front when coming to see me about unpaid payroll taxes. More often than not clients are using the money to satisfy trade obligations or meet payroll rather than acting with bad intent or to fund a luxurious lifestyle. Unfortunately, this strategy can generate exposure to substantial civil and criminal penalties.

If companies do not pay their payroll or sales taxes, the individuals involved may become liable for the tax as a "trust fund"

and become an alternative source of collection for the government. If numerous people are involved in the business, it may be difficult for the practitioner to determine who is individually liable for the trust fund taxes and whether the liability will be strictly civil or perhaps criminal as well.

Internal Revenue Code (“IRC”) § 6672 provides the federal mechanism for imposing the trust fund penalty on individuals associated with a company. It states:

Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall . . . be liable to a penalty equal to the total amount of the tax evaded, or not collected . . . and paid over.⁷

The two key requirements of IRC § 6672 are: (1) the individual must be a “responsible person” required to collect, account for, and pay over taxes; and (2) the individual must “willfully” fail to perform this duty. This federal test generally results in a fair and reasonable identification of the individuals with liability for unpaid taxes.

A determination of “responsibility” depends upon the facts and circumstances of each case. Common factors in finding “responsibility” include: (1) identification of the person as an officer, director, or principal shareholder of the corporation, a partner in a partnership, or a member of an LLC; (2) duties of the officer as set forth in the by-laws; (3) authority to sign checks; (4) identification of the person as the one in control of the financial affairs of the business; (5) identification of the person who had authority to determine which creditors would be paid and who exercised that authority; (6) identification of the person as the one who controlled payroll disbursements; and (7) identification of the person who signed the employment tax returns.⁸

A responsible person may be an officer, director, shareholder, or some other person with sufficient control over the funds to direct disbursement of such funds, including employees, accountants, bookkeepers, lenders, payroll service providers, professional employer organizations, and contractors. Examples of responsible persons, as determined by the courts, include: an accounting firm that manages the financial affairs of a farmers’ cooperative on a daily basis;⁹ a controller who has authority over the dispersal of funds and priority of payments to creditors;¹⁰ a prime

contractor who, out of necessity or by contract, pays net wages directly to employees of a subcontractor that is having financial problems;¹¹ an equity firm that supplies working capital to a corporation to pay net wages with the knowledge that the corporation is not remitting payroll taxes to the government;¹² a bank lender that honors a customer’s payroll checks drawn in excess of the credit line.¹³

The federal courts define “willfulness” for purposes of the trust fund as intentional, deliberate, voluntary, reckless, knowing (not accidental). No evil intent or bad motive is required.¹⁴ To show “willfulness,” the government must show that the responsible party was aware of the outstanding taxes and either deliberately chose not to pay the taxes or recklessly disregarded an obvious risk that the taxes would not be paid.¹⁵ The payment of net wages (wages minus trust fund taxes) to employees when funds are not available to pay withholding taxes is a willful failure to collect and pay over under IRC § 6672. For purposes of determining willfulness, an employee owed wages is merely another creditor of the business, and preferences to employees over the government constitute willfulness.¹⁶

In contrast to IRC § 6672, the Kentucky trust fund statutes for payroll tax, Kentucky Revised Statute (“KRS”) § 141.340, and sales tax, KRS § 139.185, do not contain the term “willful.” Furthermore, while IRC § 6672 identifies the responsible person as a “person required to collect, truthfully account for, and pay over any tax imposed,” both KRS §§ 139.185 and 141.340 expressly identify the responsible persons as being “the president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any corporation” or “the managers of a limited liability company, the partners of a limited liability partnership, or the general partners of a limited liability limited partnership.”¹⁷ Consequently, the Commonwealth’s investigation into the trust fund is almost always limited to looking at the company’s officers.

Both KRS § 141.340 and KRS § 139.185 contain the caveat, “No person shall be personally and individually liable under this subsection who had no authority to

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collect, truthfully account for, or pay over any tax imposed by this chapter” However, the Commonwealth interprets this language broadly and assumes that all officers have such “authority” by statute or bylaws, regardless of who actually runs the day-to-day operations of the business or the identity of those on the bank account signature cards. Rebutting the Commonwealth’s presumption of “authority” is a Sisyphean task, but it can be done if the officer can provide bylaws or an operating agreement setting forth that the officer’s position in question is specifically without authority to collect, account for, or pay taxes, as well as show that the officer in question was not on the bank signature card and did not run the day-to-day operations of the business.

POTENTIAL CRIMINAL VIOLATIONS

The IRS and United States Department of Justice (“DOJ”) are more vigorously pursuing payroll tax violations and referring more cases for criminal prosecution. In April 2016, the DOJ emphasized that the failure to comply with federal employment tax obligations is “not simply a civil matter” and employers who treat amounts withheld from employees’ wages as their own property “are engaging in criminal conduct and face prosecution, imprisonment, monetary fines and restitution.”¹⁸ In 2016, language describing IRC § 7202 as “a felony that is infrequently prosecuted” was also conspicuously removed from the Federal Sentencing Guidelines.¹⁹ The most recent IRS statistics show the government’s Fiscal Year 2016 conviction rate for those indicted for tax crimes was 96.77 percent, and the incarceration rate for those convicted was 79.9 percent.²⁰

IRC § 7202 authorizes the IRS to impose criminal penalties on those who do not remit payroll taxes. IRC § 7202 states that any person required to collect, account for, and pay over payroll taxes who willfully fails to collect or truthfully account for and pay over such tax shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

Although Kentucky has specific felony criminal penalties for the failure to remit taxes,²¹ the Commonwealth almost always charges sales and withholding tax offenders with the more general crime of theft by failure to make required disposition of property.²² For prosecutors, the burden of proof is much lower under KRS § 514.070, and—to the taxpayers’ benefit—this statute also allows for misdemeanor charges in certain cases. KRS § 514.070 states that a person is guilty when:

- (a) He obtains property upon agreement or subject to a known legal obligation to make specified payment or other disposition whether from such property or its proceeds or from his own property to be reserved in equivalent amount; and (b) He intentionally deals with the property as his own and fails to make the required payment or disposition.

Theft by failure to make required disposition of property received is a Class A misdemeanor unless the value of the property is: (a) Five hundred dollars (\$500) or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony; or (b) Ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.²³

TAKEAWAY

Many practitioners who counsel business clients are familiar with the challenges that can arise when sales and payroll taxes are not turned over to the government. Unpaid taxes can wreak havoc on a marriage, put companies out of business, and land its owners in bankruptcy or worse, prison. Practitioners serve their clients well by stressing the importance of staying compliant with employment and sales tax obligations. When a delinquency occurs, practitioners should help their clients resolve the situation before the government takes action. **BB**

ENDNOTES

1. See *Tax Form Baffles Even Prof. Einstein*, N.Y. Times, Mar. 11, 1944, at A1.
2. Pub. L. No. 115-97, 131 Stat. 2054 (codified in scattered sections of 26 U.S.C.).
3. See, e.g., Kelly Phillips Erb, *Treasury Says New Postcard-Size Tax Return To Be Released Next Week*, Forbes, Jun. 21, 2018, [https://www.](https://www.forbes.com/sites/kellyphillipserb/2018/06/21/treasury-says-new-postcard-sized-tax-return-to-be-released-next-week/#203914ef408b)

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- forbes.com/sites/kellyphillipserb/2018/06/21/treasury-says-new-postcard-sized-tax-return-to-be-released-next-week/#203914ef408b.
4. Internal Revenue Serv., Tax Gap Estimates for Tax Years 2008-2010, Attach. 2, Table 2 (April 2016), <https://www.irs.gov/pub/newsroom/tax%20gap%20estimates%20for%202008%20through%202010.pdf>.
5. *Id.*
6. *Id.*
7. I.R.C. § 6672(a).
8. Internal Revenue Manual, sec. 5.17.7.1.2(4) (July 18, 2012).
9. *Quattrone Accountants, Inc. v. IRS*, 895 F.2d 921, 927 (3d Cir. 1990).
10. *Looney v. United States*, 544 F. Supp. 2d 574 (S.D. Tex. 2008).
11. *United States v. Algernon Blair, Inc.*, 441 F.2d 1379, 1381 (5th Cir. 1971).
12. *United States v. Intercontinental Indus.*, 635 F.2d 1215, 1218-19 (6th Cir. 1980).
13. *Fidelity Bank, N.A. v. United States*, 616 F.2d 1181, 1184 (10th Cir. 1980).
14. See *Domanus v. United States*, 961 F.2d 1323, 1325-27 (7th Cir. 1992).
15. *Phillips v. IRS*, 73 F.3d 939, 942 (9th Cir. 1996).
16. *Hochstein v. United States*, 900 F.2d 543, 548 (2d Cir. 1990).
17. Ky. Rev. Stat. §§ 139.185(1), (2), 141.340(2), (3).
18. Press Release, U.S. Dept of Justice Office of Public Affairs, Justice Department Reminds Employers of Their Employment Tax Responsibilities (Apr. 27, 2016) (*available at* <https://www.justice.gov/opa/pr/justice-department-reminds-employers-their-employment-tax-responsibilities>).
19. Amendments to the Federal Sentencing Guidelines at 48 (Nov. 1, 2016).
20. Internal Revenue Serv., Current Fiscal Year Statistics, <https://www.irs.gov/compliance/criminal-investigation/current-fiscal-year-statistics>.
21. Ky. Rev. Stat. § 141.990(5).
22. Ky. Rev. Stat. § 514.070.
23. *Id.* § 514.070(1), (4).

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Kentucky Sales Taxes & Nonprofit Organizations

BY: ERICA HORN



In 2018, the Kentucky General Assembly made significant changes to Kentucky's sales tax laws.¹ The Department of Revenue's application of some of the changes resulted in the proverbial "unintended consequences" for many of Kentucky's nonprofit organizations. An outcry from impacted organizations was met by promises of a remedy in the 2019 session. Legislators made good on those promises in 2019 House Bill 354, which was signed by the Governor and became law on March 26, 2019.²

The majority of the fallout from the 2018 legislation revolved around nonprofit organizations having to collect and remit sales tax on "admissions," including tickets to fundraising events. Additionally, a significant number of nonprofits were surprised to learn they should have been collecting and remitting sales tax on items sold at fundraising auctions if those items were otherwise subject to sales tax.

House Bill 354 exempts from sales tax nearly, if not all, admissions sold by nonprofit organizations. This article examines the application of Kentucky's sales taxes to nonprofit organizations prior to 2018, the Department of Revenue's actions regarding the 2018 legislative changes, and the 2019 changes made in House Bill 354, which ended the nightmare for nonprofits. As an introductory matter, however, the phrase "nonprofit organizations" should be defined.

WHAT DO YOU MEAN BY "NONPROFIT ORGANIZATIONS?"

Generally, Kentucky's sales tax statutes address three types of organizations exempt from sales tax: (1) resident, educational, charitable, and religious organizations exempt from income tax pursuant to Section 501(c)(3) of the Internal Revenue Code ("501(c)(3)s"); (2) nonprofit civic, governmental, or other nonprofit organizations ("civic and other nonprofits");⁴ and (3) public and private elementary and secondary schools ("elementary and secondary schools").⁵ The 501(c)(3)s, governmental entities, and the elementary and secondary schools are, for the most part, readily identifiable. However, there is no statutory or regulatory definition for "nonprofit civic" and "other nonprofit organizations."

THE STATUTES RELATED TO NONPROFIT ORGANIZATIONS

Purchases by nonprofit organizations generally are exempt from sales tax. This exemption extends to 501(c)(3)s and elementary and secondary schools, but not to civic and other nonprofit organizations.⁶

The statute applicable to 501(c)(3)s, KRS § 139.495, provides a purchase exemption for property and services used in connection with the mission of the organization, and states, "All other⁷ sales made by [501(c)(3)s] are taxable and the tax may be passed on to the customer as provided in KRS 139.210."⁸ (Footnote and emphasis added.) This declaration was altered slightly by KRS § 139.496, which, prior to 2019, provided an exclusion from sales tax for the first \$1,000.00 in sales for a fundraising event. KRS § 139.496 was also the *only* statute that expressly applied to civic and other nonprofit organizations.

Unlike 501(c)(3)s and civic and other nonprofit organizations, the sales tax treatment of public and private elementary and secondary schools is very broad. These entities, and groups affiliated with them, such as school-sponsored clubs and parent-teacher organizations, enjoy both the purchase exemption and a broad exemption from tax for sales of admissions to events, activities, and fundraisers. The sole caveat for schools is that the funds received be used in furtherance of their educational purposes.⁹

Overlaying this "nonprofit regimen of taxation" is sales taxation of "admissions".

THE PRE-2018 STATUTORY AND ADMINISTRATIVE TREATMENT OF "ADMISSIONS"

Traditionally, sales tax has been applied to retail sales of tangible personal property and a few services. Prior to 2018, Kentucky imposed sales tax on retail sales of tangible personal and digital property; hotel and similar rooms; sewer and telephone services; distribution of natural gas; and "admissions."¹⁰ There was no statutory definition of "admissions," but the term was defined by regulation – 103 KAR 28:010. Of particular interest are Sections 1 and 6 of the regulation. In pertinent part, those sections provide:

Section 1. Definition. "Admissions" means the right of entrance to a display, program, sporting event, music concert, performance, play, show, movie, exhibit, fair, or other entertainment event or amusement.

Section 6. The admissions listed in this section shall not be subject to sales tax: ... (3) Admissions sold by nonprofit charitable and educational institutions qualifying for exemption under KRS 139.495 [501(c)(3)s];

Section 1 provided a list, although not all-inclusive, of the types of admissions subject to sales tax. Section 6 appeared to provide an exemption for 501(c)(3)s, including most colleges and universities, from sales tax on admissions to their events and activities. The section was broad, exempting admissions to art museums, theatre performances, and other college and university activities, including athletic events.

Many of Kentucky's 501(c)(3)s were, either knowingly or unknowingly, following Section 6 of the regulation to exempt admissions. Upon closer examination, however, this section appears to have been in direct conflict with KRS § 139.495(8), which required 501(c)(3)s to collect tax on all sales, with the exception of the first \$1,000.00 in fundraising sales exempted by KRS § 139.496(1).

THE 2018 REGULAR SESSION OF THE GENERAL ASSEMBLY

At the end of the 2018 Regular Session of the General Assembly ("2018 Session"), the Legislature passed House Bill 366. This bill contained sweeping changes to Kentucky's tax code, including changes to the sales tax statutes.¹¹ Governor Bevin vetoed

this legislation.¹² On the second to last legislative day of the 2018 Session, both chambers of the General Assembly overrode the Governor's veto.¹³

The next day, the final day of the 2018 Session, the General Assembly passed a second tax bill, House Bill 487, which included all the provisions of House Bill 366 and a few additional provisions.¹⁴ The Governor did not veto House Bill 487, nor did he sign it. As a result, the bill became law.¹⁵

One of the 2018 legislative changes was moving the definition of "admission" from the regulation, 103 KAR 28:010, Section 1, to KRS § 139.010(1) and expanding that definition.¹⁶ The expanded definition is as follows:

"Admissions" means the fees paid for: (a) The right of entrance to a display, program, sporting event, music concert, performance, play, show, movie, exhibit, fair, or other entertainment or amusement event or venue; and (b) The privilege of using facilities or participating in an event or activity, including but not limited to: 1. Bowling centers; 2. Skating rinks; 3. Health spas; 4. Swimming pools; 5. Tennis courts; 6. Weight training facilities; 7. Fitness and recreational sports centers; and 8. Golf courses, both public and private; regardless of whether the fee paid is per use or in any other form, including but not limited to an initiation fee, monthly fee, membership fee, or combination thereof.¹⁷

The addition to the statutes of this definition of "admission," in and of itself, would not have changed the treatment of admissions for 501(c)(3)s, whatever that treatment should have been, because of the express exemption from sales tax set forth in Section 6 of 103 KAR 28:010. However, the Department of Revenue soon advised that Section 6 was no longer lawful.¹⁸

THE DEPARTMENT OF REVENUE'S APPLICATION OF THE DEFINITION OF "ADMISSION"

The Kentucky Alliance of YMCAs ("Alliance") was the first to recognize the potential problems with 2018 House Bill 366. With the 2018 Session waning, the chair of the Alliance sent a letter to the chairs and vice-chairs of the House and Senate Appropriation and Revenue Committees expressing concern about taxation of YMCA memberships, because the new law imposed sales tax on the privilege of using "fitness and recreational sports centers" as part of the definition of "admission."¹⁹ The Alliance had no success with the Legislature, which should not have been problematic because the sale of the YMCA memberships would have been covered by Section 6 of the regulation. However, at a June 2, 2018 meeting between the author, leaders in the nonprofit sector, the Commissioner of the Department of Revenue, and the Executive Director of the Division of Sales and Excise Taxes, the Department advised that Section 6 was no longer good law and could not be followed.

According to the Department of Revenue, the legal authority for Section 6 was a 1970 decision by the Kentucky Court of Appeals²⁰, then the state's highest court. The Department asserted the 1970 case had been overruled in March 2018 by the Kentucky Supreme Court in *Commonwealth v. Interstate Gas Supply, Inc.*²¹ The Department articulated its position as follows:

Non-profit 501(c)(3) groups must collect sales tax on their charges for all categories of taxable admissions for periods beginning July 1, 2018, forward.

The Kentucky Supreme Court recently held that the Ky. Const. Section 170 exemption for charitable institutions applied only to property taxes and not to excise taxes (sales and use tax). The only sales tax exemptions for 501(c)(3) charitable, educational, and religious organizations are those explicitly listed in KRS Chapter 139. Except for the very narrow exemptions for horse racetracks, historical sites, county fairs, elementary and secondary schools, and non-profit 501(c)(3) school-sponsored clubs and organizations, all other entities engaged in sales of admissions must begin collecting tax on these sales.²²



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A discussion of Kentucky Constitution Section 170, the two cases cited by the Department, and the merits of the Department's argument are beyond the scope of this article. Suffice it to say, repeal of Section 6 of 103 KAR 28:010 created a sea change for 501(c)(3)s. Football, basketball and other tickets to events at Kentucky's colleges and universities were now subject to sales tax, as well as tickets to the ballet, a theatre performance, or a philharmonic performance sponsored by a 501(c)(3). Also subject to sales tax were admissions or tickets to nonprofit fundraising events. Effective July 1, 2018, a \$100.00 ticket to a gala was \$106.00, and a \$10,000.00 sponsorship of the same gala, if the sponsorship came with tickets, was \$10,600.00.

Shortly after learning of the Department's position, local news outlets began reporting that the nonprofit community was reaching out to state legislators, and those legislators were promising to fix the "unintended consequences" flowing from the 2018 changes and the Department's application of those changes. The first bill addressing the situation was pre-filed by House Speaker David Osborne in July 2018.²³

RELIEF – 2019 HOUSE BILL 354

The members of the General Assembly that had promised relief for the nonprofits made good on that promise with the introduction and passage of House Bill 354.²⁴ In its final form, the bill exempts from sales tax: (1) sales of admissions by 501(c)(3)s and civic and other nonprofit organizations; and (2) fundraising event sales made by the same groups.²⁵ "Fundraising event sales" is defined to exclude "sales related to the operation of a retail business, including, but not limited to thrift stores, bookstores, surplus property auctions, recycle and reuse stores, or any ongoing operations in competition with for-profit retailers." The bill makes clear that sales of admissions by 501(c)(3)s to events and fundraisers and other fundraising sales are exempt from sales tax and extends those exemptions to civic and other nonprofit organizations. The previous \$1,000.00 exemption for fundraising sales was repealed.²⁶

After the Governor signed House Bill 354 on Tuesday, March 26, 2019, Kentucky's non-profit sector joined in a collective sigh of -- thank goodness that's over. **BBB**

ENDNOTES

1. 2018 Ky. Acts ch. 207 (House Bill 487).
2. The General Assembly adopted Free Conference Committee Report 1 on House Bill 354 on March 13, 2019. The legislation included an emergency clause making the relevant sections of the bill, sections 28 and 29, effective upon the Governor's signature or the bill otherwise becoming law. The bill was signed by the Governor on March 26, 2019 and may be accessed at <https://apps.legislature.ky.gov/record/19rs/hb354.html#actions>.
3. KRS § 139.495 (2017). All cites to the Kentucky Revised Statutes will be to the statutes in effect as of December 31, 2017, except when otherwise indicated.
4. KRS § 139.496(1)(b).
5. KRS § 139.497.
6. KRS § 139.495, KRS § 139.496, and KRS § 139.497.
7. KRS § 139.495(3)-(5) provides that certain sales by bookstores and school cafeterias are exempt from sales tax.
8. *Id.* at (8).
9. KRS § 139.497.
10. KRS § 139.200.

ABOUT THE AUTHOR

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11. 2018 Ky. Acts ch. 171.
12. The bill history for 2018 House Bill 366 may be accessed at <https://apps.legislature.ky.gov/record/18rs/hb366.html>.
13. *Id.*
14. The bill history for 2018 House Bill 487 may be accessed at <https://apps.legislature.ky.gov/record/18rs/hb487.html>.
15. *Id.* (2018 Ky. Acts ch. 207).
16. *Id.* at § 36, effective for transactions occurring on or after July 1, 2018. In addition to adding a statutory definition of "admission" and expanding that definition, the sales tax changes imposed, for the first time, sales tax on the following services: landscaping services; janitorial services; small animal veterinary services; pet care services; industrial laundry services, including but not limited to industrial uniform supply services, protective apparel supply services, and industrial mat and rug supply services; non-coin-operated laundry and dry cleaning services; linen supply services; indoor skin tanning services; non-medical diet and weight reducing services; limousine services, if a driver is provided; and extended warranty services. The most controversial of these new services subject to tax was small animal veterinary services. *Id.* at § 37(g)-(q).
17. *Id.*, codified as KRS § 139.010(1) (2018) (*emphasis added*).
18. Of note is that no changes were made in 2018 to the "nonprofit statutes," KRS § 139.495, KRS § 139.496(1), and KRS § 139.497.
19. April 11, 2018 letter from David Martorano, Chair of the Alliance, to Sen. Christian McDaniel, Sen. Stan Humphries, Rep. Steven Rudy, and Rep. Ken Fleming.
20. *Kennedy Book Store, Inc. v. Department of Revenue*, 450 S.W.2d 524 (Ky. 1970).
21. 554 S.W.3d 831 (Ky. 2018).
22. <https://taxanswers.ky.gov/Sales-and-Excise-Taxes/Pages/Facility-and-Event-Admission-Fees-FAQs.aspx>.
23. 2019 Bill Request 76, <https://apps.legislature.ky.gov/record/19rs/prefiled/BR76.htm>.
24. <https://apps.legislature.ky.gov/record/19rs/hb354.html>.
25. 2018 House Bill 354, Sections 28 and 29, available at <https://apps.legislature.ky.gov/record/19rs/hb354.html>. As in 2018, no changes were made in 2019 to KRS § 139.497, which governs purchases and sales by elementary and secondary schools.
26. 2018 House Bill 354, Section 30, available at <https://apps.legislature.ky.gov/record/19rs/hb354.html>.

FAMILY LAW ARBITRATION IN KENTUCKY: A REBIRTH

BY: WILLIAM D. TINGLEY

The Kentucky Supreme Court's Standing Committee on Family Court Rules of Procedure and Practice¹ sent to the Court a recommendation that FCRPP² 2(6)(a) Mediation be amended to identify arbitration³ as another process litigants may choose to resolve their family law claims. The primary rationale for the amendment is to address the chilling effect the Kentucky Court of Appeals decision in *Campbell v. Campbell* had on family law arbitration.⁴ The intent of this article is to provide a legal context for considering the proposed rule change by illuminating the complete history of family law arbitration cases in Kentucky. As observed by sister states, over 100 years ago the Kentucky Supreme Court recognized and enforced agreements to arbitrate family law claims in *Masterson I*,⁵ *Masterson II*,⁶ and *Masterson III*.^{7,8,9}

The right of litigants to contract for settlement of claims by arbitration is guaranteed by Section 250 of the Kentucky Constitution:

It shall be the duty of the General Assembly to enact such laws as shall be necessary and proper to decide differences by arbitrators, the arbitrators to be appointed by the parties who may choose that summary mode of adjustment.

Ky. Rev. Stat. § 417.050, one of the arbitration enabling statutes, provides:

A written agreement to submit any existing controversy to arbitration or a provision in written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract....

Specifically excluded from the statute are arbitration agreements between employers and employees. There is no mention of family law claims. *Expressio unius est exclusio alterius*, the mention of one thing implies the intentional exclusion of another. *C.D.G. v. N.J.S.*¹⁰

Before the *Masterson* courts had been classic family law claims for property division, child custody, visitation, child support, alimony, and attorney fees. All were settled through arbitration. The underlying procedural history of the case is described in *Masterson I*:

Pending a suit brought by the appellee against his wife for separation from bed and board, due, as he avers, to her passionate outbursts of temper and violence to appellee's children by a former wife, an agreement was reached by which the parties were to live separate and apart from each other, and the question of alimony and of all property rights was left to arbitration. This agreement was entered as an order of court in the pending case. The award was duly made and reported, and by it the husband was to pay the wife \$500 cash, \$512.50 in one year, and a like amount in two years, with interest from date of the award. He was likewise to pay the wife the sum of \$20 per annum for six years as support for an infant, custody of which was given the wife under the terms of the agreement.¹¹

Vacating the trial court's judgment, in favor of the arbitrators' award, that court held:

As the arbitrators selected by these parties to adjust this question heard proof, and did adjust it, apparently to the satisfaction of both husband and wife at the time, although the finding by consent was subsequently abandoned, -but by the wife from sheer necessity, -we are convinced that the award was a just and equitable one, and the wife should be adjudged substantially the amount fixed therein.¹²

Directly addressing the enforceability of the arbitrated agreement, the *Masterson II* court held:

Pending the original controversy between the husband and wife, they agreed upon a permanent separation, and, in contemplation thereof, further agreed to leave to arbitrators the matters of settlement of alimony and custody and support of the children. The arbitrators selected returned their award into court, which for some reason appears not to have been enforced, and the litigation was prosecuted. This court, however, on the former appeal, took the agreement to arbitrate as valid, and adopted the award as a just basis of settlement of the question of alimony... But no case has been cited in which it has been decided that such contracts are void if made in contemplation of the continuance of a previous separation, or in contemplation of an immediate separation where disagreements have taken place between the husband and wife. On the contrary, it has been decided in numerous cases that the husband's contract to support the wife, made under such circumstances, is valid. Clancy, *Husb. & W.* p. 397, c. 4; 2 Story, *Eq. Jur.* §§ 1427, 1428.¹³

Two years after *Masterson II*, the Court decided *Masterson III*. In that decision it reaffirmed its earlier decisions to enforce the parties' arbitrated settlement and affirmed the trial court's later decision to change custody based upon new evidence.¹⁴

One hundred and one years after *Masterson III* came *Redmon v. Redmon*.¹⁵ *Redmon* was the appeal of a final order modifying child support. In their marital settlement contract "[t]he parties agreed that any request for modification of the child support obligation would be submitted to binding arbitration with no right of appeal."¹⁶ After entry of the arbitrator's award, Mr. Redmon filed a motion to "modify or correct" alleging the award was so excessive it constituted fraud.¹⁷ The trial court granted his motion and reduced the award. Reversing and remanding the Kentucky Court of Appeals held:

KRS 417.050 provides that a written agreement to submit a controversy to arbitration is valid, enforceable and irrevocable, except for grounds existing at law for the revocation of any contract. An arbitration decision will not be held invalid merely because it is unjust, inadequate, excessive or contrary to the law. *Carrs Fork Corp. v. Kodak Mining Co., Ky.*, 809 S.W.2d 699, 702 (1991)^[18]. It shall not be set aside even if it is wrongly decided.¹⁹

Though the *Redmon* court did not make reference to *Masterson I, II, or III*, its decision to enforce the parties' arbitrated settlement agreement was consistent therewith.

Two years after *Redmon* came *Patterson v. Patterson*.²⁰ *Patterson* arose on a petition for dissolution of marriage and related claims. Citing the arbitration provision of the parties' marital settlement agreement, the court of appeals dismissed holding:

This appeal arises from a dissolution proceeding originally scheduled for trial on April 4, 2002. Approximately one week prior to that date, the parties entered into a written agreement to arbitrate all issues related to the divorce with attorney B. Mark Mulloy acting as the agreed-upon arbitrator. The voluntary arbitration agreement, the validity of which is not in dispute, clearly states that the final judgment tendered by the arbitrator and entered by the Court 'shall be binding on the parties and shall not be subject to appeal.'²¹

Patterson was followed two years later by *Pippin v. Pippin*.²² *Pippin* was another action for dissolution of marriage where the parties' marital settlement agreement required arbitration of their claims.

In its opinion affirming all but the trial court's decision on maintenance arrears, the *Pippin* court supported its decision citing findings made both by the arbitrator and by the trial court. However, the court noted that the validity of the arbitration agreement was "not in dispute."²³ Said dicta had a dampening effect on the family law bench and bar's use of arbitration. They became concerned that judgments incorporating marital settlement agreements arrived at through arbitration might later be vacated, resulting in a lengthening rather than the desired shortening of family conflicts. However,

it was the majority's decision in *Campbell* which effectively brought the practice of family law arbitration to a full stop.

The *Campbell* court, *sua sponte*, vacated the trial court's judgment confirming the arbitrator's award, declaring the trial court's approval of the agreement an "unlawful delegation of a judicial function."²⁴ The Kentucky Supreme Court granted discretionary review but before the Court could render an opinion, the parties settled the case. Though the Court depublished *Campbell*, widespread enforceability concerns for marital settlement agreements reached through arbitration persist.

Had the Kentucky Supreme Court's review of *Campbell* gone forward, the author suspects the Appellant would have at least advanced the following arguments. First, there was no attempt in the Kentucky Court of Appeals' decision to reconcile Ky. Const. § 250, and its corollary, Ky. Rev. Stat. §§ 417.045-240, with Ky. Rev. Stat. § 23A.100 Jurisdiction of family court. The decision mentions both statutory schemes but only summarily concludes "[i]n our review of Kentucky law, we can find no published authority that has addressed whether domestic relations cases fall within the purview of KRS 417.050."²⁵ The law of statutory construction requires an attempt to reconcile apparently conflicting statutes and an attempt to give effect to both. *Commonwealth v. Kenley*.²⁶ In

addition, certainly *Masterson I, II, and III* are published authority falling within the purview of Ky. Rev. Stat. § 417.050; *Masterson II* specifically cites 73, Ky. St., a forerunner to Ky. Rev. Stat. §§ 417.045-240.²⁷

Second, as revealed by the dissenting opinion in *Maclean v. Middleton*, the *Campbell* decision appears to be predicated on an incomplete view of the family court concept.²⁸ The *Campbell* court reasoned that arbitration of family law claims is an unlawful delegation of a judicial function because it is antithetical to the concept of "One Family, One Judge, One Court."²⁹ Beyond question, the *Campbell* majority's observation that the concept of 'one family, one judge, one court' is a bedrock concept of family court was correct. However, uniformity in orders and judicial economy, of what that mantra bespeaks, is but one of the pillars of the framework of family court; there is another. Just as fundamental to the architecture of family court is the integration of all forms of extrajudicial i.e., alternative, dispute resolutions systems. Court designated support workers, mediators, lawyers trained in collaborative law, psychologists and social workers, court appointed custody evaluators and business appraisers, Friend[s] of the court, Guardians *ad litem*, parenting coordinators, relationship counselors, Families in Transition and Batterer's Intervention Program trainers, and CASA volunteers, are all heavily utilized in family court, *by design*, to help parties reach

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resolution of their claims with a minimum of judicial intervention. In *Morgan v. Getter* the Court described this two-pillar dynamic of family court:

Unified family courts, with their holistic approach to families (the one-family one-judge idea), *their alternatives to litigation* (mandated or encouraged mediation, for example), their involvement with other social service providers (often facilitated by a family court judge's on-staff support worker), and what are often less formal proceedings (including, for example, the relaxation of evidentiary rules) have been hailed as the providers of "therapeutic justice," as problem solvers and conflict mitigators for families suffering from underlying dysfunctions. Simply put, these courts are not mere umpires or dispute deciders. John Lande, *The Revolution in Family Law Dispute Resolution*, 24 J. Am. Acad. Matrim. Law 411 (2012); Jana B. Singer, *Dispute Resolution and the Post-divorce Family: Implications of a Paradigm Shift*, 47 Fam. Ct. Rev. 363 (2009).³⁰

This inclusion of a wide variety of extrajudicial dispute resolution options is what is meant when family court is also frequently described as "a portal to community-based services." Former Jefferson Chief Family Court Judge Richard J. FitzGerald,³¹ a key architect of Kentucky's family courts, often said "the idea is to achieve collaboration between family members not clobberation."

Finally, the assertion of unlawful delegation of a judicial function carries the implication of no judicial oversight over marital settlement agreements achieved through arbitration. However, Ky. Rev. Stat. § 403.108 requires judicial oversight over such agreements, regardless of the process used to reach consensus. The review is *de novo* and requires a factual finding that the agreement is or is not "unconscionable."³² Further, because marital settlement agreements become the judgment of the court, a *de novo* finding is required that all provisions regarding custody and visitation are "in the best interest of the child."³³

The Standing Committee's recommendation to specifically identify arbitration in FCRPP 2(6)(a) does not make new law in Kentucky. Ky. Const. § 250, *Masterson I, II, III, Maclean*, and Ky. Rev. Stat. § 417.050 remain as the controlling authority. The unpublished opinions in *Redmon, Patterson, Pippin*, and *Campbell* are not authoritative. CR 76.28(4)(c).³⁴ Should the Kentucky Supreme Court adopt the recommendation of the Standing Committee, there will undoubtedly be a rebirth in arbitration of family law claims in Kentucky. **BBB**

ENDNOTES

1. [hereinafter Standing Committee].
2. Family Court Rules of Procedure and Practice.
3. *Arbitration*, Black's Law Dictionary (10th ed. 2014) ("A dispute-resolution process in which the disputing parties choose one or more neutral third parties to make a final and binding decision resolving the dispute.")
4. No. 2006-CA-001803-MR, 2010 WL 391841 (Ky. App. 2010).
5. 46 S.W. 20 (Ky. 1898) [hereinafter *Masterson I*].
6. 60 S.W. 301 (Ky. 1901) [hereinafter *Masterson II*].
7. 71 S.W. 490 (Ky. 1903) [hereinafter *Masterson III*].



ABOUT THE AUTHOR

WILLIAM D. TINGLEY is a Fellow of the American Academy of Matrimonial Lawyers. Currently, he is serving as the Chair for the Rules and Comments Subcommittee of the Kentucky Supreme Court's Standing Committee on Family Court Rules of Procedure and Practice. Tingley was Co-Chair of the Jefferson County Advisory Board for the Kentucky Supreme Court's Family Court Project. He has testified before the Senate and House Judiciary Committees of the Kentucky Legislature concerning family law legislation. He has appeared before the Kentucky Supreme Court in 21 family law cases, six of which resulted in published opinions, and the Kentucky Court of Appeals in 135 family law cases, four of which resulted in published opinions.³⁵ For over three decades he has lectured state-wide, on behalf of the Kentucky Bar Association and the American Academy of Matrimonial Lawyers, on a variety of family law topics.

8. *Faberty v. Faberty*, 477 A.2d 1257 (N.J. Sup. Ct. 1984) (citing *Bandas v. Bandas*, 430 S.E.2d 706 (Va. Ct. App. 1993), 1 Alt. Disp. Resol. Sec. 23:13 (4th ed.), and 18 J. Am. Acad. Matrim. Law 429 (2003)).
9. Carolyn M. Zack, *Family Law Arbitration in the United States*, American Bar Association (forthcoming 2019).
10. 469 S.W.3d 413 (Ky. 2015).
11. *Masterson I* at 21.
12. *Id.*
13. *See id.* at 302.
14. *Masterson III* at 490.
15. No. 2002-CA-001799-MR, 2003 WL 21476789 (Ky. App. 2003).
16. *Id.* at *1.
17. *Id.* at *2.
18. *overruled on other grounds by Nami Resources Company, LLC v. Asher Land and Mineral, Ltd.*, 554 S.W.3d 323 (Ky. 2018) (trial court has duty to take corrective action when error at trial is so egregiously prejudicial as to cause manifest injustice).
19. *Redmon* at *2.
20. 2003-CA-001588-MR, 2005 WL 3001673 (Ky. App. 2005).
21. *Id.* at *1.
22. 2005-CA-002087-MR, 2007 WL 2460713 (Ky. App. 2007).
23. *Pippin* at *1.
24. *Campbell* at *16.
25. *Campbell* at *15.
26. 516 S.W.3d 362 (Ky. 2017).
27. *See Masterson III* at 303, *see also* *Young v. Vista Homes, Inc.*, 243 S.W.3d 352, 369 n.4 (Ky. App. 2007) ("[N]ot to be officially reported" designation by former Kentucky Court of Appeals does not render opinions published in Southwestern Reporter "unpublished," as that term is used in CR 76.28(4)(c)).
28. 419 S.W.3d 755 (Ky. App. 2014) (trial court's decision to enforce parties' agreement to submit remaining property issue to a master commissioner affirmed with dissent making the unlawful delegation of a judicial function argument embraced by the *Campbell* majority).
29. *Campbell* at *7.
30. 441 S.W.3d 94, 105 (Ky. 2014) (emphasis added).
31. †1946-2017.
32. Ky. Rev. Stat. §§ 417.045-240 (also requires judicial confirmation of arbitrator's award).
33. *See id.* at § 403.270.
34. (unpublished opinions may only be cited as precedent if no published opinions adequately address the issue before the court).
35. Kentucky Court of Justice, <http://courts.ky.gov> (last visited May 12, 2019).

Louisville Law Professors Highlight the Impact of Tax Law in Everyday Life

BY: DEAN COLIN CRAWFORD

We all know the old saying about death and taxes. But although it is an unavoidable part of life, tax remains a topic that can seem out of reach for many of us.

In recent discussions with two of the tax law experts at the University of Louisville School of Law, they remarked on the importance of teaching students that tax—while complex and challenging—has tangible, real-world impact.

One such example broached by both Professor Tom Blackburn and Professor Goldburn P. Maynard Jr. is the way taxes impact retirement savings.

Professor Blackburn spoke about some of his recent ponderings about ERISA, originally enacted in 1974 and designed to protect employee benefit plan participants and their beneficiaries.

“The purpose of ERISA was to get all of us to put money away that we couldn’t be taxed upon today, but on retirement when we started drawing this money out, we would be taxed and it would be taxed as ordinary income,” he says, adding that the assumption was that at retirement, one would earn less income and so would be in a lower tax bracket.

“But what’s actually happened is that tax rates have gone down overall, so we could have been paying taxes on our dividend income,” Professor Blackburn says, explaining that dividends are now being taxed at a lower rate, while the money drawn out of retirement accounts could be taxed at more than double that rate, depending on one’s tax bracket. He wonders if retirement account holders would have been better off having their dividends come directly to them rather than accruing in retirement accounts.

Professor Maynard, who recently presented at the University of Cincinnati College of Law’s “The Business Use of Trusts” symposium, has also been thinking about retirement accounts.

His presentation, about mutual funds, was tied to tax as well.

He noted that 401(k)s, 403(b)s and IRAs are all tax-favored plans passed by Congress to encourage retirement savings.

“That’s a subsidy that’s being run through the tax system, and ultimately, that’s a policy program that the government is running through the tax system,” he says.

There’s a consensus that the mutual fund industry has been overcharging in fees — Professor Maynard says he has seen estimates of about a \$35 billion annual overcharge in fees. That means that investment advisers are capturing a substantial part of a government subsidy.

When it comes to regulating mutual funds, there has been pushback. Last year, the Fifth Circuit Court of Appeals struck down regulations issued by the U.S. Department of Labor that had expanded the definition of “fiduciary” to include more financial and insurance professionals under ERISA, meaning they would have been subject to stricter regulation.

“This is a government subsidy. So you’re having these government agencies trying to police these subsidies and lessen the waste and then you’re having the courts saying, ‘You don’t have the power to do this,’” says Professor Maynard.

While decisions like these don’t typically make front-page news, they have real impact, Professor Maynard says.

“People don’t necessarily think about how tax affects their lives in lots of ways,” he says. “We may be fine with there being these tax-advantage plans because we want there to be more retirement savings, but are we OK with investment advisers capturing a good amount of that subsidy?”

Professor Blackburn also points out the important role tax plays in our lives. After federal taxation was removed as a Kentucky bar exam subject in 2017, “the tax faculty has been challenged to find compelling reasons for reluctant students to undertake the rigors of a tax education,” he says.

But, he argues, “tax is such an employable skill.” Professionals such as financial advisers and CPAs might understand tax, but lawyers bring valuable skills to the subject, especially when it comes to business planning.

“If you want to succeed in business, you’ve got to do your tax planning,” he says. “The planning goes in to what lawyers do best, and that is to think about the situation from the big picture.”

I myself was one who shied away from taking tax law. But the Basic Income Tax course was one of the best and most rigorous I took. Since then, I have been a believer and always counsel students to take it whenever possible. The tax system, in theory, touches every person in the country. It is essential to the practice of law, and all of us benefit from knowing enough at least to call tax counsel. That is a message I will keep sending to our students, along with our outstanding tax faculty and alums and friends who practice in the area.



UK Law Students Provide Free Filing Assistance Save Tax Payers

more than \$65,000 In Fees

This tax season the University of Kentucky College of Law continued one of its signature pro bono efforts—the Volunteer Income Tax Assistance (VITA) Program. Law student volunteers along with accounting students and an alumna provided free assistance with tax preparations and filings to mostly low-income individuals with simple returns, as well as foreign students and scholars.

This year a total of 31 volunteers prepared and filed 425 tax returns, saving clients more than \$65,000 in preparation fees. Clients received \$460,751 in federal refunds and \$45,174 in state refunds. The tax clinic was open February 19 through April 15.

The UK Law VITA site is one of seven in Central Kentucky operating with the help of United Way of the Bluegrass. Douglas Michael, Associate Dean of Academic Affairs and Dorothy Salmon Professor of Law at UK College of Law, leads the VITA clinic with the help of Jennifer Bird-Pollan, Robert G. Lawson Professor of Law and Chair of the University Senate Council at UK.

“Students get a real clinical experience,” said Assistant Dean Michael. “They are trained in law and regulations and must use that

knowledge and their interviewing and problem-solving skills to help actual taxpayers with problems with real costs and consequences.”

The United Way of the Bluegrass provides training, administrative and financial support of this program. Gatton College of Business and Economics and the Lexington Public Library have helped with equipment and space for VITA Program labs, and the Internal Revenue Service (IRS) created the program and provided software, training and advice. “It is heartening to see so many come together in public service,” said Dean Michael.

All student volunteers must complete a series of in-class or online trainings and, afterwards, pass multiple IRS tests to receive certification. It’s a great opportunity for students to apply what they’ve learned in the classroom in practical scenarios. “I believe it is necessary to demonstrate to students that public service is important,” said Dean Michael. “It is also great fun to see the students enjoy their involvement in helping others.”

UK Law student and alumni volunteers for 2018 tax year preparation included: UK Law students Abbey Aldredge, Summer Bablitz, Barrett Block, Alex Callahan, Lauren Cobo, John Evans, Tristan Finn, Alex Henning, Jared Hudson, Aaron Johnson, Noah Lewis, Maddie Loeffler, Michael McCain, Mia Morales, Cameron Myers, Nick Nash, Foster Peebles, Melanie Ramsey, Chai Safeek, Tommy Staffieri, Dalton Stanley, Scott Sullivan, Mitchell Talaki, Clay Thornton, and Seth Woods. Ten of the 25 UK Law students were returning volunteers from last year’s program. Accounting students Cora Alles and Tony Del Grosso volunteered their services as did UK Law alumna Cate Poole (’12). Additional volunteers included Rick Fern, a retired CPA and accounting professor, and Stephanie Barnett, an accounting alumna from the University of Kentucky Gatton College of Business and Economics.

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A Clinic Project Teaches How Law and Philanthropy Can Work Together

A fairly narrow legal question that took root in the Chase Children's Law Center Clinic this past autumn had blossomed by spring into a self-help manual for parents and financial support for nonprofit groups for children.

The synthesis began when students became interested in what happens to children who are United States citizens when their non-citizen parents are detained or deported. That led to what Professor and Clinic Director Amy Halbrook calls a "policy project," in which students study the law involved in a current issue and utilize community resources to develop legal and non-legal solutions for it.

For clinic students, who more typically encounter matters such as access to education or custody, the immigrant project involved interviewing judges, lawyers, community organizers, and social workers, and visiting community services to create a handbook to help parents plan for their children in the event of a family separation. The awareness of problems facing parentless children, generally, and services for them that came from working on the handbook meshed with a foundation-supported program at Northern Kentucky

University that helps professors weave lessons in philanthropy into courses and allows students to use foundation money to make grants of \$1,000 to \$2,000 to nonprofit programs.

The parent handbook, which will be translated into Spanish, explains undocumented parents' legal rights, children's rights, finding a lawyer, navigating the court system, and arranging child care. The foundation money for nonprofit grants is from the Mayerson Student Philanthropy Project, housed in the Scripps Howard Center for Civic Engagement at NKU.

"As they conducted their research, students developed familiarity with agencies that serve this population [of children]," Professor Halbrook says. "At the mid-point in the semester, the group discussed the organizations they had visited, their missions, and the services they provide. The group agreed they would send requests for proposals to four agencies. We received grant proposals from three of the four." The students reviewed the proposals and decided to award grants of \$1,000 each to the Children's Law Center and to Pass It On.

The Mayerson Student Philanthropy Project was funded initially by The Manuel D. & Rhoda Mayerson Foundation, and now involves 11 major donors and dozens of others. It was created to expand students' awareness of social problems and nonprofit organizations, and to enhance their understanding of the coursework that incorporates a project by integrating theory and practice, and improving critical-thinking and communication skills.

For clinic students, the project delivered the dual-lesson intended. On law: "I learned how substantial the need is within the community and our professional community for greater legal education and training in immigration law and its intersection with both criminal law and family law," says clinic student Erin Melcher Beam. On philanthropy: "Philanthropy always gives back as much or more than what you personally contribute. By adding your part to the contributions of others, the total impact you can make can surprise you, and it can reward you by connecting you to your community and neighbors in ways you never expected," Ms. Beam says.

Chase Professor and Children's Law Center Clinic Director Amy Halbrook, center left, and Clinic Supervisor Susie Bookser, right, meet with clinic students at the nonprofit Children's Law Center in Covington, Ky.



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for Another Successful Year

By: Jennifer "Jenna" Scholl Overmann

As my time as YLD Chair comes to an end, I would like to thank all of the people who have worked so hard to make it another successful year for the YLD. The YLD has had an outstanding group in its leadership positions this year and without them, all we have accomplished would not have been possible. I would also like to thank the KBA staff for all that they did for the YLD this year. Your assistance is invaluable. Thank you to the Board of Governors and KBA as a whole. Your support and guidance have meant everything. Thank you to our two premier sponsors for the year, Lawyers Mutual Insurance Company of Kentucky and National Insurance Agency, Inc. Your support allows the YLD to assist so many in the Commonwealth. Finally, thank you to all of our supporters. There are far too many to name.

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This group of YLD Leadership helped ensure that the YLD tradition of service to our members and the community continued on during this year. **THANK YOU** for your time and dedication.

I encourage any YLD member who is interested in taking on a leadership role during the 2019-2020 bar year to visit WWW.KYBAR.ORG/YLD to find a list of available positions and descriptions for next year and to fill out an application for an appointment. If you are not a YLD member yet, but meet the criteria, please sign up to be a member next year.

Thank you for allowing me to serve as chair to such a wonderful organization. It has truly been an honor.



Legal Food Frenzy 2019

Results as of 4/8/19

Total dollars raised: **\$39,837**

Total pounds equivalent: **479,096**
(converting \$1 to 8 pounds plus bonus pounds)

Total meals equivalent: **399,250**
(using USDA's average of 1.2 pounds per meal)

Participating offices: **58**

Attorneys represented by participating offices:
1,849

Overall winner:
Frost Brown Todd, LLC 42,315 pounds

Government winner:
**Jefferson County Commonwealth's
Attorney Office 40,076 pounds**

Corporate: **GE Appliances 14,750 pounds**

Law school: **UK 8,000 pounds**

Large:
Stoll, Keenon, Ogden 326 pounds per atty

Medium:
Schiller Barnes Maloney 822 pounds per atty

Small:
Sheffer Law Firm 2,513 pounds per atty

Solo:
Hicks and Funfsinn 4,233 pounds per atty

District:
2nd District 2,167 per atty



Listening to Podcasts to Learn Effective Storytelling Techniques

By: Professor Kristin J. Hazelwood

I have recently started listening to podcasts and audio books while training for my first half-marathon, with the hope that the concentration required to follow a story will help distract me from the length of the run. As it turns out, I am not alone in my interest in podcasts. According to data gathered by the Pew Research Center, Americans are listening to podcasts at rising rates.¹ In 2008, only nine percent of Americans had listened to a podcast in the past month.² In 2018, that figure had risen to 26 percent.³

I was concerned, however, whether I—who prefer receiving new information in a written form—would enjoy and catch all the details of a story conveyed orally. I wondered whether the podcast would be sufficiently engaging to capture my attention and sufficiently vivid to help me visualize the developing story. My surprise at how much I enjoy listening to podcasts led me to realize that perhaps legal writers might be able to learn more about effective storytelling techniques by listening to podcasts.

The role of storytelling in teaching law students, advising clients, and persuading judges has been a frequent topic among legal writing experts.⁴ With respect to persuading judges, the scholarship has focused on topics such as writing persuasive fact statements by telling a story,⁵ using narrative techniques to overcome the plausibility pleading standard,⁶ and using narrative techniques to supplement logical reasoning.⁷ To examine the value of storytelling in appellate writing, one scholar conducted an empirical study in which he asked judges, law clerks, and practitioners to review two “logos” test briefs that focused narrowly on the “legally relevant facts” under the case law and two “story” test briefs that provided more context for the parties’ dispute; the reviewers read a “logos” brief and a “story” brief for each party in a fictional piece of litigation.⁸ His study found that both appellate judges and appellate practitioners, especially seasoned ones, preferred the “story” briefs.⁹

For these reasons, I began exploring the idea of how the hosts of podcasts engage

their listeners. Although my research is ongoing, I have already made a couple of important discoveries. First, as I would suggest is also true with legal writing, whether a listener becomes engaged in a podcast is determined within the opening minutes of the program. NPR Training can measure listener data on its app and track when a listener loses interest in the program and stops listening, and its findings demonstrate this trend.¹⁰ To help its hosts engage the audience, NPR’s training team offers five possible approaches to the start of a podcast: 1) “ask a question,” 2) “dive immediately into the narrative,” 3) “introduce a mystery,” 4) “establish the concept first,” and 5) “get personal.” Although the fifth approach would not be appropriate for legal writing, the other four approaches could all be considered as strategies for the opening section of a facts section of a brief.

Second, in both podcasts and legal writing, the story’s structure is key in telling the story. According to NPR Training, a basic example of a frequently successful structure is three “acts.”¹¹ The first two “acts” establish

the competing forces at play in the story, and the third “act” describes their conflict.¹² The key to this structure is to have three distinct parts to the story, with a clear transition between them.¹³ This structure, or many of the other structures one might hear in a podcast, would work well in organizing a facts section in an appellate brief.

These are but two examples of ways that listening to podcasts might help legal writers better develop their storytelling skills. It has been often repeated that the best readers make the best writers. With today’s technology, perhaps the best listeners and readers make the best writers.

ENDNOTES

1. Pew Research Center, *Audio and Podcasting Fact Sheet*, <https://www.journalism.org/factsheet/audio-and-podcasting/> (last visited Apr. 11, 2019). Similarly, in 2018, 17 percent of Americans had listened to a podcast in the past week, as opposed to only seven percent in 2013. *Id.*
2. *Id.*
3. *Id.*
4. See generally J. Christopher Rideout, *Applied Legal Storytelling*, 12 Legal Comm. & Rhetoric: J. ALWD 247 (2015) (providing bibliography of storytelling legal scholarship).
5. See generally, e.g., Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Fact Statements*, 32 Rutgers L.J. 459 (2001).
6. See generally Anne E. Ralph, *Not the Same Old Story: Using Narrative Theory to Understand and Overcome the Plausibility Pleading Standard*, 26 Yale J.L. & Human. 1 (2014).
7. See generally, e.g., Jennifer Shepard, *Once upon a Time, Happily Ever After, and in a Galaxy Far, Far Away: Using Narrative to Fill the Cognitive Gap Left by Overreliance on Pure Logic in Appellate Briefs and Motion Memoranda*, 46 Williamette L. Rev. 255 (2009).
8. Kenneth D. Chestek, *Judging by the Numbers: An Empirical Study of the Power of Story*, 7 J. ALWD 1 (2010).
9. *Id.* at 28-32.
10. NPR Training, *Storytelling Tips and Best Practices*, “How Audio Stories Begin,” <https://training.npr.org/audio/how-audio-stories-begin/> (last visited on Apr. 12, 2019).
11. NPR Training, *Storytelling Tips and Best Practices*, “You Asked: How Do You Tell a Story in Three Acts?” <https://training.npr.org/audio/you-asked-how-do-you-tell-a-story-in-3-acts/> (last visit on Apr. 12, 2019).
12. *Id.*
13. *Id.*

ABOUT THE AUTHOR

KRISTIN J. HAZELWOOD is the Spears-Gilbert Associate Professor of Law at the University of Kentucky College of Law. Prior to joining UK Law in 2012, she taught legal writing at Vanderbilt University Law School and Belmont University College of Law. Before teaching, she practiced with Bass, Berry & Sims, PLC, in Nashville. She received her law degree from Washington and Lee University School of Law.



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2019 ABA TECHSHOW- Helping Lawyers Develop Sufficient Competence in Technology

BY: ROBERT A. YOUNG

Today over 30 states in the U.S. have amended their rules of ethical conduct to include “technology competence” as a fundamental duty of practicing attorneys. Although the specific language varies in each state, they are all consistent with the American Bar Association’s 2012 change to its Model Rules of Professional Conduct Rule 1.1, which reads: “To maintain the requisite knowledge and skill, a lawyer should keep abreast of the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.”

For the last 10 years, I have had the opportunity to attend the ABA TECHSHOW. This year, lawyers from all over the World converged on Chicago for the 2019 TECHSHOW where over 1,000 attendees learned about the advances in legal technology. This included over 100 vendors, some of them showcasing their products for the very first time.

My biggest takeaway from the EXPO hall was the large number of new time and billing companies and financial analytic vendors. Not only is it imperative to capture all time worked, but also is the capability to analyze the data collected in order to make informed decisions regarding practice and firm profitability. Companies like ITimekeep and ITimeSolv allow lawyers to input their time as it is worked, thus lowering the risk that their time may not be captured. This can be done on a desktop computer, laptop computer, mobile phone, or any tablet.

Capturing time is only one component of a profitable practice. Practices can also increase their profitability if clients are provided with a variety of payment methods that are easy to access. As mentioned by one speaker, most clients don’t write checks anymore... especially millennials who don’t carry a checkbook. Today, every profitable practice requires an electronic pay system—a one click checkout like everything else we buy. Vendors like LawPay and

ClientPay can create a secured payment page on a firm’s website at a minimal cost.

Running a practice, especially if you are solo, requires constant communication with your clients. The growing number of virtual receptionists onsite in Chicago included Lex Reception, Ruby Receptionists and Answer 1. All of these vendors allow your phone to be answered 24/7 or an immediate chat with a prospective client. But, before a potential client calls you, they first have to find you. Are your clients finding you via the local yellow pages, or are you being found more and more by those searching for an attorney on the web? In today’s world, it is a must to be involved in social media. Facebook, LinkedIn and Twitter are required, while Instagram and Pinterest are optional.

Why is social media required? First, today’s consumers are looking for an authority in the law, not a generalist. As an attorney, you must be the authority and build your brand. Social media is a great tool to build this brand at almost no cost. Second, although some networking occurs in person, most of the meaningful networking occurs now on social media. It is a great way to engage, and not being there means you are invisible in this great network.

If you participate in social media and do it well, it also gives you instant credibility. Remember clients are using the easiest path via social media to find out about you, and hardly no one makes a phone call anymore without knowing something about you. Most potential clients don’t even go to your website... instead they go to your social media to learn about you and how it would be to work with you. Remember even if the potential client does not find you initially on the internet, they are going to find out about you there. Control what they are seeing. Finally, Google wants you to be on social media. Google wants to collect information on you. One of the places it looks to see if you are a legitimate business is through your social media channels. If you are there, Google will rank you higher. If not, you will be ranked much lower.



TECHSHOW2019

Once you are there, what do you post? Two speakers with two totally different practices, gave 10 wonderful tips:

- 1** | Be Social- it's not advertising, it's to make people like you. Do it just like you would at any in-person social event, and don't talk too much about yourself. People want to feel good when they see your posts. Show fun things being done in your office.
- 2** | Just like a physical networking event, don't be boring. The goal is to be interesting and relevant. Don't make it about "look at me" or "look at what I did." Make it about someone else if you can, and when you can, also make it about yourself a little at the same time. Tag other people. Make it fun!
- 3** | Don't be too on-the-nose. Don't talk too much about your practice area. No one is as interested in your practice area as you are. Get outside your box. In certain practice areas, don't post about anything painful that may be relevant but not good for your client. This is especially true in criminal cases, domestic or those who represent individuals that have suffered some loss or being subject to some discipline. Examples of things you can post in your practice area are tips that are informative or can help potential clients.
- 4** | Don't post "look at me content" or "I am so great."
- 5** | Know yourself! Don't try to prove to be someone you are not. Get a sense of what client's value about you. Be authentic. Check you reviews or ask your clients what they liked about you. We almost never look at our reviews to see what people liked about their experience with us.
- 6** | Use beautiful images. Unsplash.com gives you great photos. Always try to use an image when you post. Use a great photo to grab someone's attention.
- 7** | Put your hashtags in the comments, not in the post. On Instagram it's the cultural norm.
- 8** | Headshots matter. You must have current photos.
- 9** | Claim your profile on AVVO and Super Lawyers. AVVO is a superpower with SEO. Filling out your profile will help you get recognized on Super Lawyers.
- 10** | The biggest ethical issue is to not post anything that involves any type of misrepresentation or is deceiving.

Now that clients have found you, do you as an attorney have the "technological competence" to handle their case like they expect? Are you using iPhone tracking services that may be very helpful in family and PI cases? You can get travel routes by asking adverse parties or witnesses to pull out their phone at a deposition. You may also ask them to look at their Google timeline on their phone to see where they have been. Should you tell your clients to leave their phones at home, or should you subpoena the adverse party or

witness to bring their Google timeline with them to the deposition? If you are not competent in technology, this may never cross your mind.

Did you know that Amazon records every command you have ever given to Alexa? You can go to your review voice history and hear every command. The same thing rings true with Ring doorbell. In family law matters, tell your client to change the passwords on these accounts to keep the spouse from accessing them.

Google Maps has a trove of data. Not only is Google taking data from built in microphones in Nest users, but when they are using Google Maps, they are collecting info from your unsecured networks. Use Google Maps in your PI cases for investigations and help in discovery. If you are trying to confirm if a house or business number exists to prevent fraud, look at the address to make sure it exists.

In business cases, Wayback Machine (aka Internet Archive) allows you to locate deleted data for websites. You can go back and get info on a companies' old websites to see how they may have changed their website. This could be helpful in false advertising cases.

Finally, if you are a litigator and you are not proficient in e-discovery, the "E-discovery Buyers Guide" by Brett Burney is a free product <https://ediscoverybuyersguide.com/>.

As a litigator, I always wonder what it would be like to be in the position of the defendant in a deposition. As someone who practices a great deal of medical malpractice, I often deal with the standard of care. With over 30 states having amended their rules of ethical conduct to include "technology competence," is the "standard of care" for the way you practice different than it was five-10 years ago? I think it is. There are a vast amount of resources available to you to help your clients and help you promote your practice. These products will make you a better lawyer and create a more profitable practice. Change is good. Take advantage.

ABOUT THE AUTHOR

ROBERT A. YOUNG is managing partner of English, Lucas Priest and Owsley, LLP, in Bowling Green, Ky. His 30-year career in law has primarily focused on personal injury litigation. He is also a focused and respected mediator. Young serves on the Task Force on Law Office Management for the Kentucky Bar Association. He is also involved extensively in the American Bar Association. Follow him on Twitter at @BobYoungELPO.



SUMMARY OF MINUTES KBA BOARD OF GOVERNORS MEETING • JANUARY 18, 2019

The Board of Governors met on Friday, Jan. 18, 2019. Officers and Bar Governors in attendance were, *President* D. Ballantine, *President-Elect* S. Smith, *Vice President* T. Kerrick, *Young Lawyers Division Chair* J. Overmann, and *Young Lawyers Division Chair-Elect* Z. Horn. *Bar Governors 1st District* – F. Schrock, V. Sims; *2nd District* – M. Cook, J. Meyer; *3rd District* M. Dalton, H. Mann; *4th District* – A. Cubbage, B. Simpson; *5th District* – E. O'Brien; *6th District* – G. Sergeant, T. McMurtry; and *7th District* – J. Vincent. Immediate Past President W. Garmer and Bar Governors R. Blackburn and M. Barfield were absent.

In Executive Session, the Board of Governors considered five (5) default disciplinary cases, involving two attorneys. Judy McBrayer Campbell of Frankfort and Dr. Leon Mooneyhan of Shelbyville non-lawyer members serving on the Board pursuant to SCR 3.375 participated in the deliberations.



In Regular Session, the Board of Governors conducted the following business:

- Heard a status report from the 2019 Diversity & Inclusion Summit, Rules Committee and Task Force on Judicial Evaluations.
- Approved the lists of CLE non-compliant and unpaid dues attorneys to be suspended.
- Approved five (5) disabled inactive status requests pursuant to SCR 3.030(5)(a).
- Approved the appointment of Bar Governor Melinda Dalton of Somerset to the Child Support Guidelines Commission.
- President Douglas C. Ballantine reported that, overall, the Local Bar Outreach President and YLD Joint Receptions, held in conjunction with the KLU programs, were not heavily attended but those who did attend were appreciative of the event.
- Approved the proposed FY 2019-2020 KBA and IOLTA Budgets.
- Bar Leadership Conference Committee Co-Chair Bar Governor J.D. Meyer, serving as Co-Chair with Bar Governor Amy Cubbage, reported that plans are being made to have the 2019 Conference in October at the Administrative Office of the Courts in Frankfort. A tentative agenda and speaker information will be forthcoming.
- Lyle Hanna, Jaime Lisk and Chase Adams of Hanna Resource Group (HRG) presented the KBA employee survey results which included an overview of the HRG 2019 plan for staff training, compensation study and overall plan for 2019-2020.
- Young Lawyers Division (YLD) Chair Jennifer S. Overmann reported on the upcoming programs of the Legal Aid Society in Louisville on February 22 and Legal Aid of the Bluegrass in Lexington on March 20 which are free to participants with the requirement that each participant take up to two pro bono cases through the legal aid within the next year. In addition, Overmann reported on the following activities of the YLD: Legal Food Frenzy campaign, incorporation of the attorney wellness initiatives in YLD programs; upcoming elections, Women in Law event and continuing the Road Less Traveled program.
- Tyler Fallin, CPA with RFH Consultants, PLLC, presented and reviewed the KBA Audit Report for FY June 30, 2018.
- KLEO Task Force Co-Chair KBA Past President Charles E. “Buzz” English, Jr., and Allison Connelly presented the Task Force report while also giving an overview and background of the KLEO program. English reported that the Task Force will be meeting with the Kentucky Bar Foundation to recommend that there be an increase in voluntary sustainer from \$30 to \$35 for monies to be allocated for the continuance of the KLEO program.

- Approved a proposed ethics opinion regarding attorneys discussing and disclosing information that pertains to their clients and litigation on various social media outlets.
- Approved the appointment of Bar Governor Howard Mann of Corbin to serve on the KYLAP Commission.
- Approved the creation of a Well-Being Committee to assist with challenges facing attorneys.
- Deemed the proposed remote online notaries proposed legislation was within the scope and mission of the KBA; however, the KBA does not advise the Real Property Law Section to take a position.
- Approved authorizing funding the balance of the required KERS withdrawal payment (over and above the bond proceeds) from the KBA General Fund Reserves and CLE Fund Reserves.
- Executive Director John D. Meyers reported the election results in the Bar Governor contested races: 4th District - J. Tanner Watkins, Louisville; 5th District - Mindy Barfield, Lexington; 6th District - Todd McMurtry, Ft. Mitchell and 7th District - Rhonda Jennings Blackburn, Pikeville.
- Meyers reported that Judy Campbell of Frankfort and Dr. Leon Mooneyhan of Shelbyville were reappointed for second two-year term as lay members of the Board of Governors by the Supreme Court. The Supreme Court also appointed Michael Hall of Pikeville to the Inquiry Commission.

TO KBA MEMBERS

Do you have a matter to discuss with the KBA's Board of Governors?

BOARD MEETINGS ARE SCHEDULED ON

June 11, 2019

July 19-20, 2019

To schedule a time on the Board's agenda at one of these meetings, **please contact John Meyers or Melissa Blackwell at (502) 564-3795.**



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July 2019 Kentucky Bar Applicants List

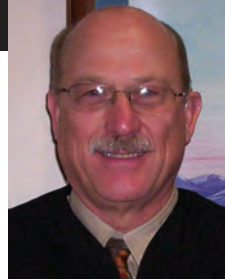
Following is a list of applicants who have applied to take the July 30 & 31, 2019, Kentucky Bar Examination.

NOTE: This list is current as of April 10, 2019. Any applications filed after this date will not be included on this list.

Kaleb Coleton Adams	Kayla Danielle Deatherage	Patrick Glyn Hughes	Matthew Christopher Notaro	Bradley Harrison Strait
Amanda NeCole Allen	Eric Zachary DeLong	Taylor Michelle Ichinose	Taylor Lane Oldham	Zachary Patrick Straub
Catherine Lynn Allison	James Barton Denham	Elizabeth Porter Irish	Shelby Christine Osborne	Irina Valeryevna Strelkova
Anna Nicole Anthony	Alexis Jean Denniston	Micah Shawn Johnson	Elizabeth Farish Ousley	Amy Mittenzwei Stutler
William Jason Barker II	Kristyn Danielle Densmore	Natalie Suzanne Johnson	Emily Susan Payne	Scott James Stutts
Lauren Elizabeth Beahl	Mackenzie Lynn DeSpain	Shannon Marie Keene	Elizabeth Gaines Penn	Samantha Brooke Sullivan
Bethany Grace Beal	Christopher Michael Dolinski, Sr.	Lera Khubunaia	Laura Jane Phelps	Danielle Marie Sweet
Shelby Lynn Bevins-Sullivan	Peter Wayne Dooley	Tessa Caitlin Kilbane	Nicole Elaine Pottinger	Julianne Hall Tackett
Matthew Isaac Boggs	Caitlin Elizabeth Dunnington	Cody Enoch King	Donald Allen Powell II	Courtney Marie Taylor
Janie Lee Boyd	Spencer Eastwood	Kylie Alexandra King	CaraBell Cassidy Preece	Elizabeth Stratton Telle
Ashton Montgomery Boyken	Colin Doan Edmundson	Akesha Lee Kirkpatrick	Matthew Adam Pruitt	Sarah Anne Telle
Caroline Snell Bradley	Jacob Neal Eldemire-Smith	Sarah Melissa Kline	Melanie Jewel Ramsey	Anthony Charles Thomas
Lauren Elizabeth Bradley	Charles Anthony English	Andrew Joseph Klump	Samuel Adam Raque	Corey Matthew Thomas
Patrick M. Brennan	Audrey Loraine Ernstberger	Anna Alexandrovna Korneeva	Juliana Hart Reczek	Rebecca Walton Tribby
Courtney Katherine Brothers	John N. Evans	Jacob Alan Kruer	Reagan Thomas Reed	Shannon Alyse Tubbs
Whitney Brooke Browning	Neil Edward Fannin	Elizabeth Ann Lampert	Kristen Ne'Cole Rollerson	Abigail Lee Tudor
Kelsey Lee Bryant	Ibrahim Aly Farag	Laura Lane	Christina Lauren Romano	Brendon Turley
Zachary Thomas Buckler	Jesse A. Farler	Saria Nicole Woodyard Lattimore	Randall Scott Roof	Zachary Lyndon Turpin
Kyle Ryan Bunnell	Jeremy Neel Faulk	Tomsen Frederick Leonard	Jeffrey Paul Rosenberger	Catherine Vining
Emily Morgan Campbell	Eric Miller Feldpausch	Sarah Lynn Lile	Steele Isaac Rouse	Christina S. Walker
Macaulay Jane Campbell	Antonio Rafael Fernandez	Emily Alexis Logan	Kayla Elise Rowe	Kathryn Marie Waller
Hernan Federico Campoy	Amanda Hope Ferrell	Ayesha Angeline Lomonaco	Travis Franklin Rowland	Cody R. Walls
Breanna Marie Canning	Ellen Elizabeth Findley	Timothy Joseph Lowe	Brandon Joshua Rudolph	Brittany Jayde Warford
Madison Capps	Lloyd Franklin Fowler	Elizabeth M. Mahon	James L. Rummage	Marissa Caroll Waters
Alexandra Rae Cardosi	Tammy Renee Fraley	Maureen Camilla Malles	Kyle Alexander Ruschell	Sheree Eva-Marie Weichold
Dustin M. Carey	Ashton Nicole France	Lauren Nicole Martin	Michael James Rusher	Emily Rosalena Wessel
Abbie M. Carrico	Cameron Patrick Franey	Sherrie L. Martin	Alisha C. Russell	Alexander William Wilcox
Jamila Malaika Carter	Lauren Elizabeth Freeman	Joseph Thomas McClure	Damion J. Sanford	Andrew Horton Wilhoit
Meredith Leigh Cave	Logan Sorrell Fugate	Ryan Joseph McElroy	Michael Anthony Schay	Donald Lewis Wilkerson, III
Candise Epiphany Caylao	Sarah Elizabeth Gabhart	Aubrey Kathleen McGuire	Thomas Glen Schifano	James Joseph Wilkerson
Philip Edward Cecil	Ryan Michael Gallagher	Lauren Elizabeth Meers	Chad Alex Schlotzhauer	Andrew John Williams
Ilya Chernyavskiy	Alexander Hammond Gardner	Lauren Lynn Meunier	Scott Alexander Schuette	Reana Nail Williams
Abigail Elizabeth Clark	Daniel Levi Gaus	Alisa Micu	Eric Douglas Schwarber	Whitney Nikole Williams
Chelsea Marie Clem	Jordan Ashton Gilliam	Benjamin Gregory Miller	Olivia Kathryn Senter	Jessica Nadine Wimsatt
Justin Noel Cloyd	Anthony J. Gonzalez	Breanna Rose Miller	Erin Marie Shaughnessy	William Samuel Winger
Jonathan Wayne Courtney	Haley Elizabeth Goode	Wesley Aaron Miller	Davin Lee Shaw	Sydney Brooks Wininger
Cayla Nicole Combs	Seth Davis Gray	Ronnie Wayne Mills	Erica Lynn Sherrard	Logan Mariah Wood
LaQuasha Denisha Combs	Chelise Lynn Conn Greer	Katherine Ann Monin	John Forcht Shockley	Annemarie Woofter
Warren Douglas Combs	Tyler Edward Greer	Kaitlin Marie Moore	Matthew Jared Sigler	Brittany Zimmerman Wright
Carlin Conway	Cathleen Alexis Gross	Katherine Jean Moore	Abhishek Prakash Singh	Samantha Renee Wright
Mary Elizabeth Cornett	Jacquelyn Ha	Roger Keith Morris, Jr.	Margaret Anderson Sites	Erik Stephen Young
Emily Lynn Costin	Christopher Evan Hall	Tyler James Morris	Andrew Evan Skomorowsky	Ian Nelson Young
Elizabeth Graves Coulter	John Breckinridge Hamilton	Vincent Timothy Morris	Amanda Dawn Smith	Christopher Scott Zelli
Ashley Leanne Daily	Danielle Nicole Hampton	Elizabeth Deane Mosley	Gregory Kirk Smith	
Zachary Holdon Damron	Matthew Ryan Hart	Madeline Olivia Moss	Cade Alan Snodgrass	
Devan A. Dannelly	Calesia Shaneece Henson	Patrick Muldoon	Eric Spagnuolo	
Robert Sinclair Davies III	Jason Hunter Hernandez	Alexander Mulhall	Anne Kathryn Spalding	
Kalisa Nikia Davis	Jalyn Rose Hewitt	Miles David Mussetter	Erin Nicole Spears	
Neil Harrison Davis	Cody Nathaniel Hollan	Allyssa Marie Nalley	Annelie Ellen Stallings	
Nicholas John Davis	Michael Edgar Hooper, Jr.	Caleb M. Nelson	Zachary Mohr Sterling	
Megan Nichole Dean	Jared Michael Hudson	Kelsey Lynn Noel	Madison Clare Stewart	

WKU Scholarship Fund Commemorating Judge Tom Simpson

Judge Simpson was born in Union County, Ky., in 1949, growing up in Sturgis and Morganfield. He received his undergraduate education at Western Kentucky University where he was a member of the Eta Rho chapter of Sigma Nu Fraternity. He entered the Louis Brandeis School of Law at the University of Louisville in 1974. After graduation, the Judge began his legal career eventually opening the law office of Simpson & Simpson with his father in 1992. He further served his community as Union County Public Defender and as Assistant Commonwealth Attorney. In 2004, he was appointed to the District Court bench, and was later elected to that office. Judge Simpson presided in Union, Crittenden and Webster counties.



An avid sportsman, Judge Simpson enjoyed hunting local game and fishing with friends. He supported many local charities over the years, most notably the Morganfield Lions Club, serving as Corn Festival Parade co-chairman. He is remembered as someone who loved the law, applying it with compassion and thoughtfulness, always seeking to perform his judicial duties with consideration and fairness for all.

Judge Simpson's friends and family are proud to offer this scholarship, knowing how strongly he believed in helping others pursuing a law career. Judge Simpson passed away in 2009 following a courageous battle with cancer.

For more information and to make a gift honoring Judge Simpson visit:
<https://www.wku.edu/chf/tomsimpson.php>.

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30th Annual Pike Co. Bar Association CLE at the Beach

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Tuition: Free of charge to KBA members.

Dates: July 17, 2019 - July 19, 2019
 from 8:30 a.m. to 12:00 noon
 each day.

Topics ranging from workers' compensation to civil litigation.

An application will be submitted requesting accreditation with the Kentucky Bar Association.

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Leadership Conference

>>> October 22, 2019

Details Coming Soon!



AOC To Offer Legal Training for Dependency, Neglect and Abuse Cases

The Administrative Office of the Courts will conduct legal training for dependency, neglect and abuse cases (formally titled GAL training). For more information on the advanced and basic trainings, as well as schedule, visit: <https://courts.ky.gov/courtprograms/Pages/dna.aspx>.

An application for accreditation has been submitted to the Kentucky Bar Association's CLE Commission.

KBA's Ethics Committee's Lawyer Checklists

The KBA's Ethics Committee under the guidance of Shelly Gilman and Bill Fortune, updated its previously published "Checklist for Preparation of Client Engagement Letters" and released a new lawyer checklist, "A Checklist to Obtain Client Informed Consent Under SCR 3.130(1.7)." The checklists have been designed to alert lawyers to the myriad decisions that need to be made when considering acceptance of a new client(s). The checklists are intended to serve as a guide to help resolve some of the more fundamental problems at the initial stage of the engagement, and they are not a substitute for careful compliance with SCR 3.130. Both checklists may be found on the KBA website, www.kybar.org, under the heading Resources; then "Resources for Lawyers" then the "Practice Management" section. Your questions and suggestions for improvement are encouraged and should be submitted to Professor Fortune at fortunew@email.uky.edu.



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April 30, 2019

NOTICE

TO: THE PUBLIC AND MEMBERS OF THE PRACTICING BAR FOR THE EASTERN AND WESTERN DISTRICTS OF KENTUCKY

Pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure and Rule 57 of the Federal Rules of Criminal Procedure, the United States District Courts for the Eastern and Western Districts of Kentucky hereby give public notice of the following:

The Joint Local Rules Commission for the Eastern and Western Districts of Kentucky has recommended, and the District Court has authorized for release for a period of public comment through July 31, 2019, the revision of certain Joint Local Rules of Civil Practice and Joint Local Rules of Criminal Practice. Unless otherwise indicated, as seen in this Notice, underlined text is added and ~~struck~~ text is deleted. The proposed revisions are as follows:

- A. LCrR 11.1 – Plea Agreement Supplements Required in Criminal Cases** – will be amended as follows in order to delete the requirement of filing under seal and to allow the districts to follow their own practices:

LCrR 11.1 Plea Agreement Supplements Required in Criminal Cases

All plea agreements shall be accompanied by a supplement containing either a cooperation agreement or a statement that no such agreement exists. ~~The Clerk of Court shall file the supplement under seal.~~

- B. LR 86.1 and LCrR 59.1 – Effective Date** – will be amended as follows in order to simplify the rule and to avoid the necessity of repeated amendments:

LR 86.1 Effective Date

~~These rules are effective December 1, 2009. These rules, as amended from time to time, first took effect in 1986. Amendments to these rules take effect upon entry of each Joint General Order ordering such amendments.~~ Except for jury plans, speedy trial plans and criminal justice plans for each district, these rules supersede all previous local rules and court orders.

LCrR 59.1 Effective Date

~~These rules are effective August 12, 2014. These rules, as amended from time to time, first took effect in 1986. Amendments to these rules take effect upon entry of each Joint General Order ordering such amendments.~~ Except for jury plans, speedy trial plans and criminal justice plans for each district, these rules supersede all previous local rules and court orders.

- C. Subparagraph (a) of LR 7.1 and LCrR 12.1 – Motions** – will be amended as follows in order to remove reference to “routine motions” and, by the deletion, to require a statement of grounds for the motion, relief sought, and legal arguments necessary for the circumstances of the subject motion:

LR 7.1 Motions

(a) Generally. ~~Except for routine motions—such as motions for an extension of time—a~~ motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

LCrR 12.1 Motions

(a) Generally. ~~Except for routine motions—such as motions for an extension of time—a~~ motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

Comments concerning the proposed rule amendments are welcome. Comments must be submitted in writing or via email on or before July 31, 2019, and should be sent to:

Brian F. Haara
Chair, Joint Local Rules Commission
Tachau Meek PLC
101 South Fifth Street, Suite 3600
Louisville, Kentucky 40202
bhaara@tachaulaw.com

Kentucky Bar Association's 2019



a Success!

The Kentucky Bar Association hosted the 2019 Diversity and Inclusion Summit on Friday, March 22, at the Northern Kentucky Convention Center.

The summit provided practical resources and ideas for firms to implement their own diversity and inclusion programs; assist management and other administrators with handling diversity issues; and emphasize ways to empower attorneys from diverse backgrounds to work through these same issues to become successful contributors in their places of employment.

Speakers included Paulette Brown, past president of the American Bar Association; Gina M. Kastel from Faegre Baker Daniels; Dr. Cherie Dawson-Edwards, from the University of Louisville; Paul B. Thaler from the National LGBT Bar Association and Foundation; Kentucky Bar Foundation Executive Director Guion L. Johnstone; Helen G. Bukulmez, Spencer Law Group; Tristian Vaught, Living with Change Foundation; and Priya D. Klocek from Consultant On The Go in Cincinnati, Ohio. Justice Anne K. McKeig, Associate Justice of the Minnesota Supreme Court served as the keynote speaker for the luncheon.



From left to right, Kentucky Supreme Court Justices, Laurance B. VanMeter and Michelle M. Keller, along with Minnesota Supreme Court Associate Justice Anne K. McKeig and Kentucky Supreme Court Justice Debra H. Lambert, gather for a photo following Justice McKeig's keynote speech during the Kentucky Bar Association's 2019 Diversity and Inclusion Summit in Covington, Ky.

The overwhelming response to the program has been extremely gratifying. We would like to extend our sincerest thanks to the speakers and attendees, as well as our sponsors, for their participation in this event and for helping to ensure the success of the Kentucky Bar Association's Diversity and Inclusion Summit. The evaluations and numerous comments received indicate this was an outstanding experience for all involved!



FORMAL ETHICS OPINION

KENTUCKY BAR ASSOCIATION

ETHICS OPINION KBA E-448

ISSUED: MARCH 14, 2019

The Rules of Professional Conduct are amended periodically. Lawyers should consult the current version of the rule and comments, SCR 3.130 (available at www.kybar.org/237), before relying on this opinion.

SUBJECT: Proposed self-defense opinion

QUESTION: May a lawyer reveal client confidential information reasonably necessary to respond to a former client's public criticism?

ANSWER: No

AUTHORITIES: Rule 1.6 (b)(3), Crystal, *Defending Against Internet Criticism: "Silence is Golden,"* 26 South Carolina Lawyer 12 (2014); Fucile, *Discretion in the Better Part of Valor: Rebutting Negative Online Client interviews*, 83 Defense Counsel J. 84 (2016); *People v. Issac*, 2016 WL 6124510 (Col. 2016); *State ex rel Counsel for the Nebraska Supreme Court v. Tonderum*, 840 N.W. 487 (Nebraska 2013).

QUESTION: How may a lawyer ethically respond to a former client's public criticism?

ANSWER: See Opinion

NOTE TO READER

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530. This Rule provides that formal opinions are advisory only.

The self-defense exception to the duty of confidentiality (1.6(b)(3)) is triggered by claims or disciplinary complaints against a lawyer. The exception does not encompass internet criticism. In *Defending Against Internet Criticism: Silence is Golden*, 26 South Carolina Law Review 12(2014), Nathan Crystal uses the Betty Tsamis case to illustrate: After being fired a flight attendant hired Tsamis to seek unemployment benefits from the state. Apparently Tsamis learned after she was hired that the attendant had been fired because he beat up a female co-worker. After a hearing the claim was denied and the attendant complained about Tsamis on the internet. This eventually resulted in Tsamis being publicly reprimanded for posting the following:

This is simply false. The person did not reveal all the facts of the situation up front in our first and second meetings. . . . Despite knowing he would likely lose he chose to go forward with a hearing to try to obtain benefits. I dislike it very much when my clients lose but I cannot invent positive facts for clients when they are not there. I fell badly for him but his own actions in beating up a female coworker are what caused the consequences he is now so upset about.

In most instances the best advice is to ignore the criticism. For the lawyer who wants to respond, the Committee recommends the following:

My professional and ethical responsibilities do not allow me to reveal confidential client information in response to public criticism.

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FORMAL ETHICS OPINION

KENTUCKY BAR ASSOCIATION

ETHICS OPINION KBA E-449
 ISSUED: MARCH 14, 2019

The Rules of Professional Conduct are amended periodically. Lawyers should consult the current version of the rule and comments, SCR 3.130 (available at www.kybar.org/237), before relying on this opinion.

SUBJECT: Lawyers as Third-Party Neutrals and the Practice of Law

QUESTION 1: May Lawyers Serve as Third Party Neutrals (Mediators, Arbitrators, Facilitators, and Like Services) as Part of Their Overall Law Practice?

ANSWER: Yes.

QUESTION 2: May Lawyers Conduct Third Party Neutral Services (Mediators, Arbitrators, Facilitators, and Like Services) on Their Law Practice Premises?

ANSWER: Yes.

QUESTION 3: May Lawyers Engaged in Third Party Neutral Services (Mediation, Arbitrations, Facilitation, and Like Services) on Their Law Practice Premises Utilize Non-Lawyer Staff in Mediations?

ANSWER: Yes.

NOTE TO READER

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530. This Rule provides that formal opinions are advisory only.

DISCUSSION

QUESTION 1: May Lawyers Serve as Third Party Neutrals (Mediators, Arbitrators, Facilitators, and Like Services) as Part of Their Overall Law Practice?

The Rules of Professional Conduct Contemplate that lawyer may provide services as an arbitrator, a mediator, or other third-party neutral. SCR 3.130(Rule 2.4) states:

Lawyer serving as third-party neutral.

- (a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.
- (b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

The Comments¹ to Rule 2.4 clarify that the nature and extent of the lawyer's role as a mediator, arbitrator, or other third-party neutral is defined by the situation: It may involve a voluntary or court ordered mediation, may be undertaken upon the parties' agreement as the chosen method of resolving the disputed issues, occur as a result of a contract to pursue arbitration, or come about through some other form of alternative dispute resolution procedure. As noted below, service as a mediator, arbitrator, or a third-party neutral is not limited to lawyer.

Additionally, Comment 2 to Rule 2.4 recognizes that in some alternate dispute resolution systems, there are other rules or Codes of Ethics that may apply to the lawyer, (or non-lawyer for that matter) serving as a mediator, arbitrator, or other neutral facilitator.² The Mediation Guidelines For Court of Justice Mediators, Administrative Procedures of the Court of Justice, Rule AP XII, contains express Ethical Guidelines the conduct of a third-party neutral in the mediation process:

Mediator Conduct

A mediator's duty to protect the integrity and confidentiality of the mediation process commences with the first communication with a party, is continuous in nature, and does not terminate upon the conclusion of the mediation.

Comment (a). A mediator should not use information obtained during the mediation for personal gain or advantage.

Comment (b). The interests of the parties should always be placed above the personal interest of the mediator.

Comment (c). A mediator should not accept mediations that cannot be completed in a timely manner, or as directed by the court.

Comment (d). Although a mediator may advertise the mediator's qualifications and availability to mediate, the mediator should not solicit a specific case to mediate.

Comment (e). A mediator should not mediate a dispute when the mediator has knowledge that another mediator was appointed or selected without first consulting with the other mediator or the parties. If the previous mediation has been concluded, consultation is not necessary.³

Both the Supreme Court of Kentucky⁴ and the Kentucky General Assembly⁵ encourage mediation. By definition, "mediation," is a voluntary, neutral process in which the mediator assists the parties to resolve their dispute.⁶ Mediation and other alternative dispute resolution also is conducted by non-lawyers and is not considered the practice of law.⁷ However, mediators should be qualified by training or experience to conduct the mediation⁸ or other alternative dispute resolution process.⁹

In recommending Rule 2.4 to the Supreme Court of Kentucky as part of the recommended 2009 amendments to the Kentucky Rules of Professional Conduct, the KBA Ethics 2000 Committee incorporated the "ABA Reporter's Explanation of Changes to the new MR 2.4":

The role of third party neutral is not unique to lawyers, but the Commission recognizes that lawyers are increasingly serving in these roles. Unlike nonlawyers who serve as neutrals, lawyers may experience unique ethical problems, for example, those arising from possible confusion about the nature of the lawyer's role. The Commission notes that there have been a number of attempts by various organizations to promulgate codes of ethics for neutrals (*e.g.*, aspirational codes for arbitrators or mediators or court enacted Rules governing court sponsored mediators), but such codes do not typically address the special problems of lawyers. The Commission's proposed approach is designed to promote dispute resolution parties' understanding of the lawyer neutral's role.

Thus, the lawyer who acts as a third-party neutral is not providing service as a lawyer representing a client in the alternative dispute resolution process, but is nonetheless a lawyer who remains obligated to comply with the Rules of Professional Conduct, both in the resolution process and in the representation of other clients.¹⁰

QUESTION 2: May Lawyers Conduct Third Party Neutral Services (Mediation, Arbitrations, Facilitators, and Like Services) on Their Law Practice Premises?

SCR 3.130 (Rule 2.4) does not require a third-party neutral to conduct the mediation, arbitration or other alternative dispute resolution process either on the lawyers premises or in a business separate and apart from the lawyer's practice of law. As noted, the lawyer acting as a third party neutral does not represent any party in the process. Subsection 2.4(b) states:

A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them.

But if the third-party neutral has reason to believe that a party does not understand the lawyer's role, the attorney must clarify the situation. The Comments confirm the lawyer mediator is not serving in a "lawyer client" relationship while serving as a third-party neutral.¹¹

Yet at the same time, the lawyer neutral still is a lawyer, subject to the Rules of Professional Conduct. In that respect, the lawyer/third party neutral must insure that the mediation, arbitration, or other third-party neutral activities are conducted in a manner that insures that the lawyer's legal practice and representation of law firm clients is conducted confidentially and in the manner required by the Rules of Professional Conduct.

KBA Ethics Op. E-417 (2001) outlines the lawyer's responsibility when the lawyer undertakes to share office space with or otherwise work with non-lawyers. The essence of the opinion is that the Rules of Professional Conduct set the floor on the expected conduct and practice methods of the lawyer. The opinion does not undertake to permit or prohibit any particular office setting or arrangement with non-lawyers—instead, the opinion reminds lawyers that "physical layout and operation" and the manner in which the interaction with non-lawyers in the law office setting must comply with the lawyer's obligations under the Rules of Professional Conduct.

For example, when mediation participants are invited into the law office setting, the lawyer must insure, *inter alia*, that the lawyer protects confidences of clients (Rule 1.6), is aware of the potential for conflicts of interests (Rule 1.7); understands the rules pertaining to post-third-party neutral employment (Rule 1.12);¹² supervises non-lawyer assistants (Rule 5.3); preserves the lawyer's professional independence (Rule 5.4); complies with the prohibition on false or misleading communications (Rule 7.10), appropriately communicates the lawyer's fields of practice (Rule 7.40), and does not engage in misconduct (Rule 8.4).

The underlying tenets of KBA Ethics Op. E-417 (2001) are that the lawyer's clients, the clients' legal matters, and the clients' confidential information are protected.

QUESTION 3: May Lawyers Who are Engaged in Third Party Neutral Services (Mediation, Arbitrations, Facilitators, and Like Services) on Their Law Practice Premises Utilize Non-Lawyer Staff in Mediations?

Under SCR 3.130 (Rule 5.3) the lawyer, whether acting as a third-party neutral or in the representation of the client "shall make

reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; . . ."¹³

The Rules of Professional Conduct do not address specifically the scope of or limits upon participation of non-lawyer assistants, whether administrative, paralegal, or non-lawyer mediator assistants or even non-lawyer mediators. What the Rules do require is that the lawyer employing non-lawyer assistants "shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer"¹⁴ and "shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; . . ."¹⁵ Thus, in the context of work as a third-party neutral, the lawyer must insure that the interaction with the non-clients involved in the alternative dispute resolution process not interfere with the lawyers' representation of clients and lawyer/client obligations.

Lawyers who employ non-lawyer assistants in the performance of services as third-party neutrals as part of their law practice are subject to SCR 3.130 (Rule 5.4).¹⁶ On the other hand, neither Rule 2.4 nor Rule 5.4 would prohibit a lawyer from entering into an alternative dispute resolution business or enterprise with non-lawyers, but if that route is undertaken, the business must be separate and apart from the lawyer's law practice. See KBA Ethics Op. E-417.

ENDNOTES

1. SCR 3.130(Rule 2.4) Comment 1: Alternative dispute resolution has become a substantial part of the civil justice system. *Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction.* Whether a third-party neutral serves primarily as a facilitator, evaluator or decisionmaker depends on the particular process that is either selected by the parties or mandated by a court. (Emphasis Added).
2. SCR 3.130(Rule 2.4) Comment 2: The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. *In performing this role, the lawyer may be subject to court Rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.* (Emphasis Added).
3. Administrative Procedures of the Court of Justice, Rule AP XII, Sec. 3(2), "Ethical guidelines."
4. Supreme Court of Kentucky Model Mediation Rules, Preamble: "[T]he process known as mediation may provide an efficient and cost-effective alternative to traditional litigation, and, further, that the wise and judicious use of mediation may benefit litigants."
5. KRS 454.011. **Declaration of public policy on encouragement of dispute resolution through negotiation and settlement.**
It is the policy of this Commonwealth to encourage the peaceable resolution of disputes and the early, voluntary settlement of litigation through negotiation and mediation. To the extent it is consistent with other laws, the courts and state governmental agencies are authorized and encouraged to refer disputing parties to mediation before trial or hearing.
6. Administrative Procedures of the Court of Justice, Rule AP XII, Sec. 3, "Ethical guidelines":

(1) **Mediation Defined.** Mediation is an informal process in which a neutral third person, called a mediator, facilitates the resolution of a dispute between two or more parties. The process is designed to help disputing parties reach an agreement on all or part of the issues in dispute. Decision-making authority remains with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. Parties should comply with orders of the court requiring participants in mediation to have settlement authority. See *Kentucky Farm Bureau Mut. Ins. Co. v. Wright*, 136 S.W.3d 455 (Ky. 2004).

Comment. A mediator's obligation is to assist the parties in reaching a voluntary outcome. The mediator should not coerce a party in any way. A mediator may make suggestions, but the parties make all settlement decisions voluntarily.

Order of Supreme Court of Kentucky, No. 2005-02.

See also, Supreme Court of Kentucky Model Mediation Rules, Rule 2.

Mediation defined.

Mediation is an informal process in which a neutral third person(s) called a mediator facilitates the resolution of a dispute between two or more parties. The process is designed to help disputing parties reach an agreement on all or part of the issues in dispute. Decision-making authority remains with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives.

7. See KBA Ethics Op. E-377 (1995), "Mediation is not the practice of law, and does not violate SCR 3.020."
8. See Administrative Procedures of the Court of Justice, Rule AP XII, Sec. 2, "Training and Experience."

See also, Rule AP XII, Sec. 3:

(5) **Mediator Qualifications.** A mediator should inform the participants of the mediator's qualifications and experience.

Comment. A mediator's qualifications and experience constitute the foundation upon which the mediation process depends; therefore, if there is any objection to the mediator's qualifications to mediate the dispute, the mediator should withdraw from the mediation. Likewise, the mediator should decline to serve if the mediator feels unqualified to do so.

Order of Supreme Court of Kentucky, No. 2005-02.

9. The descriptive term "Facilitator" is not generally defined, but the Mediation Guidelines For Court of Justice Mediators, Administrative Procedures of the Court of Justice, Rule AP XII, Sec. 3(17) Mediation Styles, describe "Facilitative Mediation" as "a process to assist the parties in reaching a mutually agreeable outcome" and "Evaluative Mediation" as "modeled after settlement conferences held by judges."
10. The "Collaborative Law" process is one type of an alternative dispute resolution process which "which encourages parties to cooperate in order to reach an agreement, rather than to engage in acrimonious litigation." See KBA Ethics Op. E-425, p.2 (2005).
11. SCR 3.130(Rule 2.4) Comment 3: A lawyer serving as a third-party neutral may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. *The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them.* For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. *Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of client confidentiality and the attorney-client privilege.* The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected. (Emphasis added).
12. SCR 3.130(Rule 2.4) Comment 4: A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

13. SCR 3.130(Rule 5.3) states:

Responsibilities regarding nonlawyer assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer only if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

14. SCR 3.130(Rule 5.3(a)).

15. SCR 3.130(Rule 5.3(b)).

16. SCR 3.130(Rule 5.4).

Professional independence of a lawyer.

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate

may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.



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2019 PROPOSED AMENDMENTS TO THE RULES OF THE *Supreme Court of Kentucky*



The following Proposed Rules Amendments will be considered in an open session beginning at 9:00 a.m. on Wednesday, June 12, 2019. The hearing will be conducted in the Grand Ballroom at the Galt House Hotel in Louisville.

I. SCR 2.009 Immunity

The proposed amendments to SCR 2.009 shall read:

(1) Any person who communicates information to a member of the Board, Committee or its affiliates concerning an applicant for admission to the Kentucky Bar shall be granted immunity from all civil liability which might result from said communications.

(2) The Office of Bar Admissions, the Board, the Committee, their officers, members, employees, and agents, are immune from any and all civil liability for conduct and communications occurring in the performance of their duties. This includes but is not limited to, character and fitness qualification and investigations; eligibility for admission, reinstatement, or restoration of licensure; preparation and/or administration of examinations; and licensing of persons seeking to be admitted or readmitted to the practice of law.

II. SCR 2.018 (1), (2), (3) and (4) Application process

The proposed amendments to sections (1), (2), (3) and (4) of SCR 2.018 shall read:

(1) All applications for admission to the Kentucky Bar shall be [electronically] submitted on forms approved by the Board and Committee. Application forms are [available] accessible electronically on the Kentucky Office of Bar Admissions website, www.kyoba.org. All portions of the application, except for fee payment and submission of documents requiring the notarized signature of the applicant, shall be submitted electronically. Before the applicable deadline, required fees and required signed and notarized documents shall be sent to the Office of Bar Admissions by USPS mail or hand delivery.

(2) The applicant must give full and complete response(s) to all inquiries on the application as well as furnish

any additional documents requested in relation to the application.

(3) Any applicant who submits an incomplete application by failing to upload the required credit report with said application will be notified of the error, and given an opportunity to upload [a completed application within 30 days after the notification,] the required documentation and pay([ing]) therewith a non-refundable fee of \$20.00. No action will be taken by the Office of Bar Admissions upon an incomplete application. [The Office of Bar Admissions may, in its discretion, act upon a completed application that is submitted after the said 30 day period.]

(4) [Before the applicable deadline, the applicant shall, by USPS mail or hand delivery, submit to the Office of Bar Admissions a.] In signing the notarized signature page of [for] the Application, the applicant attest[ing]s to the accuracy of all information contained therein [thereon]. All answers on the application form must be completely candid. Lack of candor may result in possible denial of character and fitness certification. Applicants must disclose in writing on the application any circumstances or occurrences that may reflect adversely upon their character or fitness.

III. SCR 3.030 (2), (3)(a) and (b), (4), (5), (6)(a) and (b) Membership, practice by nonmembers and classes of membership

The proposed amendments to section (2), subsections (a) and (b) to section (3), sections (4) and (5) and subsections (a) and (b) to section (6) of SCR 3.030 shall read:

(2) A person admitted to practice in another state, but not in this state, shall be permitted to practice a case in this state only if that attorney subjects himself or herself to the jurisdiction and rules of the Supreme Court of Kentucky, pays a [one time] per case fee equal to the annual dues paid by those KBA members who have been admitted to practice law for five years or more to the Kentucky Bar

Association and engages a member of the association as co-counsel, whose presence shall be necessary at all trials and at other times when required by the court. No motion for permission to practice in any state court in this jurisdiction shall be granted without submission to the admitting court of a certification from the Kentucky Bar Association of receipt of this fee.

(3)(a) If any attorney continues to appear on the basis of *pro hac vice* admission per subsection (2), the attorney shall pay a renewal fee every year until the case is concluded. The renewal fee shall be due on the one-year anniversary of the attorney's original *pro hac vice* admission. Any subsequent renewal fees shall be due in subsequent years on the same calendar date. The renewal fee payment shall be equal to the annual dues paid by KBA members who have been admitted to practice for five years or more.

(b) Failure to pay the renewal fee within thirty (30) days of the due date will result in the attorney being suspended from appearing in any case in which he/she has been admitted *pro hac vice*. Upon notification of the failure of payment, members of the KBA serving as co-counsel shall immediately notify the Court in which the case is pending.

[[3]4] The association, by its bylaws, may create honorary memberships.

[[4]5] A class of membership is established to be known as "Senior Retired Inactive Member." Any member who reaches the age of 70 years and no longer is actively practicing law and who has met the necessary CLE requirements for inactive status pursuant to SCR 3.665(2), shall upon notification to the Executive Director be classified as Senior Retired Inactive and shall not be required to pay annual dues. Any member who has been classified as Senior Retired Inactive may donate legal services through a duly organized legal aid program offering pro bono representation, or a local bar association legal pro bono program or initiative.

[[5]6](a) A class of membership is established to be known as "Disabled Inactive Member." An attorney admitted to practice in this state who has been, because of a mental or physical condition, judicially declared to be a person under a legal disability, or for whom probable cause exists to believe that the attorney has a mental or physical condition that substantially impairs his or her ability to practice law shall provide to the Director of the Kentucky Bar Association a detailed written report from a licensed qualified health care provider who has examined the attorney setting out the findings of the health care provider, including the results of all tests made, diagnoses and conclusions. The Director shall present the matter to the Board who may enter an order transferring the attorney to

Disability Inactive Status. An attorney classified under this subsection is not required to pay dues or obtain the annual CLE requirement pursuant to SCR 3.645. This status shall be reflected on the attorney's membership record. No attorney classified under this status may engage in the practice of law in this state. Any disciplinary proceedings against the attorney shall be stayed while the attorney is on disability inactive status. Any report and supporting records from a health care provider regarding the treatment of the attorney shall be confidential and sealed.

(b) An attorney transferred to disability inactive status may file a petition with the Court for restoration to active status. A copy of the petition shall be served on Bar Counsel, who shall have 20 days to file a response to the petition. If Bar Counsel objects to the petition, the matter shall be referred to the Character and Fitness Committee to conduct proceedings under SCR 2.300. If Bar Counsel has no objection to the petition the Court may enter an order restoring the attorney to active status with or without conditions or refer the matter to the Character and Fitness Committee to conduct proceedings under SCR 2.300. If an attorney is restored to active status, any disciplinary proceedings that have been stayed will be resumed.

IV. SCR 3.035 (1)(b) and (3) Membership registration requirements and service

The proposed amendments to subsection (b) to section (1) and section (3) of SCR 3.035 shall read:

(1)(b) Maintain with the Director one official email address and shall upon change of that address notify the Director within ten (10) days of the new official email address, except however, that "Senior Retired inactive" members, "Disabled Inactive" members and those "Honorary" members who no longer actively practice law or maintain an office shall not be required to maintain an official email address. An official email address shall be unique to the attorney and not be used by another KBA member;

(3) The Association may reject any communication to the Association which fails to comply with paragraph (1) (c) of this Rule [3.175,] provided that a member's failure to include his or her member identification number in a document shall not result in a default in any disciplinary proceeding.

V. SCR 3.130(1.5)(f) Fees

The proposed amendments to section (f) of SCR 3.130(1.5) shall read:

(f) A fee may be designated as an advance fee. An advance fee agreement shall be in a writing signed by the

client evidencing the client's informed consent, and shall state the dollar amount of the [retainer]fee, its application to the scope of the representation and the time frame in which the agreement will exist.

VI. SCR 3.130(4.5) (1)(b), (3) and new section (6) Solicitation of clients

The proposed amendments to subsection (b) to section (1), section (3) and new section (6) of SCR 3.130(4.5) shall read:

(1)(b) the person contacted has an immediate family relationship, or prior attorney-client relationship with the lawyer[, or person contacted]; or

[This Rule shall not prohibit response to inquiries initiated by persons who may become prospective clients at the time of any other incidental contact not designed or intended by the lawyer to solicit employment.]

(3) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside of the envelope, if any, or in the subject line if sent as an email, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (1)(a) or (1)(b).

(6) This Rule shall not prohibit response to inquiries initiated by persons who may become prospective clients at the time of any other incidental contact not designed or intended by the lawyer to solicit employment.

VII. SCR 3.130 (5.7) (a)(4), (5), (6) and (7) and Supreme Court Commentary (4) Activities of suspended lawyer

The proposed new subsection (4), amendments to subsections (5), (6) and (7) to section (a) and section (4) of Supreme Court Commentary of SCR 3.130(5.7) shall read:

(a)(4) appear as a representative, spokesperson, or salesperson-in any visual, audible, print, or electronic media of any kind for any law firm or legal-related entity providing or proposing to provide legal service to the public or a specific subset of the public at large.

(5) [(4)] negotiate or transact any matter for or on behalf of another person with third parties;

(6) [(5)] receive, disburse, or otherwise handle a client's funds; or

(7) [(6)] engage in activities that constitute the practice of law.

SUPREME COURT COMMENTARY

(4) Examples of the types of work a suspended lawyer may perform include: (a) performing legal work of a preparatory nature for an active lawyer's review, such as legal research, gathering information, and drafting pleadings, briefs, and other similar documents; (b) communicates with a lawyer's client or third parties regarding matters such as scheduling, billing, updates on the status of a client's matters, fact gathering, and confirmation of receipt or sending of correspondence and messages; (c) accompanying an active lawyer to a deposition or other discovery proceeding for the limited purpose of providing clerical assistance to the lawyer who will appear as a client's representative. A suspended lawyer shall comply with the requirements of SCR 3.390 and take all reasonable steps to protect the interests of the lawyer's clients.

VIII. SCR 3.130(7.03) (2) Advisory opinions

The proposed amendments to section (2) of SCR 3.130(7.03) shall read:

(2) For any advertisement submitted pursuant to SCR 3.130(7.03)(1), the lawyer shall mail or deliver to the Commission, c/o the Director of the Kentucky Bar Association, 3 copies of the advertisement. If the advertisement is to be published by broadcast media, including radio or television, a fair and accurate representation of the advertisement plus 3 copies of a typed transcript of the words spoken shall be submitted. Websites [advertisements that do not qualify for submission without a fee] must be submitted in electronic format on a data disc in PDF (Portable Document Format), or other such data storage media as the Commission may designate by regulation. Three (3) copies of the data disc should be mailed or delivered to the Commission, c/o the Director of the Kentucky Bar Association. A filing fee of \$75.00 for each advertisement filed under this subsection shall accompany each submission. Additionally, advertisements of more than 100 pages, or longer than 10 minutes of video or audio, will require a supplemental fee of \$100.00. The fair and accurate representation of a broadcast media advertisement shall include 3 copies of a [video cassette (VHS),]digital video disc (DVD), flash drive, or compact disc (CD), [or audio cassette] plus 3 copies of a typed transcript of the advertisement.

IX. SCR 3.130(7.20) (2)(b) Advertising

The proposed amendments to subsection (b) to section (2) of SCR 3.130(7.20) shall read:

(2)(b) Pay the usual charges of a legal service plan or a not-for-profit [qualified] lawyer referral service. [A qualified referral service is a lawyer referral service that has been approved by the Advertising Commission];

X. SCR 3.130(8.3) (f) and (g) Reporting professional misconduct

The proposed new section (f) and amendments to section (g) of SCR 3.130(8.3) shall read:

(f) As provided in SCR 3.320, a lawyer prosecuting any member of the Association who has been arrested for or who has been charged by way of indictment, information, or complaint with a felony or Class A misdemeanor shall immediately notify Bar Counsel of such event.

[f] (g) As provided in SCR 3.166(2), a lawyer prosecuting a case against any member of the Association to a plea of guilty, conviction by judge or jury or entry of judgment, should immediately notify Bar Counsel of such event.

XI. SCR 3.160 (1), (2) (4) and (5) Initiation of disciplinary cases

The proposed amendments to sections (1), (2), (4) and (5) of SCR 3.160 shall read:

(1) After review by Bar Counsel pursuant to subparagraph (3) of this Rule, any sworn written statement of complaint against an attorney for unprofessional conduct shall be filed with the Office of Bar Counsel who shall promptly notify the attorney by certified mail, sent to the address maintained by the Director pursuant to SCR 3.175, or other means consistent with the Supreme Court Rules and Civil Rules, of the complaint, and that he/she has 20 days to [respond] file a verified response to the complaint. Upon completion of the investigation by the Office of Bar Counsel the matter shall be assigned to an Inquiry Commission panel by rotation.

(2) Notwithstanding the provisions of paragraph (1), when it comes to the attention of the Inquiry Commission from any source that an attorney may have engaged in unprofessional conduct, the Inquiry Commission, or a three-person panel thereof, may initiate and conduct an investigation[.]. [and] [i]f it believes from its investigation that there is sufficient evidence to justify its filing a complaint against the attorney it may file such a complaint[.] or it may issue a warning letter. The attorney who receives the warning letter may, within 30 days from the date of the letter, respond to the letter and request it be reconsidered by the Inquiry Commission.

(4) Once a complaint has been filed, it cannot be withdrawn and shall be processed and reviewed pursuant to this rule.

(5) [(4)] Neither the Association, the Board, the Director, the Inquiry Commission, the Trial Commission, the Office of Bar Counsel, nor their officers, employees, agents,

delegates or members shall be liable, to any person or entity initiating a complaint or investigation, or to any member of the bar or any other person or entity being charged or investigated by, or at the direction of, the Inquiry Commission, for any damages incident to such investigation or any complaint, charge, prosecution, proceeding or trial.

XII. SCR 3.161 Processing disciplinary cases

The proposed new rule SCR 3.161 shall read:

(1) Upon the expiration of sixty (60) days after service upon Respondent by certified mail or other means, or receipt of a response to a complaint, whichever is later, the Office of Bar Counsel shall refer the matter, together with such investigative evidence as may have been obtained, to the Inquiry Commission.

(2) The Inquiry Commission may dismiss the Complaint; issue a Private Admonition, with or without conditions as set forth in SCR 3.162(1); issue a warning letter, with or without conditions, as set forth in SCR 3.162(2); or issue a Charge,

(3) If the Inquiry Commission dismisses a complaint, no reason must be given, and there shall be no appeal of the dismissal.

(4) Upon motion by Bar Counsel, and with good cause shown, the Inquiry Commission may direct that the complaint be returned to Bar Counsel for further investigation.

XIII. [SCR 3.170 Processing disciplinary cases]

The proposed deletion of SCR 3.170:

[Upon the expiration of sixty (60) days after service upon Respondent by certified mail or other means, or receipt of a response to a complaint, whichever is later, the Office of Bar Counsel shall refer the matter, together with such investigative evidence as may have been obtained, to the Inquiry Commission to determine whether the complaint should be dismissed or a charge should be filed.

Upon motion by Bar Counsel, and with good cause shown, the Inquiry Commission may direct that the complaint be returned to Bar Counsel for further investigation.]

XIV. SCR 3.180 (3) Investigations and trials to be prompt; subpoena power

The proposed amendments to section (3) of SCR 3.180 shall read:

(3) Upon application of Bar Counsel to the Inquiry Commission and after a hearing of which Respondent is

given at least five (5) days' notice, for good cause shown the Inquiry Commission may authorize the Director or the Disciplinary Clerk to issue a subpoena to a Respondent, or any other person or legal entity, to produce to Bar Counsel any evidence deemed by the Inquiry Commission to be material to the investigation of a complaint or investigative file opened pursuant to SCR 3.160(2), and to testify regarding such production. Such an application may be made in connection with complaints against more than one Respondent if the complaints are based on the same or a related set of facts. The person or entity so subpoenaed will not divulge, except to his/her own attorney, that such a subpoena has been served nor what evidence is sought or obtained. The Respondent may be present at the time the evidence or material is examined or obtained by Bar Counsel and will be furnished copies of all documents obtained, unless obtained from the Respondent.

XV. SCR 3.162 Informal admonition procedure

The proposed new rule SCR 3.162 shall read:

(1) After a complaint against an attorney for unprofessional conduct is investigated and a response filed, the Inquiry Commission may direct a private admonition, with or without conditions, to the attorney if the acts or course of conduct complained of are shown not to warrant a greater degree of discipline. The attorney so admonished may, within 20 days from the date of the filing of the admonition with the Disciplinary Clerk, reject such admonition and request that a charge be issued and filed as is provided by Rule 3.190; whereupon, the issues shall be processed under the applicable rules.

(2) The Inquiry Commission may also issue a warning or a conditional dismissal letter including, but not limited to, conditions such as referral to KYLAP, attendance at a remedial ethics program or related classes as directed by the Office of Bar Counsel, or referral to fee arbitration under SCR 3.810. The attorney who receives the warning letter may, within 30 days from the date of the letter, respond to the letter and request that it be reconsidered by the Inquiry Commission.

XVI. SCR 3.163 Charges; form; by whom and where filed

The proposed new rule SCR 3.163 shall read:

If a panel of or the entire Inquiry Commission determines, by a majority vote, that probable cause exists for a charge to be filed, it shall cause to be prepared such charge stating the name and bar roster address of the attorney and facts alleged to constitute unprofessional conduct. The charge shall be signed by a member of the panel which considers the case. It shall then be filed with the Disciplinary Clerk within twenty (20) days. Upon notice to

the respondent, the Inquiry Commission may amend the charge upon its own motion, or that of the Office of Bar Counsel, or the Respondent, at any time before hearing or submission by default.

XVII. SCR 3.164 Notice of filing charges; time to answer

The proposed new rule SCR 3.164 shall read:

Upon the filing of a charge, the Disciplinary Clerk shall furnish the Respondent with a copy, by certified mail return receipt requested to the Respondent's bar roster address, or by service on the Director as set forth in SCR 3.035, and notify the Respondent that within twenty (20) days after receipt of the notice, he/she must file a verified answer and three (3) copies with the Disciplinary Clerk for transmittal to the Inquiry Commission. The Inquiry Commission may rule on motions to file late answers for good cause shown as set forth in CR 6.02.

XVIII. [SCR 3.185 Informal admonition procedure]

The proposed deletion of SCR 3.185 shall read:

[(1) After a complaint against an attorney for unprofessional conduct is investigated and a response filed, the Inquiry Commission may direct a private admonition, with or without conditions, to the attorney if the acts or course of conduct complained of are shown not to warrant a greater degree of discipline. The attorney so admonished may, within 20 days from the date of the admonition reject such admonition and request that a charge be issued and filed as is provided by Rule 3.190; whereupon, the issues shall be processed under the applicable rules.

(2) The Inquiry Commission may also issue a warning or a conditional dismissal letter including, but not limited to, conditions such as referral to KYLAP, attendance at a remedial ethics program or related classes as directed by the Office of Bar Counsel, or referral to fee arbitration under SCR 3.810. The attorney who receives the warning letter may, within 30 days from the date of the letter, respond to the letter and request that it be reconsidered by the Inquiry Commission.]

XIX. [SCR 3.190 Charges; form; by whom and where filed]

The proposed deletion of SCR 3.190:

[If a panel of or the entire Inquiry Commission determines, by a majority vote, that probable cause exists for a charge to be filed, it shall cause to be prepared such charge stating the name and bar roster address of the attorney and facts alleged to constitute unprofessional conduct. The charge shall be signed by a member of the panel which

considers the case. It shall then be filed with the Disciplinary Clerk within twenty (20) days. Upon notice to the respondent, the Inquiry Commission may amend the charge upon its own motion, or that of the Office of Bar Counsel, or the Respondent, at any time before hearing or submission by default.]

XX. [SCR 3.200 Notice of filing charges; time to answer]

The proposed deletion of SCR 3.200 shall read:

[Upon the filing of a charge, the Disciplinary Clerk shall furnish the Respondent with a copy, by certified mail return receipt requested to the Respondent's bar roster address, or by service on the Director as set forth in SCR 3.175, and notify the Respondent that within twenty (20) days after receipt of the notice, he/she must file an answer and three (3) copies with the Disciplinary Clerk for transmittal to the Inquiry Commission. The Inquiry Commission may rule on motions to file late answers for good cause shown as set forth in CR 6.02.]

XXI. SCR 3.210 (1) Processing cases of default, admissions of violations or answers raising only issues of law

The proposed amendments to section (1) of SCR 3.210 shall read:

(1) If no answer is filed after a Respondent is notified, the Inquiry Commission shall order the record, together with such investigative evidence as may have been obtained, to be submitted to the Board. If there is more than one file, the Inquiry Commission may at the request of Bar Counsel order the files be consolidated.

XXII. SCR 3.290 (1) Filing and processing of pleadings and other papers

The proposed amendments to section (1) of SCR 3.290 shall read:

(1) Promptly after a charge is filed all further pleadings, notices, motions, orders, and briefs shall be sent to the Disciplinary Clerk. The Disciplinary Clerk shall file the original and forward one copy each: to the Inquiry Commission, through the Office of Bar Counsel, or to the Trial Commissioner, if after appointment, to Respondent or Respondent's counsel of record and to the Office of Bar Counsel. However, a motion to reconsider, dismiss, or amend a charge shall be sent only to the Inquiry Commission and to counsel of record. [All other reports, inquiries, letters and letters of transmittal, and other communications shall be sent to and processed by the Clerk; however, any communication between the parties concerning negotiations for an agreed sanction shall not be transmitted to the Disciplinary Clerk or Trial Commissioner nor filed

of record unless the sanction proposal is approved by the Court. No such paper or copy thereof shall be sent by, or on behalf of, any party to the Court, the Board, the Trial Commissioner, Inquiry Commission, or any member thereof.]

XXIII. SCR 3.330 (2) Order of proceedings and burden of proof

The proposed amendments to section (2) of SCR 3.330 shall read:

(2) Every subpoena shall command each person to whom it is directed to attend and give testimony and/or to produce designated documents in that person's possession, custody, or control, at the time and place therein specified. Notice of the subpoena, except those issued for a hearing, shall be [provided to] served on each party and to any person or entity whose information is being requested. Copies of all documents received in response to the subpoena shall be furnished to the opposing party, except on Motion and for good cause shown.

XXIV. SCR 3.370 (2) Procedure before the Board and the court

The proposed amendments to section (2) of SCR 3.370 shall read:

(2) Upon motion by the parties or upon the Board's own motion, oral arguments may be scheduled before the Board. The oral argument proceedings shall be electronically recorded and be considered a part of the record.

XXV. SCR 3.500 (2)(d) and new section (e) Restoration to membership

The proposed amendments to subsection (d) to section (2) and new section (e) of SCR 3.500 shall read:

(2)(d) Upon the filing of the foregoing items, the Office of Bar Counsel shall present the matter to the Board at its next meeting, or, if not contested, at any time by mail or electronic means. Within 30 days of its review of the complete application materials, the Board may restore the applicant to membership, remand the matter to Bar Counsel for further investigation, or refer the matter to the Character and Fitness Committee of the Kentucky Office of Bar Admissions for proceedings pursuant to SCR 2.040 and SCR 2.011, and subsequent review by the Supreme Court. If the matter is referred to the Character and Fitness Committee, the applicant shall pay a fee of \$450.00 to the Kentucky Office of Bar Admissions. Upon completion of its review, the Character and Fitness Committee shall submit its recommendation to the Board for its action and recommendation to the Court.

(e) The provisions of SCR 2.013 regarding the intent to practice law in Kentucky shall not apply to former members

filing an application for restoration

XXVI. SCR 3.510 (3), (4) and (6) Reinstatement in case of disciplinary suspension

The proposed amendments to sections (3), (4) and (6) of SCR 3.510 shall read:

(3) If the period of suspension has prevailed for more than 180 days, the matter shall be referred to the Character and Fitness Committee for proceedings under SCR 2.300. The Character and Fitness Committee will determine whether the application of a member who has been suspended 180 days or less but whose termination of suspension has been objected to, or a member who has been suspended for more than 180 days, should be approved. The Character and Fitness Committee shall file with the Director and the Clerk the entire record, including a written report and recommendation by the Character and Fitness Committee. [Thirty days after the filing of the report, Bar Counsel and the applicant may each file briefs, not to exceed 30 pages in length. No further briefs may be filed. Upon motion of the parties or upon the Board's own motion, oral arguments may be scheduled before the Board. The Board shall review the record, report, and briefs and recommend approval or disapproval of the application to the Court.] Within thirty (30) days after the Character and Fitness report is filed, either party may file with the Director a Notice for the Board to review the report and recommendation accompanied by a brief, not to exceed thirty (30) pages in length. The opposing party may file a brief not to exceed thirty (30) pages in length, written within thirty (30) days after the filing of the appellant's brief. No further briefing may be filed. Upon motion of the parties or upon the Board's own motion, oral arguments may be scheduled before the Board. If no party files a Notice of Review within thirty (30) days for the Board to review, the matter shall be submitted to the Court. The Court may enter an order reinstating the Applicant to the practice of law or deny the application.

(4) If the period of suspension has prevailed for more than 5 years, the Director shall refer the application to the Character and Fitness Committee for proceedings under SCR 2.300. The Committee shall file a written report and recommendation with the Director and the Clerk. [Thirty days after the filing of the report, Bar Counsel and the applicant may each file briefs, not to exceed 30 pages in length. No further briefs may be filed. Upon motion of the parties or upon the Board's own motion, oral arguments may be scheduled before the Board. The Board shall review the record, report and briefs and recommend approval or disapproval of the application to the Court. If the Committee and the Board recommend approval of the application, the Committee shall refer the application to the Board of Bar Examiners for processing in accordance with Rule

3.500(3) and shall file the entire record with the Clerk, including the written report and recommendation of the Committee.] Within thirty (30) days after the Character and Fitness report is filed, either party may file with the Director a Notice for the Board to review the report and recommendations accompanied by a brief, not to exceed thirty (30) pages in length. The opposing party may file a brief, not to exceed thirty (30) pages in length written within thirty (30) days after the filing of the Appellant's brief. No further briefing may be filed. Upon motion of the parties or upon the Board's own motion, oral arguments may be scheduled before the Board. If no party files a Notice of Review within thirty (30) days for the Board to review, the matter shall be submitted to the Court. The Court shall review the record, report and briefs and recommend approval or disapproval of the application. If the Court recommends approval of the application, it shall refer the application to the Board of Examiners for processing in accordance with Rule 3.500(3) and shall file the entire record with the Clerk, including the written report and recommendation of the Committee. The Board of Bar Examiners shall certify the results of the examination to the Director and the Court. If the Applicant successfully completes the examination, the Court may, at its discretion, enter an order reinstating the suspended member to the practice of law. However, if the Applicant fails to pass the examination, the Court shall enter an order denying the application.

(6) If the Committee, [and] Board, or Court recommend approval of reinstatement on conditions, as provided in SCR 2.042, or approval with such additional conditions as the Board or Court may recommend, the Court may include such conditions in any order of reinstatement.

XXVII. SCR 3.530 (6) Ethics Committee and Unauthorized Practice Committee - advisory opinions – informal and formal

The proposed amendments to section (6) of SCR 3.530 shall read:

(6) Any attorney licensed in Kentucky or admitted to practice law in another state who is in doubt as to the propriety of any course of conduct or act of any person or entity which may constitute the unauthorized practice of law may make a request in writing, or in emergencies, by telephone, to the Chair of the Unauthorized Practice Committee, or such other members of the Unauthorized Practice Committee as are designated by the Chair, for an advisory opinion thereon. Local bar associations may also request advisory opinions. The Committee member to whom the request is directed shall bring this matter to the attention of the Committee at its next meeting. The Committee may attempt to furnish the requesting attorney with a prompt telephonic answer and written informal

letter opinion as to whether the conduct constitutes the unauthorized practice of law. A copy of such informal opinion shall be provided to the Director and the Chair of the Unauthorized Practice Committee. [Any attorney licensed in Kentucky or admitted under SCR 3.030(2) who is in doubt as to the ethical propriety of any professional act contemplated by that attorney with respect to the unauthorized practice of law shall be referred to the Ethics Committee district member for an informal opinion as set forth in (2) and (3). Communications about such an inquiry between the requesting attorney and the unauthorized practice committee member, and between the committee members of the two committees, shall be confidential.]

XXVIII. SCR 3.600 (1), (2), (8) and (11) Continuing legal education definitions

The proposed amendments to sections (1), (2), (8) and (11) of SCR 3.600 shall read:

(1) “Approved activity” is a continuing legal education activity that meets the requirements set forth in these Rules [SCR 3.650] and has been approved for credit by the CLE Commission.

(2) “Member [Attorney] Identification Number” is the 5 digit number assigned to each member of the Association upon admission.

(8) “Ethics, professional responsibility and professionalism” is the category by which “ethics credits” shall be earned and includes programs [or seminars], or designated portions thereof, with instruction focusing on the Rules of Professional Conduct independently or as they relate to the practice of law and/or law firm management [malpractice avoidance, attorneys fees, legal ethics, and the duties of attorneys to the judicial system, the public, clients and other attorneys].

(11) “Non-compliance” means not meeting continuing legal education requirements set forth in SCR 3.640 and SCR 3.645 [and SCR 3.640] and includes both lack of [certification and lack of] completion and lack of certification of activities prior to established time requirements.

XXIX. SCR 3.605 (1), (2)(a), (b), (c), (d), (e), (f), (3)(a), (b), (c), (d), (e), (f), (g), (h), (i), (4) and (5) The [c]Commission; functions and membership

The proposed amendments to section (1), subsections (a), (b), (c), (d), (e) and (f) to section (2), subsections (a), (b), (c), (d), (e), (f), (g), (h) and (i) to section (3), sections (4) and (5) of SCR 3.605 shall read:

(1) The Continuing Legal Education Commission shall consist of 7 attorneys, 1 of whom shall be from each

appellate district of the Commonwealth as presently existing or hereafter created. Under the policy direction of the Court and the Board, the Commission shall be responsible for the administration and regulation of all continuing legal education programs and activities for the members of the Association.

(2) Selection and tenure of the Commission; filling vacancies on the Commission

(a) The Court shall appoint all members of the Commission from a list consisting of 3 times the number to be appointed submitted to the Court by the Board. Of the members first appointed, 3 shall be appointed for 1 year, 2 for 2 years and 2 for 3 years. Thereafter, appointments shall be made for a 3-year term.

(b) Members may be reappointed but no member shall serve more than 2 successive 3 year terms. Each member shall serve until a successor is appointed and qualified.

(c) Vacancies shall be filled for the vacant term in the same manner as initial appointments are made by the Court.

(d) A chairman shall be designated by the Court for such time as the Court may direct.

(e) Each Commission member must be licensed to practice law in the courts of this Commonwealth and have been a resident in the appellate district from which nominated for 2 years immediately preceding the appointment.

(f) Members of the Commission shall serve without compensation but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. The Association shall have the responsibility of funding the Commission and any necessary staff, who shall be employees of the Association.

(3) Commission Duties: The Commission shall be responsible for the administration of these continuing legal education rules, subject to policy approval and other direction by the Board and the Court. In discharging this responsibility, the Commission shall:

(a) Encourage and promote the offering of high-quality continuing legal education.

(b) Conduct, sponsor, or otherwise provide high-quality continuing legal education, specifically including, but not limited to, one seminar offering at least 12 credits in each Supreme Court District each year.

(c) Encourage and promote quality legal writing.

(d) Promptly approve or deny all applications provided for by these rules.

(e) Establish standards, procedures, and forms to evaluate applications made pursuant to these rules.

(f) Promulgate rules and regulations for the administration of the mandatory continuing legal education program subject to approval of the Board and the Court

(g) Report annually, on or before September 15, and as otherwise required, to the Board and the Court on the status of continuing legal education in the Commonwealth. Such report shall include recommended changes to these rules and regulations and their implementation.

(h) Submit to the Board annually, on or before November 1, a recommended budget for the succeeding year with any recommended changes in annual membership dues to cover costs of administering these rules.

(i) Perform such other acts and duties, not inconsistent with these rules, as are necessary and proper to improve the continuing legal education programs within the Commonwealth.

(4) A quorum consisting of at least 4 Commission members is required for conducting the business of the Commission.

(5) The Commission shall be provided with a Director for Continuing Legal Education and sufficient administrative and secretarial assistants as are from time to time required. Selection and qualifications of the Director for Continuing Legal Education shall be determined by the Board except that the person selected shall be an attorney licensed to practice law in the courts of this Commonwealth. The Director for Continuing Legal Education shall be responsible to the Commission for the proper administration of the rules applying to the Commission and any regulations issued by the Commission.

XXX. [SCR 3.610 Selection and tenure of the commission; filling vacancies on the Commission]

The proposed deletion of SCR 3.610:

[The Court shall appoint all members of the Commission from a list consisting of 3 times the number to be appointed submitted to the Court by the Board. A chairman shall be designated by the Court for such time as the Court may direct. Of the members first appointed, 3 shall be appointed for 1 year, 2 for 2 years and 2 for 3 years. Thereafter, appointments shall be made for a 3 year term. Members may be reappointed but no member shall serve more than 2 successive 3 year terms. Each member shall

serve until a successor is appointed and qualified. Vacancies occurring through death, disability, inability or disqualification to serve or by resignation shall be filled for the vacant term in the same manner as initial appointments are made by the Court. Members of the Commission shall serve without compensation but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. The Association shall have the responsibility of funding the Commission and any necessary staff who shall be employees of the Association.]

XXXI. [SCR 3.615 Commission member qualifications]

The proposed deletion of SCR 3.615:

[Each Commission member must be a citizen of the United States, licensed to practice law in the courts of this Commonwealth and have been a resident in the appellate district from which nominated for 2 years immediately preceding the appointment.]

XXXII. [SCR 3.620 Commission quorum]

The proposed deletion of SCR 3.620:

[A quorum consisting of at least 4 Commission members is required for conducting the business of the Commission.]

XXXIII. [SCR 3.625 Commission staff]

The proposed deletion of SCR 3.625:

[The Commission shall be provided with a Director for Continuing Legal Education and sufficient administrative and secretarial assistants as are from time to time required. Selection and qualifications of the Director for Continuing Legal Education shall be determined by the Board except that the person selected shall be an attorney licensed to practice law in the courts of this Commonwealth. The Director for Continuing Legal Education shall be responsible to the Commission for the proper administration of the rules applying to the Commission and any regulations issued by the Commission.]

XXXIV. [SCR 3.630 Commission duties]

The proposed deletion of SCR 3.630:

[The Commission shall be responsible for the administration of these continuing legal education rules, subject to policy approval and other direction by the Board and the Court. In discharging this responsibility, the Commission shall:

- (1) Encourage and promote the offering of high quality

continuing legal education.

(2) Conduct, sponsor, or otherwise provide high quality continuing legal education, specifically including, but not limited to, one 12 credit seminar in each Supreme Court District each year.

(3) Encourage and promote quality legal writing.

(4) Approve or deny promptly all applications provided for by these rules.

(5) Establish standards, procedures, and forms to evaluate applications made pursuant to these rules.

(6) Promulgate rules and regulations for the administration of the mandatory continuing legal education program subject to approval of the Board and the Court.

(7) Report annually, on or before September 15, and as otherwise required, to the Board and the Court on the status of continuing legal education in the Commonwealth. Such report shall include recommended changes to these rules and regulations and their implementation.

(8) Submit to the Board annually, on or before November 1, a recommended budget for the succeeding year with any recommended changes in annual membership dues to cover costs of administering these rules.

(9) Perform such other acts and duties, not inconsistent with these rules, as are necessary and proper to improve the continuing legal education programs within the Commonwealth. When in the course of undertaking the duties set forth above, the Commission receives information which may raise questions regarding a member's competence to represent clients or to otherwise practice law as defined at SCR 3.020, or which may raise any of the issues covered at SCR 3.165(b), the Commission has an affirmative duty to report such information to the Office of Bar Counsel for review by the Inquiry Commission.]

XXXV. SCR 3.635 (1) and (3) Kentucky Law Update seminars in each appellate district

The proposed amendments to sections (1) and (3) of SCR 3.635 shall read:

(1) Each educational year, the Commission shall conduct a [12 credit] continuing legal education seminar of at least 12 credits in each Supreme Court District. Subjects taught at each seminar shall include the latest Kentucky Supreme Court and Court of Appeals decisions, procedural rule changes, Federal Court decisions, legal ethics, professional responsibility and professionalism, Kentucky statutory changes and other subjects relating to

improvements in basic legal skills. Each program shall include a minimum of 2 credits for subjects specifically addressing legal ethics, professional responsibility and professionalism.

(3) Members may attend Kentucky Law Update seminars in any location. [The maximum credit that may be earned for attending any 1 Kentucky Law Update seminar is 12 credits. However, if different tracks of programs are attended at different locations, additional credit may be approved by the Commission.] Duplicate credits shall not be earned by attending the same program at different locations. However, if different tracks of programs are attended at different locations, additional credit may be approved by the Commission.

XXXVI. SCR 3.640 (2), (3), (4), (5), (6)(a), (b) and (c), (7)(a) and (b), (8)(c), (d), (f), (g) and (h) New Lawyer Program requirement

The proposed amendments to sections (2), (3), (4) and (5), subsections (a), (b) and (c) to section (6), subsections (a) and (b) to section (7), subsections (c), (d), (f), (g) and (h) to section (8) and deletion of section (9) of SCR 3.640 shall read:

(2) At least twice each educational year, the Commission shall provide or cause to be provided a New Lawyer Program of [not less than] at least 12 credits. The Commission may in its discretion, accredit a New Lawyer Program proposed by other CLE providers.

(3) [Continuing legal education credits for the New Lawyer Program shall be awarded in a number consistent with the award of credits for other continuing legal education programs.] The New Lawyer Program shall include at least 2 hours of ethics, a course on law practice management and other subjects deemed appropriate by the Commission.

(4) [The New Lawyer Program shall include at least 2 hours of ethics, a course on law practice management and other subjects determined appropriate by the Commission.] The Commission or other provider accredited under SCR 3.640(2) may charge a reasonable registration fee approved by the Court for the New Lawyer Program.

(5) [The Commission or other provider accredited under SCR 3.640(2) may charge a reasonable registration fee approved by the Court for the New Lawyer Program.] Each individual attending the New Lawyer Program shall certify to the Director for CLE the completion of the Program on the attendance certificate provided for that purpose. Such certification shall be submitted to the Director for CLE upon completion of the program. Continuing legal education credits awarded for the program shall be applied to the educational year in which the program is attended,

and if applied to a year in which the individual so attending is otherwise exempt from CLE requirements under SCR 3.665(1)(c), then said credits shall carry forward in accordance with SCR 3.645(3).

(6) [Each individual attending the New Lawyer Program shall certify to the Director for CLE the completion of the Program on the attendance certificate provided for that purpose. Such certification shall be submitted to the Director for CLE upon completion of the program and in no case shall the certification be submitted later than 30 days after completion of the program. Continuing legal education credits awarded for the program shall be applied to the educational year in which the program is attended, and if applied to a year in which the individual so attending is otherwise exempt from CLE requirements under SCR 3.665(c), then said credits shall carry forward in accordance with SCR 3.645(3).] A member required to complete the New Lawyer Program pursuant to paragraph (1) of this Rule may, upon application to and approval by the Commission, be exempted from the requirement under the following circumstances:

(a) The member is admitted to practice in another jurisdiction for a minimum of 5 years, and will certify such prior admission to the Commission;

(b) The member has attended a mandatory new lawyer training program of at least 12 credits, including 2 ethics credits, offered by the state bar association of another jurisdiction and approved by the Director for CLE; or

(c) The member is an active member of the United States armed forces—who has completed a mandatory new lawyer training of at least 12 credits, including 2 ethics credits, offered by the United States armed forces branch in which he/she is an active member, and approved by the Director for CLE.

(7) [A member required to complete the New Lawyer Program pursuant to paragraph (1) of this Rule may, upon application to and approval by the Commission, be exempted from the requirement under the following circumstances:

(a) The member is admitted to practice in another jurisdiction for a minimum of 5 years, and will certify such prior admission to the Commission;

(b) The member has attended a mandatory new lawyer training program of at least 12 credits, including 2 ethics credits, offered by the state bar association of another jurisdiction and approved by the Director for CLE; or

(c) The member is an active member of the United States armed forces who has completed a mandatory new

lawyer training of at least 12 credits, including 2 ethics credits, offered by the United States armed forces branch in which he/she is an active member, and approved by the Director for CLE.] The time for completion of the New Lawyer Program requirement may be extended upon written application to and approval by the Commission. The written application must be received within 30 days of the original deadline for the requirement. All applications must be signed by the member. The Commission may approve extensions for completing the Program under the following circumstances:

(a) Where the member demonstrates hardship or other good cause clearly warranting relief. Requests for relief under this subsection must set forth all circumstances upon which the request is based, including supporting documentation. In these circumstances, the member shall complete the New Lawyer Program requirement as soon as reasonably practicable as determined by the Commission; or

(b) Where the member fails to demonstrate hardship or other good cause clearly warranting relief. When requesting relief under this subsection, the member must pay a fee of \$250.00 and complete the New Lawyer Program requirement at the next regularly scheduled offering of the program.

(8) [The time for completion and certification set forth in paragraphs (1) and (6) of this Rule may, upon written application to and approval by the Commission or its designee, be extended. Written application for an extension under this paragraph must be received by the Commission no later than 30 days after the member's deadline to complete the Program as set forth in paragraph (1) of this Rule within 30 days of the original deadline for the requirement. All applications must be signed by the member. The Commission may approve extensions for completing the Program under the following circumstances:

(a) Where the member demonstrates hardship or other good cause clearly warranting relief. Requests for relief under this subsection must set forth all circumstances upon which the request is based, including supporting documentation. In these circumstances, the member shall complete the requirement set forth in paragraphs (1) and (6) as soon as reasonably practicable as determined by the Commission or its designee; or

(b) Where the member fails to demonstrate hardship or other good cause clearly warranting relief, the member must pay a fee of \$250.00 and complete requirement set forth in paragraphs (1) and (6) at the next regularly scheduled New Lawyer program.] Non-compliance with the New Lawyer Program requirement: Failure to complete and certify attendance for the New Lawyer Program pursuant to this Rule shall be grounds for suspension from the practice

of law in the Commonwealth or other sanctions as deemed appropriate by the Board.

(a) Ninety days prior to the end of the 12-month period all individuals not certifying completion of the New Lawyer Program pursuant to this Rule shall be notified in writing that the program must be completed before the end of the 12 month period, and the notice shall state the date by which the New Lawyer Program must be completed.

(b) Names of all individuals not submitting certification of completion of the New Lawyer Program within the 12-month period or not being granted an extension of time, pursuant to paragraph (7) of this Rule, shall be submitted to the Board by the Director for CLE, certifying failure to comply with the New Lawyer Program requirement.

(c) The Board shall cause to be sent to the member a notice of delinquency by certified mail, return receipt requested, at the member's bar roster address. Such notice shall require the attorney to show cause within 30 days from the date of the mailing why the attorney's license should not be suspended for failure to meet the New Lawyer Program requirement set forth in this Rule. Such response shall be in writing, sent to the attention of the Director of CLE, and shall be accompanied by costs in the amount of \$50.00 payable to the Kentucky Bar Association.

(d) Unless good cause is shown by the return date of the notice, or within such additional time as may be allowed by the Board, the lawyer will be stricken from the membership roster as an active member of the KBA and will be suspended from the practice of law or otherwise sanctioned as deemed appropriate by the Board. A copy of the suspension notice shall be delivered to the member, the Clerk of the Supreme Court of Kentucky, and in the case of suspension, to the Circuit Clerk of the district wherein the member resides for recording and indexing as required by SCR 3.480.

(e) A member suspended under this Rule may apply for restoration to membership under the provisions of SCR 3.500.

(f) A member may appeal to the Supreme Court of Kentucky from such suspension order within 30 days of the effective date of the suspension. Such appeal shall include an affidavit showing good cause why the suspension should be set aside.

[(9) Non-compliance with the New Lawyer Program requirement: Failure to complete and certify attendance for the New Lawyer Program pursuant to this Rule shall be grounds for suspension from the practice of law in the Commonwealth or other sanctions as deemed appropriate by the Board.

(a) Ninety days prior to the end of the 12-month period all individuals not certifying completion of the New Lawyer Program pursuant to this Rule shall be notified in writing that the program must be completed before the end of the 12 month period, indicating the date.

(b) Names of all individuals not submitting certification of completion of the New Lawyer Program within the 12-month period or not being granted an extension of time, pursuant to paragraph (7) of this Rule, shall be submitted to the Board by the Director for CLE, certifying failure to comply with the New Lawyer Program requirement.

(c) The Board shall cause to be sent to the member a notice of delinquency by certified mail, return receipt requested, at the member's bar roster address. Such notice shall require the attorney to show cause within 30 days from the date of the mailing why the attorney's license should not be suspended for failure to meet the New Lawyer Program requirement set forth in this Rule. Such response shall be in writing, sent to the attention of the Director of CLE, and shall be accompanied by costs in the amount of \$50.00 payable to the Kentucky Bar Association.

(d) Unless good cause is shown by the return date of the notice, or within such additional time as may be allowed by the Board, the lawyer will be stricken from the membership roster as an active member of the KBA and will be suspended from the practice of law or otherwise sanctioned as deemed appropriate by the Board. A copy of the suspension notice shall be delivered to the member, the Clerk of the Kentucky Supreme Court, and in the case of suspension, to the Circuit Clerk of the district wherein the member resides for recording and indexing as required by SCR 3.480.

(e) A member suspended under this Rule may apply for restoration to membership under the provisions of SCR 3.500.

(f) A member may appeal to the Kentucky Supreme Court from such suspension order within 30 days of the effective date of the suspension. Such appeal shall include an affidavit showing good cause why the suspension should be set aside.]

XXXVII. SCR 3.650 (2)(a), (b), (e), (f), (g), (h), (i), (j), (k) and (l), (4) (c) and (e) Qualifying continuing legal education activity [and]standards

The proposed amendments to subsections (a), (b), (e), (f), (g), (h), (i), (j), (k) and (l), to section (2) and subsections (c) and (e) to section (4) of SCR 3.650 shall read:

(2)(a) The activity is an organized program of learning [(including a course of study, workshop, symposium or

lecture)] which contributes directly to the legal competence of an attorney.

(b) The activity deals primarily with substantive legal issues directly related to the practice of law, or law practice management [, and includes consideration of any related issues of ethics, professional responsibility, or professionalism].

[(e) The activity must be offered by a sponsor having substantial, recent experience in offering continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction and supervision of the activity.]

[(f)] (e) The activity itself must be taught and conducted by an individual or group qualified by practical or academic experience.

[g] (f) The activity, including the named advertised participants, must be conducted substantially as planned, subject to emergency alterations.

[h] (g) Thorough, high-quality, readable, timely, useful and carefully prepared written materials must be made available to all participants at or before the time the activity is presented. A brief outline without citations or explanatory notations is not sufficient.

[i] (h) At the conclusion of the activity, each participating attorney must be given the opportunity to complete an evaluation questionnaire addressing the quality of the particular activity.

[(j) The cost of the activity itself to participating attorneys must be reasonable considering the subject matter and instructional level.]

[k] (i) The activity may be presented live or by technological transmission as defined in SCR 3.600(12). Activities including audio components must have high-quality audio reproductions so that listeners may easily hear the content of the activity. Activities including video components must have high-quality video reproductions so that observers may easily view the content of the activity.

[(l) (j) [In cases of an i]In-house activit[y]ies, as defined in SCR 3.600(9), [such activities] may be approved if all standards set forth herein for accreditation are met[.], and [In addition,]at least half the instruction hours [must be]are provided by qualified persons having no continuing relationship or employment with the sponsoring firm, department or agency.

(4)(c) Bar review courses taken in preparation for bar

examinations[for admission to the highest court in a state or jurisdiction].

(e) Any activity completed prior to admission to practice in Kentucky except the New Lawyer Program [program required pursuant to SCR 3.645(5) and 3.640(1)].

XXXVIII. SCR 3.655 (2)(c) Calculation and reporting of continuing legal education credits: formulas and limits

The proposed amendments to subsection (c) to section (2) of SCR 3.655 shall read:

(2)(c) Members may be granted one credit for each 2 hours spent in preparation for teaching or participating as a panel member or seminar leader, researching, [or] writing, and/or editing materials presented by someone else, in an approved activity, up to a maximum of 12 credits per educational year. No credit will be awarded for administrative functions.

XXXIX. SCR 3.665 (1), (2)(a)(ii), (iv), (v) and (b), (3) and (4) Exemptions and removal of exemptions

The proposed amendments to section (1), subsections (a) (ii), (iv), (v) and (b) of section (2) and sections (3) and (4) of SCR 3.665 shall read:

(1) For each educational year, the following members of the Association shall be exempt from the [requirements of SCR 3.645] mandatory CLE requirement:

(2) Upon application to the Commission, the following members may be exempted from the [requirements of SCR 3.645] mandatory CLE requirement:

(a)(ii) Practice of law as defined in SCR 3.020, within the Commonwealth, during the effective period of this exemption [pursuant to SCR 3.665(2)(a)] shall constitute the unauthorized practice of law. Information known by the Commission regarding the practice of law during any period for which a member has certified non-practice status [pursuant to SCR 3.665(2)(a)] is not confidential as provided by SCR 3.695 and shall be provided along with the member's continuing legal education transcript by the Director for CLE to the Office of Bar Counsel and the Inquiry Commission in writing.

(iv) A member seeking removal of a non-practice exemption shall be required to file a written application with the Commission, addressed to the Director for CLE[, for the removal of said exemption]. Required as an attachment to the application [for removal of said exemption] shall be certification for each educational year during which he or she was exempt, either: (1) proof of completion of sufficient continuing legal education credits to meet the

minimum annual continuing legal education requirement [for each educational year during which he or she was exempt, excluding the current educational year]; or (2) proof that he or she was compliant with the mandatory CLE requirement of another jurisdiction. In no case shall a member be required to certify completion of more than 12 credits, including [applicable] 2 ethics credits, as a condition of removal of the exemption. Timely certification shall include only continuing legal education credits earned during the current educational year and 2 prior educational years. This Rule in no way affects the member's responsibility to complete the current year minimum annual education requirement by June 30th. [The current year minimum educational requirement must be completed as set forth at SCR 3.645.] The member shall be notified in writing[, via certified mail,] of the commission's action on the application for the removal of the exemption.

(v) Application for removal of a[n] non-practice exemption [granted pursuant to SCR 3.665(2)(a)] may not be made within 30 days of the granting of the exemption.

(b) Hardship exemption: Members who practice law within the Commonwealth, but demonstrate that meeting the mandatory CLE requirement[s of SCR 3.645] would work an undue hardship by reason of disability, sickness, or other clearly mitigating circumstances.

(3) Every member seeking an exemption from the mandatory continuing legal education requirement [of SCR 3.645 pursuant to SCR 3.665(2)] shall submit an application on forms provided by the Association or shall make other such written request providing information necessary for determination by the Commission of circumstances warranting exemption.

(4) Exemptions granted [pursuant to SCR 3.665(2)(b) and (c)] based on hardship or military service are considered temporary in nature unless specifically designated otherwise. In order to maintain an exemption based on a temporary hardship or military service, annual application is necessary. Failure to so certify will result in loss of the exempt status.

XL. SCR 3.670 (1) and (2)(a) Extension of time requirements

The proposed amendments to section (1) and subsection (a) to section (2) of SCR 3.670 shall read:

(1) The time requirements associated with completion of continuing legal education and certification thereof[, as set forth in SCR 3.645(1),] may be extended by the Commission in case of hardship or other good cause clearly warranting relief. Requests for time extensions [for completion of activities or certification thereof] shall be made to the Commission in writing. All requests for hardship time

extensions must be received by the Commission no later than the September 15 following the end of the educational year for which the time extension is sought. Requests must set forth all circumstances upon which the request is based, including supporting documentation. [Applications for time extensions for completion of the New Lawyer Program may be submitted pursuant to SCR 3.640(8).]

(2) A member who fails to complete the mandatory CLE requirements [of SCR 3.645] for any educational year, and who cannot show hardship or other good cause clearly warranting relief, may submit an application for a non-hardship extension of time[in which to earn the annual minimum requirement]. The application, which shall be made on KBA forms or by such other appropriate method approved by the Commission, must meet the following requirements:

(a) Applications will not be deemed complete but will be accepted prior to earning and reporting the credits required to cure the deficiency if the application contains a detailed plan for completing the annual requirement. The detailed plan must contain specific information regarding the accredited program(s) that will be taken, including the date, delivery format, location, and sponsor of the program.

XLI. SCR 3.675 (2), (3) and (4) Non-compliance: procedure and sanctions

The proposed amendments to sections (2), (3) and (4) of SCR 3.675 shall read:

(2) If, by the first day of November immediately following, a member has neither certified completion by the June 30th immediately prior, of the minimum continuing legal education requirements [set forth in SCR 3.645,] nor applied for and satisfied the conditions of an extension under SCR 3.670 or exemption under SCR 3.665, the Commission shall certify the name of that member to the Board.

(3) The Board shall cause to be sent to the member a notice of delinquency by certified mail, return receipt requested, at the member's bar roster address. Such notice shall require the attorney to show cause within 30 days from the date of the mailing why the attorney's license should not be suspended for failure to meet the mandatory minimum CLE requirements [of SCR 3.645]. Such response shall be in writing, sent to the attention of the Director for CLE, and shall be accompanied by costs in the amount of \$50.00 payable to the Kentucky Bar Association.

(4) Unless good cause is shown by the return date of the notice, or within such additional time as may be allowed by the Board, the lawyer will be stricken from the membership roster as an active member of the KBA and will

be suspended from the practice of law or will be otherwise sanctioned as deemed appropriate by the Board. A copy of the suspension notice shall be delivered [by the Director] to the member, the Clerk of the Kentucky Supreme Court, the Director of Membership, and to the Circuit Clerk of the district wherein the member resides for recording and indexing.

XLII. SCR 3.685 (1)(a)(i) and (ii), (2), (3), (4) and (5) Continuing legal education requirements for restoration or reinstatement to membership: procedures

The proposed amendments to subsections (i) and (ii) to subsection (a) to section (1), sections (2), (3), (4) and (5) of SCR 3.685 shall read:

(1) Except for those who voluntarily withdrew pursuant to SCR 3.480(1), [E]very former member or member transferred to disability inactive status pursuant to SCR 3.030, [applying for or otherwise] seeking restoration or reinstatement to membership pursuant to Rules 3.500 or 3.510, shall be required to have completed the minimum annual continuing legal education requirement for each year during which he or she was not a member in good standing, including any year prior to disbarment, suspension or withdrawal under threat of disbarment or suspension, during which the minimum annual continuing legal education requirement was not fulfilled, including the educational year during which the application is filed. Completion of such credits shall be certified to the Commission as a condition precedent to reinstatement or restoration. In no case shall a member be required to [attend] complete more than 60 continuing legal education credits, including [applicable] 10 ethics credits, as a condition precedent of restoration or reinstatement to membership.

(a) Former members who voluntarily withdrew from membership pursuant to SCR 3.480(1) shall be required to show either:

(i) compliance with the mandatory continuing legal education requirement of another jurisdiction for each year he or she was not a member in good standing, including the current educational year; or

(ii) that he or she has completed the minimum annual continuing legal education requirement for each year he or she was not a member in good standing, including the current educational year. In no case shall a former member who voluntarily withdrew be required to complete more than 24 credits, including 4 ethics credits, as a condition precedent to restoration to membership.

(2) The application or affidavit of compliance submitted for restoration or reinstatement shall include certification from the Director for CLE of completion of continuing

legal education activities as required by these Rules, or otherwise specified by the Commission or Court. Applicants or affiants shall request said certification from the Director for CLE in writing and shall submit with said written request a fee of \$50.00 to cover the expense of the record search and certification. Applications or affidavits of compliance submitted for restoration or reinstatement which do not include the required certification of continuing legal education [credits]compliance, including verification of fee payment for the certification, shall be considered incomplete and shall not be processed.

(3) The requirements for completion of continuing legal education as a condition to restoration or reinstatement as set forth above may only be satisfied with credits earned in the [current] educational year during which the application is submitted and the preceding 5 educational years. [Credits so earned shall be applicable to requirements imposed by the Commission upon application or other actions undertaken in pursuit of restoration or reinstatement.]

(4) Approval of the application or provision of a certification for an affidavit of compliance shall satisfy the requirement of the applicant under SCR 3.645 for the [current] educational year during which the application is filed.

(5) [In the event that] If a new educational year begins after approval of the application or certification [for an affidavit of compliance by the Commission], but prior to Supreme Court entry of an Order of Reinstatement or Restoration, or Registrar's certification of the member's name to the active roster of membership, the new year minimum continuing legal education requirement must be completed and the application updated before the reinstatement or restoration can proceed to the Board of Governors or to the Court, unless [a] the maximum [of 60] credits set forth above in this Rule [have been] were completed at the time of the initial application or certification [completed].

XLIII. SCR 3.690 (1) and (7) Continuing legal education award

The proposed amendments to sections (1) and (7) of SCR 3.690 shall read:

(1) Any member who completes a minimum of 60 credit hours approved by the Commission within a period of 3 or fewer educational years, is eligible for a Continuing Legal Education Award. [which shall consist of a dignified certificate issued by the Association attesting to the educational accomplishment.]

(7) The Association may publish annually [in leading daily newspapers of general circulation throughout the Commonwealth] an announcement of the members who during the preceding educational year have earned the Continuing Legal Education Award. The announcement

shall describe the basis of the award and shall set forth in alphabetical order the name [and geographical location] of each recipient. [A similar annual announcement may be included in the Kentucky Bench & Bar and on the Association website.]

XLIV. SCR 3.695 Commission records confidential

The proposed amendments to SCR 3.695 shall read:

The files and records of the Commission shall be deemed confidential and shall not be disclosed except in furtherance of the duties of the Commission, [as set forth at SCR 3.630,]of the Board, upon request of the member affected, or as directed by the Supreme Court of Kentucky. This rule specifically excludes from confidentiality information provided by a member to the Commission as a part of a member's application for relief from the requirements of these rules.

XLV. SCR 3.820 (5)(d) Clients' Security Fund

The proposed amendments to subsection (d) of section (5) to SCR 3.820 shall read:

(5) Composition and Officers of the Board

(d)The [Trustees] Board shall select a chairperson and such other officers as they deem appropriate.

XLVI. SCR 3.830 (21)(A), (B), (C) and (D) Kentucky IOLTA Fund

The proposed new subsections (A), (B), (C) and (D) to new section (21) of SCR 3.830 shall read:

(21)(A) If a lawyer does not know the identity or the location of the owner of funds held in the lawyer's IOLTA account, or the lawyer discovers that the owner of the funds is deceased, the lawyer must make reasonable efforts to identify and locate the owner or the owner's heirs or personal representative. If, after making such efforts, the lawyer cannot determine the identity or the location of the owner, or the owner's heirs or personal representative, the lawyer shall either continue to hold the unclaimed funds in an IOLTA account, or remit the unclaimed funds to the Kentucky IOLTA Fund in accordance with written procedures published by the Kentucky IOLTA Fund and available through its website or upon request.

(B) A lawyer remitting unclaimed funds to the Kentucky IOLTA Fund shall keep a record of the remittance that includes the name and last known address of the owner of the funds, if the owner of the funds is known; the date of death of the deceased owner; the efforts made to identify and locate the owner of the funds or deceased owner's heirs,

or personal representatives; the amount of funds remitted; the period of time during which the funds were held in the lawyer's or law firm's IOLTA account; and the date the funds were remitted.

(C) If, after remitting unclaimed funds to the Kentucky IOLTA Funds, the lawyer determines the identity and the location of the owner or the owner's heirs or personal representative, the lawyer shall request a refund for the benefit of the owner or the owner's estate in accordance with written procedures that the Kentucky IOLTA Fund shall publish and make available through its website or upon request.

(D) What constitutes reasonable efforts, as set out in paragraph (A), would depend on whether the lawyer knows the identity of the owner of certain funds held in the IOLTA account, or the lawyer knows the identity of the owner of the funds, but not the owner's location or the location of the deceased owner's heirs or personal representative. When the lawyer does not know the identity of the owner of the funds or the deceased owner's heirs or personal representative, reasonable efforts shall include an audit of the IOLTA account to determine how and when the funds lost their association to a particular owner or owners, and whether they constitute attorney's fees earned by the lawyer or expenses to be reimbursed to the lawyer or third person. When the lawyer knows the identity, but not the location of the owner of the funds, or the location of the owner's heirs or personal representative, reasonable efforts shall include attempted contact using last known contact information, reviewing the file to identify and contact third parties who may know the location of the owner or the owner's heirs or personal representative, or conducting internet searches. After making reasonable, but unsuccessful efforts in identifying and locating the owner of the funds or the owner's heirs or personal representative, a lawyer's decision to continue to hold the funds in the IOLTA account, as opposed to remitting the funds to the Kentucky IOLTA fund, does not relieve the lawyer of the obligation to maintain records pursuant to paragraph (B), or to determine whether it is appropriate to maintain the funds in an IOLTA account.



Supreme Court to hold rules hearing at KBA Annual Convention on proposed amendments to Family Court & Juvenile Court Rules

The Supreme Court of Kentucky will hold a hearing at the 2019 Kentucky Bar Association Annual Convention to discuss proposed amendments to the Family Court Rules of Procedure and Practice and the Juvenile Court Rules of Procedure and Practice. The hearing will be an open session held in the Grand Ballroom at the Galt House Hotel in Louisville beginning at 9 a.m. on Wednesday, June 12, 2019.

You can also submit your comments electronically by July 31, 2019. Email input on the Family Court Rules of Procedure and Practice to familycourtrules@kycourts.net. Email input on the Juvenile Court Rules of Procedure and Practice to juvenilecourtrules@kycourts.net.

You can review the proposed amendments at <https://courts.ky.gov/fcrpp-jcrpp-comments.aspx>.

The FCRPP were first adopted in 2010 and the JCRPP were first adopted in 2016. In 2018, the Supreme Court reconvened the Standing Committees on the FCRPP and the JCRPP. The committees are composed of representatives from the judiciary, the bar, and interested state and private agencies. The Supreme Court convenes the committees biennially, or as otherwise needed, to review the rules, address issues, and ensure the fair and efficient exercise of justice in the affected proceedings.

Each committee discussed and developed proposed amendments for its respective rules. During the review, the committees considered numerous comments and recommendations by judges, the bar, state agencies, stakeholders, and the public. The proposed amendments reflect the recommended revisions that resulted from the work of the committees.

KENTUCKY LAWYER ASSISTANCE PROGRAM **2019 KBA CONVENTION ACTIVITIES**

The Kentucky Lawyer Assistance Program (KYLAP) is pleased to announce that they will be sponsoring a CLE program with the Military Law Committee at the upcoming 2019 KBA Annual Convention. On Wednesday, June 12, from 11:50 a.m.- 12: 50 p.m., KYLAP Director Yvette Hourigan will speak with Dennis Shepherd from the Kentucky Department of Veterans Affairs, regarding, “Resources for At-Risk Veterans and the Practicing Bar: The Suicide Epidemic.” The full description of the program is below, along with information on recovery meetings and KYLAP’s yoga sessions.

KYLAP, along with the, the KBA Animal Law Section, KBA YLD, Lawyers Mutual Insurance Company of Kentucky, National Insurance Agency, Inc., and the University of Louisville is excited to introduce the puppy pit, a wellness initiative, that emphasizes the scientifically proven benefits that playing with dogs brings to people in allowing them to de-stress. For more information on the puppy pit, visit page 12. The puppy pit will be in the Clements room.

Last, but not least, KYLAP will again be manning an exhibit booth during the three-day event. Stop by and visit with KYLAP staff at Booth 26!

For more information on the 2019 KBA Annual Convention and to register visit www.kybar.org/2019AC



KYLAP CONVENTION ACTIVITIES

WEDNESDAY, JUNE 12
11:50AM-12:50PM

Resources for At-Risk Veterans and the Practicing Bar: The Suicide Epidemic

P. Yvette Hourigan, KYLAP, Frankfort and Dennis W. Shepherd, Kentucky Department of Veterans Affairs, Frankfort

Carroll-Ford Room

Sponsor: Military Law Committee and KYLAP

The purpose of this program is to educate the Bench and Bar on the nature of the problem and the resources available to help in dealing with it when working to assist our at-risk Kentucky veterans.

Open 12-Step Recovery Meetings

WEDNESDAY-FRIDAY 6.12-6.14

7:00 – 8:00AM

McCreary, Suite Tower, 3rd Floor

Yoga

WEDNESDAY 6.12

8:00 – 9:00PM

McCreary, Suite Tower, 3rd Floor

Exhibit Booth 26 Next to the Puppy Pit

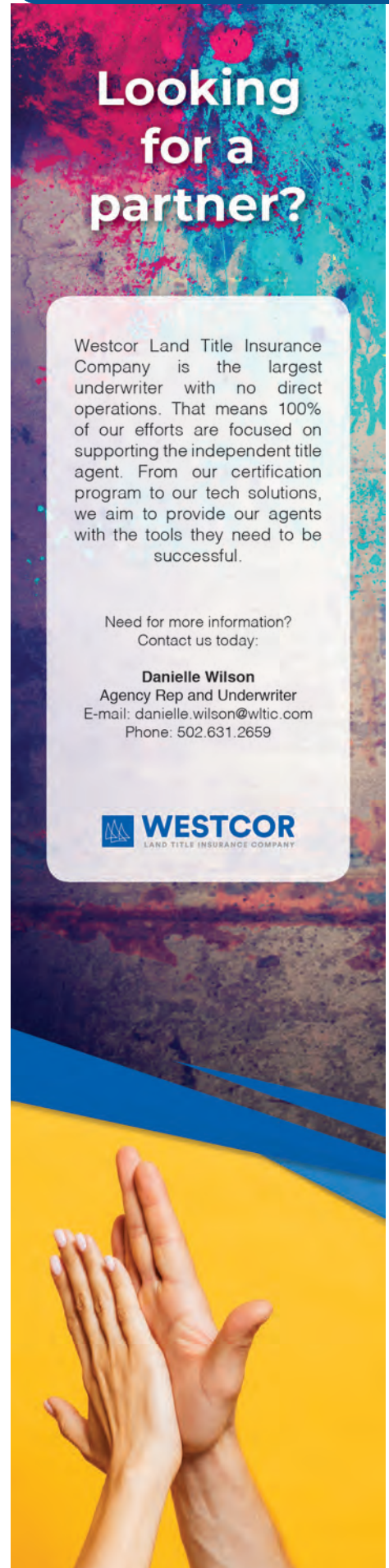


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Danielle Wilson
Agency Rep and Underwriter
E-mail: danielle.wilson@wltic.com
Phone: 502.631.2659





Reflections from Visits to Agencies Benefiting from the Kentucky Bar Foundation

Prodigal Ministries



Tuesday evening Faith, Hope, Love & Life skills class at Prodigal's McCauley House.

As a member of the Kentucky Bar Foundation Board, one of the opportunities we have is to visit grant recipients and report back on the works being done with the funding provided by the Foundation. Prodigal Ministries, which received a \$5,000 grant from the Foundation in 2018, offers transitional housing for men and women straight out of prison.

I recently visited one of Prodigal Ministries campuses in Buckner, where I was greeted by and met with Executive Director, Jennifer Partin. The home in Buckner accommodates 12 men. Since being founded, over 800 men and women have been served through this ministry and process.

Ms. Partin enthusiastically explained her role in assisting these individuals' return to society as contributing members. She explained that many of the individuals are discharged from incarceration with nothing more than the clothing on their backs. Prodigal Ministries provides for immediate needs for these individuals, including toiletries, basic clothing, food, shelter, medical attention along with assistance in securing employment and education.

When I asked Ms. Partin how the program measures success, she advised that one objective measure was to compare the rate of recidivism of those in that program to those not attending. The likelihood of reoccurrence of an inmate released back into society and committing another crime is highest within the first 90 days. Ms. Partin said that they have not had one man in the program in Buckner return over the same period of time! According to DOC statistics for 2-3 years post incarceration, recidivism has been as



#1 cheerleader, Jennifer Partin, Prodigal Ministries Executive Director, is always ready for softball season to start!

high as 43 percent, while Prodigal Ministries recidivism for that period of time has been 10-12 percent over the years.

The sincerity and love for these people by the employees of Prodigal Ministries I met during my visit was apparent. Later in my visit, Sarah Williams, Director of Community Development, while in tears, explained that she was not only very happy and proud to be an employee at Prodigal Ministries but that she, too, had been an individual served by the program.

Prodigal Ministries serves a great need in our communities. If society is ever going to truly help rehabilitate those that have "paid their price" for crimes, we must take some responsibility to make sure they are integrated back into our communities. Prodigal Ministries has demonstrated great success in bridging the gap for those transitioning from incarceration to living in our communities.

As I drove away from my visit with Prodigal Ministries, I pondered the parable from which the name was taken: "the Prodigal Son" found in Luke 15:11-32. As a member and contributor to the Kentucky Bar Foundation, I can attest to the good work that is being done at Prodigal Ministries and report that the money granted to this worthy cause is being well spent to assist some of Kentucky's most vulnerable citizens. This is another fine example of how your Kentucky Bar Foundation contributions are making our communities better.

*J. Hadden Dean, Danville
Sheehan, Barnett, Dean, Pennington, Little & Dexter, P.S.C.
Board Member, Kentucky Bar Foundation*



For more stories about the organizations the Kentucky Bar Foundation is supporting, please check out the June eNews!

La Casita Center

On February 6, 2019, I had the pleasure of visiting La Casita Center, a Kentucky Bar Foundation grant recipient.

La Casita Center provides a wide range of free programming — including kindergarten readiness, clothing distribution and meal services and trainings on such topics as tax preparation and health rights—to a largely Spanish-speaking, often immigrant Latinx population.

The Center never speaks of “serving clients” because of the hierarchical relationship those words imply.

The Center also runs a free legal clinic that educates and accompanies its population on matters ranging from family law and immigration to traffic court, workers’ compensation, domestic violence, sexual assault and more. Several volunteer attorneys staff this clinic, and I was pleased to see a Louisville Law student interning there on the day of my visit.

Interestingly, and importantly, the Center pays close attention to word choice when describing its work; in a conscious effort to “decolonize” the nonprofit vocabulary, the Center never speaks of “serving clients” because of the hierarchical relationship those words imply. Rather, staffers and volunteers “accompany” the “population” they work with.

I was deeply impressed by the Center’s holistic commitment to address the challenges faced by its population. The Center is explicit that it works “to accompany” each person and his or her family – rejecting the language of “service” which they argue is laden with hierarchical baggage they work to reject. The Center’s modest but colorful offices were brimming with activity, laughter and positive energy. Because I am fluent in Spanish, it was a delight to be able to engage firsthand the variety of issues for which the population was seeking assistance on the day of my visit.

During my visit, I spent time with Karina Barillas, Executive Director; Erica Binder-Wooten, Chair of the Board of Directors (and a 2013 Louisville Law graduate); and Jesús Ibáñez, community liaison (and a 2018 Louisville Law graduate). I was so impressed with their leadership and with the Center’s mission that, upon returning to my office, I made a personal donation to the Center via its website. This is the kind of organization that I want to support, and I am proud that the KBF has elected to do so as well. I hope more and more members of our community will do the same.

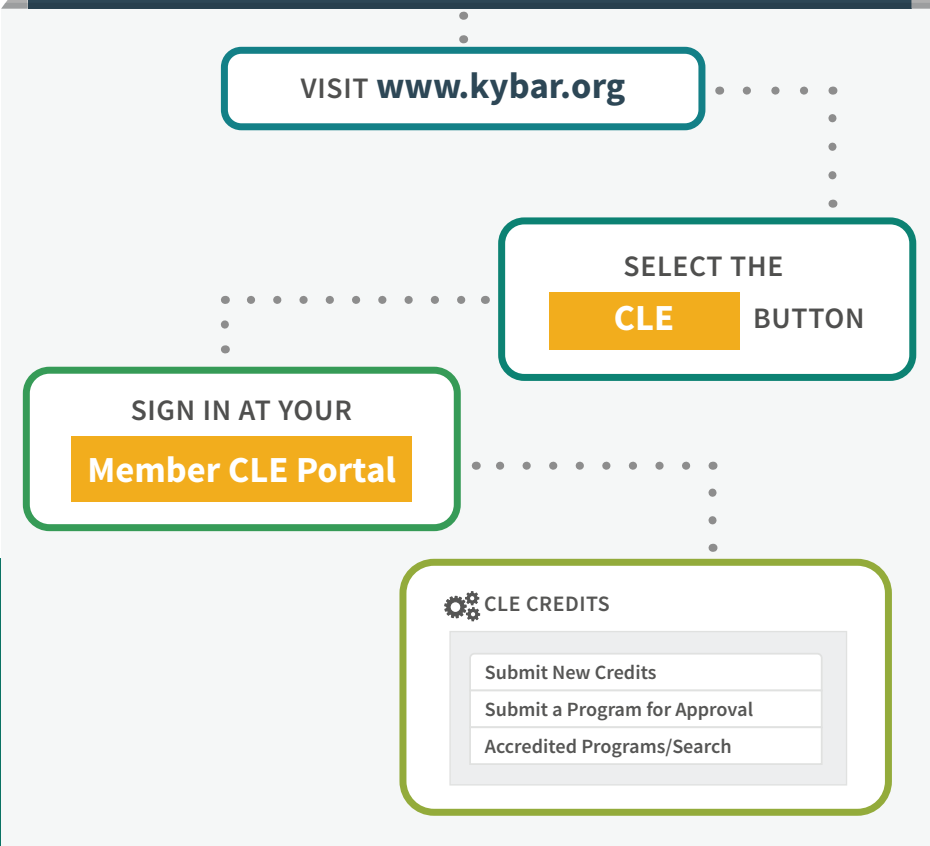
*Dean Colin Crawford
Louis D. Brandeis School of Law
Board Member, Kentucky Bar Foundation*



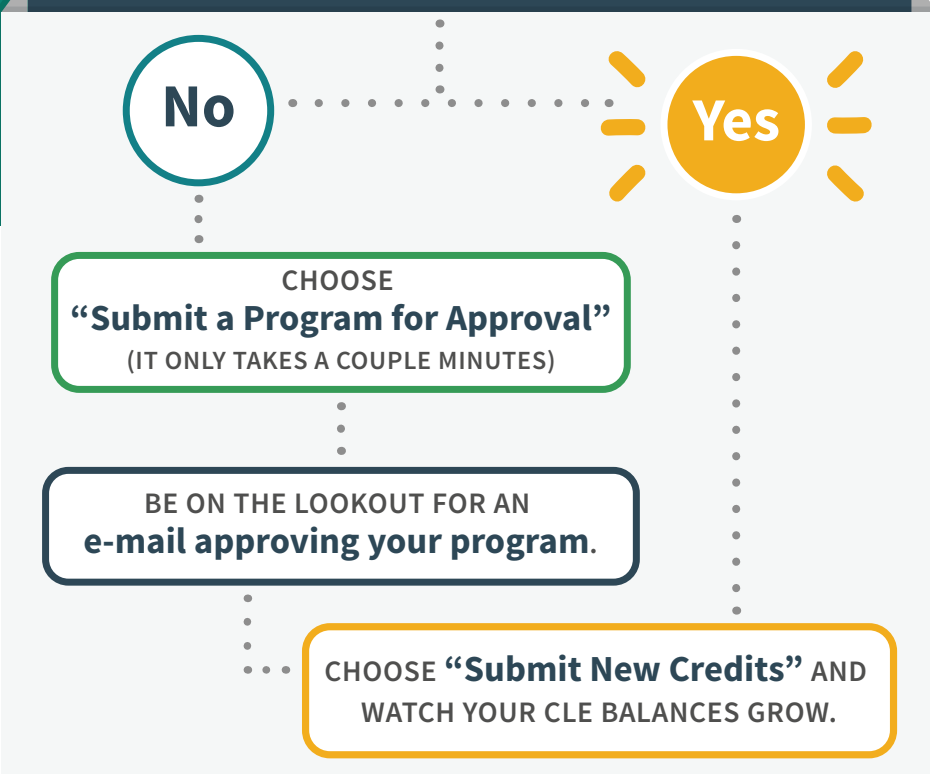
New CLE Online Feature

Reporting and keeping track of your CLE is now even easier! You can quickly report your attendance and apply for CLE programs online. **No more paper forms. No more checks. No more postage. Just follow these simple steps!**

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Is your CLE program approved? Find out at “Accredited Programs / Search”



Still have questions or need more information, visit www.kybar.org/SubmittingCreditforApprovalInfo



The 2018-19 CLE Commission: Back Row: Mary Beth Cutter, Director for CLE; J. Tanner Watkins of Louisville (4th S.Ct. District); David B. Sloan of Covington (6th S.Ct. District); Graham C. Trimble of Corbin (3rd S.Ct. District); F. Hampton Moore III of Bowling Green (2nd S.Ct. District); Leigh Gross Latherow of Ashland (7th S.Ct. District); Jason F. Darnall of Benton, Chair (1st S.Ct. District) and LaToi D. Mayo of Lexington (5th S.Ct. District). Not pictured: Justice Laurance B. VanMeter of Lexington (Supreme Court Liaison).

2018-2019 CLE COMMISSION MEMBERS

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First District Representative
jason@bedlaw.com

Frank Hampton Moore III
Second District Representative
mooreiii@coleandmoore.com

Graham C. Trimble
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Sixth District Representative
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Leigh Gross Latherow
Seventh District Representative
llatherow@vanattys.com

Justice Laurance B. VanMeter
Supreme Court Liaison

INTERESTED IN ASSISTING WITH A CLE? HAVE IDEAS FOR A PROGRAM?
Contact Mary Beth Cutter, KBA Director for CLE at mcutter@kybar.org, or any member of the Continuing Legal Education Commission.



DON'T FORGET...



The deadline to **complete** your annual CLE requirement for the 2018-2019 educational year is **JUNE 30, 2019**.

You must have a total of 12.0 CLE credits including 2.0 ethics credits to meet the annual requirement.

Check your CLE record online at www.kybar.org.

Note: The deadline to **report** your CLE credits is **AUGUST 10, 2019** for the 2018-2019 educational year.

Did you know that the KBA has 26 sections that members can join?

For more information on our sections and how to join visit www.kybar.org/sections.

Alternative Dispute Resolution	Construction & Public Contract Law	Environment, Energy & Resources Law	Labor and Employment Law	Real Property Law
Animal Law	Corporate House Counsel	Equine Law	LGBT Law	Senior Lawyers
Appellate Advocacy	Criminal Law	Family Law	Local Government Law	Small Firm Practice
Bankruptcy Law	Education Law	Health Care Law	Probate and Trust Law	Taxation Law
Business Law	Elder Law	Immigration & Nationality Law	Public Interest Law	Workers' Compensation Law
Civil Litigation				

KENTUCKY LAW UPDATE



2019

ADVANCING THE PROFESSION THROUGH EDUCATION

MARK YOUR CALENDARS!

The annual Kentucky Law Update (KLU) is just around the corner. The KLU program series is an exceptional benefit of KBA membership and Kentucky is the only mandatory CLE state that provides its members a way of meeting the annual CLE requirement at no additional cost. **Registration will become available on our website this summer. We look forward to seeing you in the fall!**

2019 KENTUCKY LAW UPDATE DATES & LOCATIONS

OWENSBORO

OWENSBORO
CONVENTION CENTER
August 29-30 (TH/F)

COVINGTON

NORTHERN KENTUCKY
CONVENTION CENTER
September 12-13 (TH/F)

BOWLING GREEN

SLOAN CONVENTION CENTER
September 26-27 (TH/F)

PADUCAH

JULIAN CARROLL
CONVENTION CENTER
October 2-3 (W/TH)

PIKEVILLE

EASTERN KY EXPO CENTER
October 10-11 (TH/F)

LOUISVILLE

KY INTERNATIONAL
CONVENTION CENTER
October 17-18 (TH/F)

LONDON

LONDON COMMUNITY CENTER
October 31 – Nov. 1 (TH/F)

ASHLAND

DELTA MARRIOTT ASHLAND
DOWNTOWN
November 7-8 (TH/F)

LEXINGTON

LEXINGTON
CONVENTION CENTER
December 5-6 (TH/F)

LOOKING FOR UPCOMING KBA ACCREDITED CLE EVENTS?

LOOK NO FURTHER...CHECK OUT

[HTTP://WEB.KYBAR.ORG/CLESEARCH/LISTPROGRAMS.ASPX](http://web.kybar.org/clesearch/listprograms.aspx)

This easy to use search engine contains up to date information on CLE events that have been accredited by the Kentucky Bar Association Continuing Legal Education Commission.



Users can search by program date, name or sponsor for information about future and past events. Program listings include sponsor contact information, approved CLE and ethics credits, and KBA activity codes for filling out the certificate of attendance.

Programs are approved and added in the order in which they are received. It may take up to two weeks for processing of accreditation applications. If an upcoming or past event is not listed in the database, check with the program sponsor regarding the status of the accreditation application.

KBA TELESEMINARS



Don't want to travel for "LIVE" CLE credits? The KBA provides you a weekly series of live teleseminars that are as nearby and as convenient as your office or home phone. For the full catalog of offerings in 2019, visit

<http://ky.webcredenza.com/>.

For questions or to register over the phone, please contact Kim at kim@webcredenza.com or (720) 879-4142.

KBA ONLINE PROGRAMS

The **KBA Online Catalog** offers a great way to take CLE whenever and wherever you have access to the internet! Seminars featuring our highest rated speakers are delivered right to your desktop in streaming audio and video formats.

Visit kybar.inreachce.com/ for the latest program additions and ordering information. The catalog also includes audio programs you can download directly to your iPod/mp3 player, for playback at your convenience.

CHECK OUT THE KBA'S FACEBOOK PAGE BY SEARCHING KENTUCKY BAR ASSOCIATION.

MAKE SURE TO  Like THE PAGE WHILE YOU ARE THERE!

CLE COURTESY REMINDERS EMAILED IN EARLY MAY

Courtesy Reminders were emailed in early May to all members who needed to **complete and/or report additional CLE credits before the June 30th end of the educational year.** A second reminder will be sent in mid-July regarding the August 10th deadline for reporting credits earned by June 30th.

Remember that you may check your CLE transcript and status at any time through the KBA website at www.kybar.org. After logging in, click on "CLE," and then "My CLE Transcript."



**2019 KBA
VIDEO REPLAY**

* PRE-REGISTRATION IS REQUIRED

* VISIT WWW.KYBAR.ORG FOR DETAILS

THURSDAY, JUNE 27, 2019

8:00 A.M. - 4:30 P.M.

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OFFICE OF THE COURTS**

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2018-19 KBA DVD Program Catalog

Check out the latest video recordings available in the KBA DVD Catalog. These DVDs are a great way to get those remaining CLE credits needed before the end of the educational year.



For more details and ordering information, please visit www.kybar.org/?accreditedprograms.

SCR 3.640 New Lawyer Program:

"Within twelve (12) months following the date of admission as set forth on the certificate of admission, each person admitted to membership to the Kentucky Bar Association shall complete the New Lawyer Program."



Kentucky Bar Association

..... 2019 New Lawyer Program

IN CONJUNCTION WITH:

2019
KBA Annual
Convention
Galt House
Louisville
6.12-14.2019

**Passion
with
Respect**

June 12-14, 2019 Galt House, Louisville

For more information, visit
kybar.org/page/nlpdatesandlocations

In Memoriam

As a final tribute, the *Bench & Bar* publishes brief memorials recognizing KBA members in good standing as space permits and at the discretion of the editors. Please submit either written information or a copy of an obituary that has been published in a newspaper. Submissions may be edited for space. **Memorials should be sent to sroberts@kybar.org.**

JULIE KATHRYN LOTT HARDESTY, 60, beloved mother and wife, passed away peacefully on March 20, 2019, with her family by her side. Hardesty was born on Nov. 26, 1958, in Louisville, to Richard Wayne Lott and Mina Hazel Lott. She attended Pleasure Ridge Park High School. She went on to attend Eastern Kentucky University where she received a B.A. in history. She attended law school at the Louis D. Brandeis School of Law at the University of Louisville, where she met her soul mate and

future husband, Joseph Leon Hardesty. She graduated from law school in 1983, becoming the first female attorney in her family. Upon graduation, she began her career at the Louisville-Jefferson County Crime Commission, eventually leading the organization as the executive director. In 1988, she was hired as a prosecutor at the Jefferson County Attorney's Office, at which time she also began a private practice. She quickly made a name for herself as a hardworking, levelheaded, ethical prosecutor and helped start the office's Domestic Violence Unit. In 1999, she was promoted to first assistant county attorney, a post she held until her passing. Preceding her in death were her husband, Joseph Leon Hardesty, parents, Richard Wayne Lott and Mina Hazel Blick, and stepfather, Glenn Blick. Survivors include her beloved children, John Hardesty (Jessica), Josh Hardesty, and Kathryn Hardesty, who were all by her side when she passed; sisters, Carmen Miller (Charles), Sue Holton (David), Rebecca Aldred (Bill), and Nancy Guida; Joe's sister, Priscilla Holder (Perry); and many cousins, nieces, nephews, and friends.

The preceding memoriam for Julie Kathryn Lott Hardesty is based upon information obtained from the Courier-Journal, which published the obituary from March 24 to March 26, 2019. To access the obituary in its entirety, visit: <https://www.legacy.com/obituaries/louisville/obituary.aspx?n=julie-kathryn-lott-hardesty&pid=191900887&fhid=4751>.

NAME	CITY	STATE	DATE DECEASED
Howe Edward Baker	Denver	KY	February 26, 2019
Dirk Manfred Bedarff	Covington	KY	February 28, 2019
James S. Bowman	Fort Thomas	KY	July 1, 2017
Thomas C. Brabant	Lexington	KY	January 28, 2019
Carl T. Cone	Lexington	KY	February 8, 2019
Richard D. Cooper	Lexington	KY	February 15, 2019
Julie Lott Hardesty	Louisville	KY	March 20, 2019
Laurence W. Knowles	Louisville	KY	October 17, 2018
Billy Jack Mabry	Louisville	KY	October 30, 2018
Emby A. McKeehan	Williamsburg	KY	August 7, 2018
Mary Lynne Osterholt	Louisville	KY	March 2, 2019
Emanuel Cohn Turner	Jackson	KY	October 8, 2017



Join us

as we celebrate the lives and legacies of those KBA members who have passed at

Crescent Hill Baptist Church

on June 11, 2019.

KBA Memorial Service
Crescent Hill Baptist Church
2800 Frankfort Ave, Louisville, KY 40206
Tuesday, June 11, 2019
3:30 - 4:30PM

The Kentucky Bar Association will celebrate the lives and legacies of those KBA members who have passed since June 1, 2018, during the Memorial Service at Crescent Hill Baptist Church, 2800 Frankfort Ave, Louisville.

Members of the planning committee encourage members who are arriving in town just prior to the convention, and those who are situated locally, to participate in this beautiful, ecumenical service held in honor of our fellow Kentucky attorneys who have passed. The dignity of the event will be underscored by the Supreme Court of Kentucky dressed in their robes. Additional members of the judiciary have also been invited to participate. The service will feature various musical selections and will be led by representatives from different faiths. Family members of the deceased will receive personal invitations, but all KBA members are encouraged to attend.



Have an item for **Who, What, When & Where?** The *Bench & Bar* welcomes brief announcements about member placements, promotions, relocations and honors. Notices are printed at no cost and must be submitted in writing to: Managing Editor, *Bench & Bar*, 514 West Main Street, Frankfort, KY 40601 or by email to sroberts@kybar.org. Digital photos must be a minimum of 300 dpi and two (2) inches tall from top of head to shoulders. There is a \$10 fee per photograph appearing with announcements. Paid professional announcements are also available. Please make checks payable to the Kentucky Bar Association.

Frost Brown Todd (FBT) Louisville Senior Associate **Miles Harrison** earned a competitive spot in Leadership Council on Legal Diversity (LCLD) development programs. Harrison will participate in LCLD's Pathfinder Program, a national program that trains early-career and high-potential attorneys in critical career development strategies, including foundational leadership skills and the building of professional networks. Harrison will gain practical tools and intensive in-person training, online experiential learning and opportunities to network with peers and esteemed LCLD Fellows as part of the Pathfinder Program. Harrison focuses his practice on business litigation, insurance and tort defense, and appellate litigation. He handles cases involving breach of contracts, business torts, securities litigation, trade secrets, non-compete agreements and other restrictive covenants, title disputes, and bad faith claims.



Graydon is proud to announce the addition of **Megan E. Day** as an associate attorney working out of the firm's Northern Kentucky office. Day joins the firm's real estate and construction groups. She counsels in the areas of leasing, acquisitions and sales, zoning, financing, and real estate and construction contract negotiation and dispute resolution. Day also advises residential and commercial property owners regarding landlord/tenant and management issues. She is well-versed in the legal protection necessary to buy, hold, improve, and manage residential and commercial real estate including legal entity selection, formation, and ongoing administration. Day earned her J.D. from the University of Kentucky School of Law and her B.S. from the University of Kentucky.

William H. (Bill) Brammell, Jr., has been named a partner in the Louisville office of **DBL Law** where he practices primarily in the areas of civil and commercial litigation, and white-collar criminal defense. Prior to joining DBL Law, Brammell clerked for the Honorable Gregory F. Van Tatenhove in the U.S. District Court for the Eastern District of Kentucky.



Brammell holds a J.D. from the University of Kentucky College of Law, a Master's of Science in democracy and democratisation from University College, London, England, and a B.A. in political science from the University of Louisville, where he served as student body president. He presently serves on the Home of the Innocents Associate Board and a number of other standing committees, the Kentucky Society for Human Resource Management State Counsel, and the New Leaders Council State Board.



Finance Monthly recently honored **Stites & Harbison, PLLC**, attorney **Mike Risley** in the 2019 edition of the Fintech Awards. Risley won in the category of Insurance & Reinsurance – Lawyer of the Year – USA. Finance Monthly is a global publication delivering news, comment and analysis to the corporate sector. The annual Fintech Awards recognizes individuals, fintech firms, start-ups and banks who are viewed as leaders in their area of expertise. Risley is a member (partner) based in the Louisville office. He is co-chair of the firm's appellate advocacy group and former chair of the Louisville office's litigation service group.

Jennifer L. Brinkley has accepted an assistant professor of legal studies position at the University of West Florida beginning in August. Brinkley has been a pedagogical assistant professor of paralegal studies and attorney in the Student Legal Services Clinic at Western Kentucky University since 2015. Her research interests include Ruth Bader Ginsburg, gender and the judiciary in Bosnia-Herzegovina, and gender equality issues. She has law review articles coming out this spring in the Lincoln Memorial University Law Review and the South Carolina Law Review. Brinkley is a 2005 graduate of the University of Kentucky College of Law and was given the Outstanding Young Lawyer award by the KBA Young Lawyers Division in 2015.





Wyatt, Tarrant & Combs, LLP, is pleased to announce **Mary Elizabeth Anderson, Max Bridges, Billy Hopkins, Jordan White** and **Sean Williamson** as senior associates. **Anderson** is a member of the firm's trusts, estates & personal planning service team. She concentrates her practice in the areas of estate planning, trust administration, estate tax, inheritance tax, gift tax, probate, business planning and elder law. Anderson earned her L.L.M. in 2012 from the Philip E. Heckerling Graduate Program in estate planning at the University of Miami School of Law and her J.D. in 2011 from the University of Tennessee College of Law. **Bridges** is a member of the firm's natural resources and energy service team and the intellectual property protection & litigation service team. He concentrates his practice on state and federal laws involving air, water, waste and endangered species, mineral and energy law, patent prosecution, enforcement, patent litigation, client counseling and transaction support. Bridges earned his J.D. from the University of Kentucky College of Law. **Hopkins** is a member of the firm's health care service team. He has conducted financial statement audits for hospitals, not-for-profit entities, public companies and employee benefit plans. Hopkins earned his J.D., *summa cum laude*, in 2014 from the University of Louisville Brandeis School of Law. **White** is a member of the firm's litigation & dispute resolution service team and labor & employment service team and focuses his practice on complex commercial disputes, creditors' rights litigation, products liability law and labor and employment issues. White earned his J.D., *magna cum laude*, in 2015 from the University of Louisville Brandeis School of Law. **Williamson** is a member of the firm's litigation & dispute resolution service team and works closely with the intellectual property protection & litigation service team. He concentrates his practice on product liability and warranty matters, fiduciary litigation and class actions and assists businesses and innovators with the protection of trade secrets and non-competition issues. Williamson earned his J.D. in 2014 from the University of Pennsylvania Law School.



Betty Moore Sandler, with **Nichols Zauzig**, has been named to the inaugural class of "Influential Women of Law" by Virginia Lawyers Weekly. This new awards program honors women attorneys and judges for their excellent work on behalf of their clients, their commitment to their communities and their service to the profession. Sandler is a fellow of the International Academy of Family Lawyers, a past board member of the U.S. Chapter, and served for more than six years on the Admissions Committee. She is a fellow of the American Academy of



Matrimonial Lawyers and a past president of the Virginia Chapter. Sandler is a graduate of the University of Kentucky and University of Kentucky College of Law.

H. Philip Grossman and **Abigale Rhodes Green** announce the formation of their new law firm **Grossman Green PLLC** with its office at 401 West Main Street, Suite 1810 in Louisville, Ky. The firm has lawyers licensed in Kentucky and Indiana and concentrates in complex personal injury cases including cases that involve wrongful death and catastrophic injury. The firm is pleased to announce that **Frederick W. Moore III** has joined them as an associate. Grossman is a past president of both the Louisville Bar Association and the Kentucky Justice Association.



Westcor Land Title Insurance Company is pleased to announce that **Danielle Wilson** has joined their team. Wilson is experienced in both residential and commercial underwriting and will serve as Westcor's Kentucky counsel, as well as agency representative for Kentucky, Indiana, and Ohio. She is a member of the American Land Title Association and is the 2019 president elect of the Kentucky Land Title Association.



Latitude is pleased to announce that **Katie Bennett** has joined their Nashville area corporate office as the director of legal recruiting & placement. Latitude provides attorneys and paralegals to companies and law firms on an engagement (short-and long-term) basis and for permanent, direct-hire positions. Latitude serves a range of clients, including Fortune 500 multi-national companies and major law firms. Bennett received her B.A. from Western Kentucky University in 2009 and her J.D. from the University of Louisville Brandeis School of Law in 2012. Prior to joining Latitude, she was an attorney with the law firm of Reynolds, Johnston, Hinton & Pepper, LLP, in Bowling Green, Ky., and also served as assistant general counsel at UBS Financial Services in Nashville.

Frost Brown Todd's (FBT) 2019 leadership changes include the addition of five women appointment to top roles. A total of 10 members across six of the firm's offices were newly appointed as practice group chairs, industry team leaders, or committee chairs at the start of the year. The new assignments include: real estate practice group: Cincinnati Member **Christina Sprecher** (chair); health care innovation industry team: Cincinnati Member **Maureen Bickley** (vice chair); finance practice group: Louisville Member **Becky Mayton Moore** (chair); manufacturing industry team: Nashville

Member **Mekesha Montgomery** (chair); diversity and inclusion committee: Dallas Member **Kimera Hall** (chair); labor and employment practice group: Columbus Member **Jeff Lindemann** (chair); technology industry team: Columbus Member **Kevin Shook** (vice chair); private equity industry team: Louisville Member **Josh O'Bryan** (vice chair); mobility and transportation industry team: Cincinnati Member **James Frooman** (chair); and insurance regulation practice group: Lexington Member **Greg Mitchell** (chair).

John E. Norman, of **Norman Law, PLLC**, was appointed Fayette County Public Administrator, effective April 1, 2019. Norman, most recently a partner at Garmer and Prather, PLLC, will focus primarily on his public administrator duties and offer related probate services, while also accepting select personal injury cases and general transactional matters. Norman Law, PLLC, can be reached via phone at (859) 252-8255 and is located at 205 North Upper Street, Lexington, KY 40507.



Andrew Pellino, a partner in **DBL Law's** Civil Litigation Practice Group, has been selected to be a part of the Leadership Kentucky Elevate Class of 2019. Elevate offers young professionals in-depth personal and professional development while fostering a better understanding of challenges facing Kentucky. Pellino

is licensed to practice in Kentucky and Indiana. He is also admitted to practice in the U.S. District Court for Western District of Kentucky and the U.S. District Court for Eastern District of Kentucky.

After five years with Wiggins & Hall Law Group, LLC, **Jonathan Hall** is proud to announce his new solo practice, **The Law Office of Jonathan A. Hall, PLLC**. Hall's practice will focus on estate planning, business planning, and probate. He is a graduate of Indiana University and the University of Dayton School of Law. He serves on the executive committee of the KBA's Young Lawyers Division.



Jay Inman, an attorney in the Lexington office of **Littler**, has been elevated to shareholder. Inman represents employers throughout Kentucky and Tennessee in a full range of labor and employment law matters arising under federal, state and local laws. He regularly provides advice, counsel and training for employers of all sizes and assists clients with investigations, charges, and litigation, including trial and appeal. Inman earned his J.D. from the University of Tennessee in Knoxville, where he interned for Tennessee Supreme Court Justice Gary R. Wade. Following graduation, Inman clerked for Magistrate Judge (now District Judge) Robert E. Wier of the United States District Court for the Eastern District of Kentucky and Senior Judge Eugene E. Siler, Jr., of the United States Court of Appeals for the Sixth Circuit.

Cordell & Cordell recently promoted divorce attorney **Jill A. Massey** to senior lead litigator. Massey, who practices out of Cordell & Cordell's Atlanta office, earned her J.D. from the University of Louisville Brandeis School of Law. She is a member of the Kentucky and Louisville Bar associations.

Carrie Masters Starts was recently named the co-chair of **Reminger Co., LPA's** Retail, Hospitality and Entertainment Facilities Practice Group. Starts is based out of Reminger's Cincinnati office. She also handles matters in the areas of general liability, medical and non-medical professional liability, insurance coverage and employment law. Starts is very involved with the Chase College of Law, currently serving as an adjunct professor, volunteering for the Chase Alumni Council and previously having coached the school's Trial Advocacy Team. In addition, she is a former member of the Board of Trustees of the Ohio Women's Bar Association and the Supreme Court Judicial Ratings Committee.

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The American Bar Association's Health Law Section recently honored **Stites & Harbison, PLLC**, attorney **Ozair Shariff** with the 2019 Emerging Young Lawyers in Healthcare Award at the Annual Emerging Issues in Healthcare Law Conference held in Orlando, Fla. Shariff is one of five honorees for this inaugural award. The Emerging Young Lawyers in Healthcare Award honors young health law section members who exemplify a broad range of achievement, vision, leadership, and legal and community service in health law. The honorees must be under the age of 36 or have practiced for five years or less. Shariff is an attorney based in the Louisville office where he is a member of the health care service group. Shariff's practice is devoted to a wide range of issues affecting health care providers and business owners.



Kyle M. Wiggins was recently named division vice-president and associate chief counsel by Kindred Rehabilitation Services, a division of Kindred Healthcare, LLC, headquartered in Louisville. Wiggins has served as senior director and operations counsel for Kindred since June 2015. Wiggins is a 2004 graduate of the University of Memphis School of Law and was previously an attorney with the Memphis office of Lewis, Thomason, King, Krieg and Waldrop, PC, and the Memphis office of Baker, Donelson, Bearman, Caldwell and Berkowitz, PC.

Catherine Stone Clemmons recently joined **English, Lucas, Priest & Owsley, LLP**, as an associate attorney. Clemmons practices in the areas of civil litigation, education, employment and family law. She earned a B.A. from Western Kentucky University in 2015. She received a J.D. from the University of Kentucky College of Law in 2018. She is a member of the Bowling Green-Warren County, Kentucky and American Bar associations.



Cordell & Cordell recently hired Senior Litigation Attorney **M. Thomas Underwood** in its Louisville office (10200 Forest Green Blvd., Suite 407, Louisville, KY 40223). Underwood earned his juris doctor from the University of Kentucky. He is a member of the Kentucky and Washington Bar associations. Prior to joining Cordell & Cordell, Underwood practiced domestic relations, probate, and general practice.

Jackson Kelly PLLC is pleased to announce that the firm has named **Clifton B. Clark** as the Lexington office managing member.

Clark will be assuming the duties and responsibilities of **Robert F. Duncan** who has served as the firm's Lexington office managing member since 2009. Clark's practice focuses primarily on corporate structuring and finance, commercial lending, mergers and acquisitions, and tax. Clark earned his law degree from the University of Kentucky College of Law, and his B.S. from the University of Kentucky. Clark is also a certified public accountant, admitted to practice before the United States Tax Court.



Vaughn Petitt Legal Group, PLLC, is excited to welcome **Scott Porter** as its newest associate. Porter brings over 30-years of legal experience including environmental and natural resources law, property matters including condemnation and easement issues, construction law, and the defense of public entities and their employees. Porter will focus on public sector, environmental and property law litigation.

DBL Law has named **Robert (Bob) Hoffer** as its new managing partner. He succeeds James Dressman III who held the managing partner position from 2012 thru Feb. 2019. Hoffer joined DBL Law in October 1978. His employment law practice covers all issues impacting employers on a daily basis, including compliance with state and federal employment laws. He has represented employers of all sizes, including some of



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the largest throughout Kentucky and the Greater Cincinnati area, and has represented hospitals and physicians for over 30 years on employment and medical negligence issues. Hoffer is a graduate of Covington Latin School (1972), Xavier University (1976) and Northern Kentucky University Chase College of Law (1980). He is chair of the St. Elizabeth Healthcare Foundation and a member of the St. Elizabeth Healthcare Board of Trustees. Dressman will remain an active DBL Law partner, representing profit and non-profit entities and organizations in financial transactions, business mergers and asset acquisitions and sales, real estate acquisitions, and simple and complex development projects.

Gordon & Rees Scully Mansukhani LLP is pleased to announce that **Jean M. Terry** has joined the firm's Louisville office as senior counsel in the construction practice group. A former civil engineer, Terry represents contractors, subcontractors, suppliers, and other building professionals in all phases of project construction, from contract formation through arbitration and litigation. She is a fellow with the Construction Lawyers Society of America and was recently selected as a diversity fellow by the American Bar Association's Forum on Construction Law. She received her J.D., *cum laude*, from The Catholic University of America, Columbus School of Law and her Bachelor of Engineering from Vanderbilt University.



Farmington Historic Plantation has elected **Stites & Harbison, PLLC**, attorney **Aaron Klein** to its Board of Regents. Farmington Historic Plantation, Louisville's first historic house museum, is owned by Historic Homes Foundation, a 501(c)(3) nonprofit. Farmington was an early 19th century hemp plantation owned by John and Lucy Speed. John and Lucy Speed's son, James, was one of Stites & Harbison's first partners, who later served as U.S. Attorney General for President Abraham Lincoln. Klein is an attorney in the firm's Louisville office and is a member of the construction service group. His practice focuses on advising owners, contractors, subcontractors, design professionals, and trade and materials contractors in all phases of the building process.



Along with former Kentucky New Era editor Jennifer P. Brown, retired assistant attorney general **Amye Bensenhaver** established the Kentucky Open Government Coalition, a nonpartisan and nonprofit organization, during national Sunshine Week 2019. The coalition's goal is to empower citizens to become open government advocates through education and support as the Commonwealth's laws come under increasing legislative and public agency scrutiny. Coalitions like this exist in 41 other states. Learn more at facebook.com/kyopengovernment.

Graydon is excited to announce the election of a new executive committee, which includes **Tom Prewitt**. In addition to its executive committee, Graydon named the following as market leaders: **Scott Jones** - Butler/Warren Market Leader and **Steve Smith** - Kentucky

Market Leader. The market leader role was created to capitalize the increasingly valuable visibility of these three leaders in their respective communities. Their roles have an emphasis on marketing, business development, and recruiting.



Tom Prewitt



Scott Jones



Steve Smith

Carman Fullerton, PLLC, is pleased to announce that **Scott White** has joined the firm as of counsel. White practices general litigation, criminal defense, family law, and state and federal constitutional law involving issues including civil rights, voting rights and 1983 state action litigation. White was also appointed by Mayor Gray to the Lexington Convention & Visitors Bureau and by Mayor Gorton to the Public Art Commission and was the first non-health care professional to serve as chair of the Lexington Board of Public Health.



Roetzel & Andress announces that it has chosen attorney **Chad M. Sizemore** to assume the role of shareholder-in-charge of the firm's Cincinnati office. Sizemore represents commercial drivers, motor carriers, and insurers in the transportation industry. He defends personal injury, wrongful death, and cargo claims, and he evaluates and litigates casualty and cargo insurance coverage disputes. Sizemore represents companies in arbitration proceedings involving disputes over vehicle service agreements. He is also a member of Roetzel's Emergency Response Team, where he coordinates the early response and investigation of accidents of varying size and severity across multiple jurisdictions. Sizemore earned his J.D. at the University of Cincinnati College of Law, and his undergraduate degree from Miami University.

Mary Beth Naumann with **Jackson Kelly** received a distinguished Amicus Service Award at the mid-year meeting of the International Municipal Lawyers Association (IMLA) in Washington D.C. The award recognizes her efforts in drafting the amicus brief in the *Silva Jr. v. City and County of Honolulu* case. The IMLA's Amicus Service Award seeks to recognize lawyers who have been actively involved in legal advocacy for and on behalf of local governments and IMLA, and who have done exemplary work to protect and advance local government interests. Naumann is a member based in the firm's Lexington office, where she practices in the areas of bankruptcy, coal, commercial restructuring, commercial litigation, and equine law.

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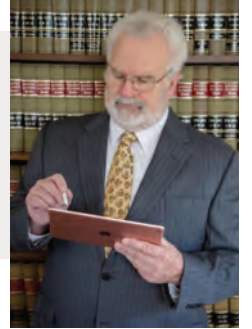
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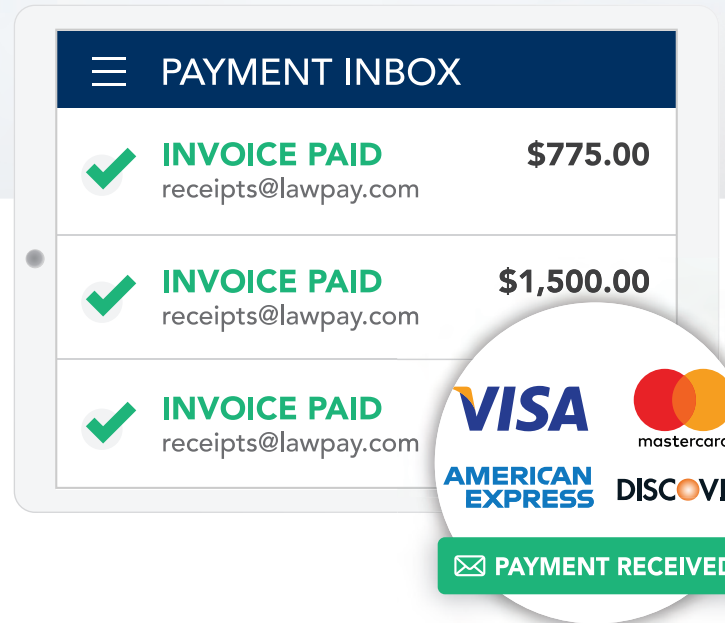


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