Inside this Issue

- Emails, Texts & Smoke Signals — Binding Contract for Sale of a House? - p. 6
- Lessons from Professor Sharp - p. 8
- Filing Individual Bankruptcy While Owning a Small Business - p. 10
- Personal Injury Lawyer’s Guide to IRS Audit-Proof Practice - p. 15
In the State of Kansas:
Workers’ Compensation insurance is mandatory when an employer's gross annual payroll exceeds $20,000.

Coverage, simply.

As a business owner, your focus is to protect your employees. If your employees suffer, your business suffers. We would like to provide you with the opportunity to receive a quick quote for obtaining workers’ compensation insurance for your law firm. This insurance will be administered by The Bar Plan Insurance Agency, Inc. and underwritten by The Hartford.

Highlights of the Workers’ Compensation policy:
- Automatic $100,000/$500,000/$100,000 Employers Liability Coverage (can be increased)
- Choice of Payment Plans
- Cost-saving services which include: Loss Control Advice, Medical Bill Review, Fraud Services, and Fast and Efficient Claim Service
- Low Affordable Rates

If you would like a quick quote, contact Annette Hilyard at 800-843-2277 x 126 or email at ahilyard@thebarplan.com.

THE BAR PLAN.
We help lawyers build a better practice

Lawyers’ Professional Liability Insurance • Court Bonds • Risk Management Practice Management • Workers’ Compensation • Lawyers’ Business Owner’s Policy

877-288-9040
www.thebarplan.com

*See K.S.A. 44-505, Exceptions Apply. Consult an attorney for legal advice.
the BarLetter

BarLetter Committee and Writing Staff

Scott Gyllenborg - Editor
Melissa Carpani
Linda Coffee
Joe Colantuono
Jeffrey Deines
Chuck Andres
Christopher Gordon
Jay Heidrick
Shane J. McCall
John Pickett
Zachary Roberson

- Articles are Welcome -
Please send to lcoffee@jocobar.org

the BarLetter, the official publication of the Johnson County Bar Association, covers legal news and issues of interest to members. Articles are intended to generate ideas readers can apply to their own practice. the BarLetter is published quarterly and distributed to approximately 2,000 attorneys, judges, and legal professionals in Johnson County and the surrounding county area. Deadline for submission of articles and advertising is the 10th day of the following months: February, May, August, and November. The publication of any advertisement or product information is not to be construed as an endorsement of the product or service offered unless the ad specifically states that there is such an endorsement or approval. the BarLetter is a non-partisan publication intended to inform our members, provide services to our members, and give members an opportunity to contribute to the association. Statements or expressions of opinions are those of the authors and do not necessarily represent those of the Johnson County Bar Association.

MEMBERSHIP LUNCHEON SCHEDULE

All Membership Luncheons begin at 11:45 a.m. and are held on the first Wednesday of each month, except in July and August, at the Ritz Charles, 9000 W. 137th Street, Overland Park, Kansas [137th Street & Antioch] unless noted. RSVP is not required.

Upcoming dates: April 2 - May 7 - June 4

Visit the calendar online at www.jocobar.org for program and speaker information!
It’s common sense that if you want to build a strong structure, the key is to start with a solid foundation. This is true not only with structures but with any organization. Without a solid base to build upon, you are destined for disaster.

Great Things Happen When You Build on a Solid Foundation

The Johnson County Bar Association is no different, only our base is a group we should all support, the Johnson County Bar Foundation. The Foundation embodies one of the fundamental cores of our profession – helping others in need. And while the work of the Foundation is done by a group of passionate Trustees we all must play our part.

In 2013, the Foundation was part of over $30,000 donated to groups such as Gift of Life, Sunflower House, Head Start of Shawnee Mission, Inc., and CASA. These donations have a significant impact on the budgets of these quality organizations and directly affect the quantity of services they can provide. In a time when social services and government grants are disappearing, the philanthropic efforts of organizations like the Johnson County Bar Foundation are critical to these groups.

So how can you help? There is an old saying that the first – and sometimes the biggest – step to success is to simply show up. The Foundation has numerous events throughout the year that offer an opportunity to become engaged. Every fall, the Foundation holds its annual golf tournament as well as the Legacy Event. These are two staples for the Foundation that are critical to its mission.

Each December, the Foundation holds its “Shamberg CLE” where it brings in excellent presenters to discuss legal issues relevant to the public’s access to justice.

And this Spring, there will be addi-
JOHNSON COUNTY BAR FOUNDATION

By Chuck Andres,
Johnson County Bar Foundation President

What is the Purpose of the Bar Foundation?

When one thinks of the Bar Foundation, is it easy to recall its recent events such as the Legacy Gala, the Golf Tournament or the John Shamberg Memorial CLE. However, the Bar Foundation is much more as reflected in its governing documents. As stated in its Form 1023, Application for Recognition of Exemption from 1988, the Foundation has a “special relationship with the Johnson County Bar Association.” In fact, the formal mission of the Johnson County Bar Foundation, adopted on January 9, 1996, states it was founded “as the charitable arm of the Johnson County Bar Association.” In fact, the formal mission of the Johnson County Bar Foundation, adopted on January 9, 1996, states it was founded “as the charitable arm of the Johnson County Bar Association.” Its purpose as reflected in the mission statement is to promote, on behalf of the legal profession, good works which advance our local system of justice, or support children and family related charities and organizations.

This mission statement augments the governing language set forth in the Articles of Incorporation, which besides the normal 501(c)(3) purposes, states the Foundation shall be operated exclusively for such charitable, scientific and educational purposes as in the judgment of the Board of Trustees shall further the welfare, honor and integrity of the profession of law. In addition, the following powers, authorities and privileges, are imposed by these Articles of Incorporation:

1. To advance the science of jurisprudence.
2. To promote the efficient administration of justice and the uniformity of judicial proceedings and decisions.
3. To elevate the ethical standards of the bench and bar.
4. To promote and improve the study of the law and research therein and the continuing education of lawyers.
5. To cause to be published and to distribute addresses, reports, treaties, and other literary works on the legal profession and the public.
6. To improve relations between the members of the legal profession and the public.
7. To foster, promote and maintain the honor, integrity and the general welfare of the profession of the law.

These Articles were filed with the Kansas Secretary of State on June 15, 1987. Its initial governing body consisted of Ray L Borth, of Morris & Larson, Cheryl Cook Boushka, of Gage & Tucker, Barton P. Cohen, John J. Gardner, of Watson, Ess, Marshall & Enggas, Thomas A. Hamill, Perry & Hamill, Hon. Gerald L. Rushfelt, Charles S. Schnider, of Spencer, Fane, Britt & Browne, Hon. Janette Sheldon, and John E. Shamberg, Shamberg, Johnson, Bergman and Goldman. And of course, its first Executive Director was, and remains, Linda Coffee.

PRESIDENT (Continued from page 4)

When one thinks of the Bar Foundation, is it easy to recall its recent events such as the Legacy Gala, the Golf Tournament or the John Shamberg Memorial CLE. However, the Bar Foundation is much more as reflected in its governing documents. As stated in its Form 1023, Application for Recognition of Exemption from 1988, the Foundation has a “special relationship with the Johnson County Bar Association.” In fact, the formal mission of the Johnson County Bar Foundation, adopted on January 9, 1996, states it was founded “as the charitable arm of the Johnson County Bar Association.”

The event will be held at the Fox and Hound near 103rd and Metcalf in Overland Park. The cost is $100 per team which consists of 4-5 people. You can contact the Bar Association office to register or you can register online at www.kcmba.org.

In June, we will be converting the regular monthly luncheon to an evening barbeque to support the Foundation’s “Judges’ Appreciation Picnic.” This event will be held on Wednesday, June 4 at the Ritz Charles. It will replace the regular monthly June luncheon, but Bar Association members will still be able to eat for free at the Picnic just like they could at the monthly luncheon.

But you don’t have to wait for an event to help. The Foundation offers a “Fellow” program where donors pledge to contribute $1,000 to the Foundation, which is payable over several years. There are currently 220 Fellows in the Foundation, which is not enough given the size of our Association. In an effort to lead by example, I recently became a Fellow and intend to pay-off my $1,000 pledge in two years. I challenge each of you to do the same.

But even if you cannot attend any of the events; even if you cannot become a Fellow; there is still an option: simply become a member of the Foundation. It costs only $25. That is a small amount for a group that does a lot of good.

If you are reading this letter, you are part of a great organization in the Johnson County Bar Association. But don’t let your membership be the start and end of your involvement. Learn about and support our Foundation and help us make the Johnson County Bar Association even stronger. After all, you are the we in us.
In this digital age of social media and rapid fire exchange of texts, emails and instant messages, who has time to formally put things in writing and actually sign their name to it? Well, according to the Kansas Court of Appeals, if you want to ensure you have a binding contract for the sale or purchase of real estate, every buyer and seller needs to take the time to do so.

Most of our clients have at least heard of the Statute of Frauds – our statutory set of rules requiring certain agreements and contracts to be in writing and signed by the parties in order to be enforceable. Specifically, the statute of frauds applies to all contracts for the sale of land. A writing, in order to be enforceable under the statute of frauds, can be any document or writing, formal or informal, that is signed by the parties or their agents and which states with reasonable certainty: (a) each party to the contract by name or a description sufficient to identify them; (b) the land subject to the purported contract; and (c) the terms and conditions which constitute the contract.

Kansas courts have held that only the material terms of the contract need to be stated with reasonable certainty and that separate writings may be construed together in order to determine whether an enforceable contract exists. Applying this standard to the modern way we communicate, the Court of Appeals had to determine where emails and other electronic communications fell within the spectrum of writings under the statute of frauds. In Sigg v. Coltrane, 45 Kan. App. 2d 65 (2010), the Court determined that an email was insufficient to constitute a binding and enforceable contract for the sale of real estate.

The buyer had submitted a written offer for the purchase of the seller’s land and also provided an earnest

Can Emails, Texts and Smoke Signals Constitute a Binding Contract for the Sale of a House?

REAL ESTATE LAW (Continued on page 7)
REAL ESTATE LAW (Continued from page 6)

deposit towards the purchase. The seller subsequently rejected the buyer’s offer, sold the property to a third party and returned the buyer’s earnest money. The buyer, in its lawsuit to enforce the purchase contract, asserted an email from the seller, which included an unsigned counter-offer, satisfied the statute of frauds. The Court of Appeals determined that even under Kansas’ Uniform Electronic Signatures Act, the email alone did not constitute a legally sufficient electronic signature - defined in the Act as “an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.”

The Court held that electronically drafting and emailing a document alone does not constitute an electronic signature under the Act. Accordingly, there was not an enforceable contract between the parties because the sellers had not “signed” any of the separate writings allegedly forming the purported contract for the sale of land. Also important, the Court found the record did not reflect the parties had agreed to conduct the transaction electronically, a prerequisite for conducting a transaction electronically under the Act.

Under the local Kansas City Regional Association of Realtors’ form real estate contracts, buyers and sellers do consent to conducting and executing the transaction electronically. However, the documents also contain provisions in which the parties agree those documents solely constitute the agreement for the sale of the property and that any modification must be signed by all parties. Since most offers originate on these base forms, it would pose a challenge to any party attempting to assert that a separate exchange of emails or texts constitutes a valid real estate contract under the statute of frauds – as those exchanges would have to exist independently of the base real estate documents. In addition, the enforcing party would need to establish that in fact an “electronic signature” was made by the party sought to be charged with the contract.

However, in a recent Massachusetts case, a Court at least permitted the argument to be advanced that an email exchange among the Rea tors may have constituted an official acceptance of a real estate contract under their version of the Electronic Signatures Act. There, the Court stated an email signature block or even the “from” portion of email could be a valid electronic signature. The case settled out of court before any formal opinion or decision was made, but at least one court has entertained this possibility.

To protect themselves, consumers and Realtors need to ensure they are deliberate and careful in the manner in which they communicate with other parties in the real estate transaction. Everyone is anxious to hear or read “we have a contract,” “your offer is accepted” or “it’s done.” To an awaiting party, hearing or seeing those kinds of statements solidifies a contract in their minds – the nuisance of getting the documents signed is a trivial detail to be completed after the fact. So we must properly manage expectations and always include language in any email, text, instant message or Morse code transmission which clearly conveys “any consensus to certain terms remains subject to and contingent upon the parties completing and signing the real estate contract and associated forms.”

If this seems difficult to include in every text and email … it is – never a bad idea to practice the ancient art of verbal dialogue articulation via a communications service provider. Otherwise known as The Phone Call – as one can avoid most of the risks addressed in this article by simply speaking rather than typing. 

ABOUT THE AUTHORS:

Christian J. Kelly
Claire McCurdy

Christian J. Kelly serves as the Chief Administrative and Legal Officer of Reece & Nichols Realtors and Berkshire Hathaway HomeServices Kansas City Realty. He may be contacted at ckelly@reeceanichols.com.

Claire McCurdy is a lawyer and has been a sales executive with Reece & Nichols Realtors since 2001. She is former Chairwoman of the Kansas City Regional Association of Realtors (KCRAR) Forms Revision Committee and has taught continuing education courses on contracts for KCRAR. Prior to beginning her real estate career Claire was a lawyer in Sprint’s Litigation Department, and before that was Of Counsel at Shook Hardy & Bacon. She may be contacted at claire@reeceanichols.com.

Jerry Bales
Mediator & Arbitrator
Douthit Frets Rouse Gentile & Rhodes, LLC
913.387.1200 jbales@dfrglaw.com
2010 was a significant year for the University of Northern Iowa. On March 20, 2010 Ali Farokhmanesh scored 16 points for the UNI Panthers, including four 3-point goals, in their 69-67 surprise victory over the University of Kansas, the number one tournament seed. That same year UNI made its first settlement payment to former professor Linda Sharp whom UNI had demoted from professor to secretary after Prof. Sharp complained about missing equipment. Sharp v. Commissioner of Internal Revenue, T.C. Memo 2013, Docket No. 21332-12 (Dec. 23, 2013).

Sharp was eventually reinstated to her position as professor, and she complained again about missing equipment. She filed an internal grievance, and while the grievance was pending Professor Sharp “developed muscle tension and migraine headaches, became afraid to go to the university, developed a fear of people, had nightmares and was eventually hospitalized for depression.” (T.C. Memo p. 3) Her psychiatrist recommended that she not return to UNI. She resigned and filed two claims - a workers’ compensation claim, and a claim alleging gross negligence and that co-workers conspired to force her to resign. UNI settled, agreeing to pay $210,000 in three installments, the first of which was due in 2010. Things were looking up for Prof. Sharp.

Oops.

Prof. Sharp filed a tax return stating that the first $70,000 payment was for “emotional distress damages only” for her workers compensation claim. The one page settlement agreement did not state whether the payment was for personal injuries or her workers, compensation claim. The IRS assessed a $25,179 deficiency and a $5,146 penalty. Prof. Sharp challenged the assessment, but in the Tax Court she “could not offer the testimony of the attorney who had represented her in her workers’ compensation case and who had advised her that she could exclude the settlement proceeds from gross income because the same attorney represented her at trial” in the tax court. (T.C. Memo p. 4).

The Tax Court concluded that there was not sufficient evidence that the settlement was for personal injuries, but acknowledged that damages “on account of personal physical injuries or physical sickness may generally be excluded from gross income.” (T.C. Memo p. 9). The Court explained that two factors determine whether a settlement is for personal injuries: “A taxpayer must show that the underlying cause of action giving rise to the recovery is based on tort or tort-type rights. A taxpayer must also demonstrate he or she received the damages on account of his or her personal physical injuries or physical sickness.” (T.C. Memo p. 10).

There are three lessons from this case:
1. A plaintiff’s complaint and demand letter should identify any personal injuries so that there is a basis to allocate some or all of the settlement to personal injuries.
2. Settlement agreements must clearly identify whether any of the payment is for personal injuries, and if so, the amount and basis for the allocation.
3. At UNI secretarial jobs and professorial positions are interchangeable.

Employee Was Fired After Letter From Former Employer

Rick Bonds signed a typical confidentiality agreement when he was hired by Philips Electronic to repair medical equipment. Philips fired Bonds when it learned that Bonds had a second job with a competitor. Bonds continued working his job with the competitor until Philips sent a letter to Bonds, and copied his employer. The letter asked for confirmation that Bonds did not provide the company with confidential information. Philips did not threaten to sue the competitor. The competitor then fired Bonds, who sued Philips for tortiously interfering with his job. Bonds v. Philips Electronic North America, 2:12-cv-10371 (E.D. Mich. Jan. 21, 2014).

The court dismissed the case on summary judgment because Philips did not ask the competitor to fire Bonds, and because Philips had a legitimate justification for sending the letter – preventing disclosure of its confidential information and ensuring that Bonds adhered to his confidentiality agreement. It was significant to the court that Philips never asked that Bonds be fired. The court noted a similar ruling in Hollingsworth v. TransAct Tools, Inc., 128 F. App’x 820, 2005 WL 902012 (C.A.2 (N.Y.))

The lessons for employers’ attorneys are: (1) that you should not request dismissal of the former employee, and (2) informing the new employer of the employee’s contractual obligations is justified if there is no malicious intent. The lesson for employees’ attorneys is that threats to the new employer may cross the line and create a tortious interference claim.

Disappointing Ruling If You Wear Flame Retardant Pants To Work

On January 27, the Supreme Court held that protective gear such as flame retardant pants qualify as “clothes.”

EMPLOYMENT LAW (Continued on page 9)
EMPLOYMENT LAW (Continued from page 8)

Sandifer v. United States Steel Corp., No. 12-417 (Jan 27, 2014). The Supreme Court concluded that the union contract did not require payment for time spent changing clothes – such as flame retardant pants. This ruling does not apply to non-union employees.

Decision Was Final Despite Pending Attorney Fee Question, And Therefore Appeal Was Late

In a decision that affects all cases with post-trial attorney fee motions, the Supreme Court rejected an appeal by labor union pension funds because they delayed filing their appeal until after the trial court decided a post-judgment attorney fee motion. Ray Haluch Gravel Co. v. Central Pension Fund., 12-992 (Jan 15, 2014). In Haluch the pension funds sued an employer for unpaid contributions and legal fees under the collective bargaining agreement and ERISA.

The court entered judgment in favor of the pension funds for some of the contributions collected. More than 30 days later the court ruled on the attorney fee request. The pension funds filed their appeal within 30 days after the ruling on the attorney fee issue – but outside the 30 day window when the original judgment was entered. The Supreme Court concluded that the judgment for the unpaid contributions was final under 28 U.S.C. §1291 despite the unresolved request for attorney fees, and therefore the appeal by the pension funds was untimely.

First Amendment And Public Employees

On January 17, 2014, the U.S. Supreme Court agreed to review a First Amendment retaliation claim brought by a public college employee against his former employer. Lane v. Central Alabama Community College, No. 13-483. Edward Lane worked for Central Alabama Community College. Lane discovered that an Alabama state representative was listed on the payroll, but was not working at the College. Lane questioned this, and was warned by the College’s president and attorney than terminating the state representative from payroll could have negative consequences for both Lane and the College. Despite these warnings, Lane terminated the state representative’s employment after she refused to report to work. Lane testified pursuant to a subpoena before a grand jury, and at two criminal trials regarding the state representative.

Months after testifying, Lane was terminated, allegedly due to budget cuts. Lane sued the College president, Dr. Steven Franks, both in his official and individual capacity, alleging retaliation in violation of the First Amendment. The district court granted summary judgment dismissing the claim because Lane’s testimony was pursuant to his official duties as a public employee and, therefore, no First Amendment protection existed. In his petition for review before the Supreme Court, Lane stated that denying First Amendment protection to him “would sanction retaliation against a citizen who did nothing more than his duty – as a citizen – to tell the truth in support of a federal criminal investigation.”

The Lane case raises an issue left undecided in Garcetti v. Ceballos, 547 U.S. 410 (2006), which held that a public employee who speaks as part of his/her job duties does not have First Amendment protection. In Garcetti, the U.S. Supreme Court concluded that a public employer can fire that employee for speaking if that employee was not speaking or writing as a private citizen. In Lane the Supreme Court will address whether Garcetti, which denied First Amendment protection, extends to a public employee who is fired after testifying under subpoena, which is not part of the employee’s job duties.

Working Remotely And The ADA

In an opinion issued on January 23, 2014, the Court of Appeals for the Fourth Circuit reversed the dismissal of a disability discrimination claim by an employee who asked to work from home as an accommodation. Summers v. Altarum Institute, Cause No. 12-1645. Carl Summers worked for Altarum which allowed its employees to work remotely if the Altarum client approved. Summers was injured and proposed to work remotely part-time, gradually increasing his hours until he was back to a full-time schedule. Altarum did not offer a response, or an alternative accommodation to Summers. Altarum instead fired Summers.

Summers filed suit under the Americans With Disabilities Act, alleging that Altarum failed to accommodate him or engage in the “interactive process.” The Court of Appeals dismissed because Summers’ condition was temporary, and in the Court’s opinion not a disability due to its temporary nature.

The Fourth Circuit discussed the expanded definition of “disability” through amendments to the ADA, and commented that the EEOC regulations include as disabilities some conditions “lasting or expected to last fewer than six months”. The Court of Appeals explained that Summers’ immobility for seven plus months qualifies as a disability under the ADA.

The lessons for employers are that even temporary injuries may qualify for protection under the ADA, and working remotely may be a reasonable accommodations that should be discussed with the employee.

ABOUT THE AUTHOR:

Joseph R. Colantuono is a member of Colantuono Bjerg Guinn, LLC in Overland Park, Kansas, where he practices in the areas of business litigation, and Title VII, ADA, ADEA, FMLA, wage/hour and non-compete claims. Joe received his juris doctor from the University Nebraska College of Law, and he is a member of the Ethics and Grievance Committee of the Johnson County Bar Association.
It is often said that small businesses are the backbone of the economy. Less commonly stated is the fact that small businesses are also the impetus for many bankruptcy filings. This is so because entrepreneurs almost always have to personally guaranty some of the largest debts associated with starting and maintaining working capital for a business. In addition, there may be personal liability associated or asserted by other trade creditors of a business, even when there is no distinct commercial guaranty executed by the owners of the business. In these cases, there are a couple of big issues that have to be faced by the owners of the business.

First is that it is rarely beneficial for a business to file a chapter 7 liquidation bankruptcy. Non-individuals such as business entities do not receive a discharge in bankruptcy. Therefore, after a chapter 7 bankruptcy for a business is filed and the case is closed, creditors are free to collect debts owed by that entity. Filing for a business chapter 7 puts all the assets of the business into the bankruptcy estate, and the bankruptcy trustee can then sell those assets and distribute money to creditors. The business entity must still abide by all the various duties of a chapter 7 debtor, such as filing schedules, providing financial information to the trustee, and attending a meeting of creditors. The chapter 7 trustee is also entitled to pursue certain avoidance actions, such as avoidance of preferential payments to creditors under section 547 of the Bankruptcy Code and avoidance of fraudulent transfers. While looking for potential fraudulent transfers, a bankruptcy trustee of a business will closely scrutinize payments to owners of the business. All of these duties and risks, and the lack of a discharge for entities, mean that the filing of a chapter 7 bankruptcy for business entities is only warranted in rare cases.

Another issue to contemplate is what happens to ownership interest of a debtor when a business owner files a bankruptcy. Under section 541 of the Bankruptcy Code, the individual debtor’s ownership interest, be it stock, an LLC membership interest, or a partnership interest, becomes part of the bankruptcy estate subject to the control of the bankruptcy trustee. If the debtor is the sole owner of the business, the bankruptcy trustee has the same rights as the owner would have. This means the bankruptcy trustee, at least in the case of an LLC, would be authorized to exercise management and governance rights of the LLC. In re Albright, 291 B.R. 538, 541 (Bankr. D. Colo. 2003).

If the debtor is one of multiple owners of an entity, the issue is less clear. It would seem that the bankruptcy trustee of the debtor is only entitled...
to receive the distributions from the entity that the debtor would have received on account of the ownership interest, but does not have management rights in the entity. For instance, an Illinois bankruptcy court has noted that “the assignment of a membership interest in an LLC transfers only financial rights. Management rights cannot be transferred without the consent of the non-transferring members.” In re Zoll, 10 B 2748, 2012 WL 295168 (Bankr. N.D. Ill. Feb. 1, 2012). The issue of the effect of bankruptcy filing by owners of single-member LLCs has come up more often than issues involving debtors who are owners of a partial interest in an LLC or other entity. In the latter case, it would be prudent to examine the operating agreement and state law regarding the type of entity before making a determination of the effect of a bankruptcy filing of one owner.

Probably the most common situation facing a chapter 7 trustee is when a debtor has an ownership interest in a business whose liabilities are greater than its assets, and there would be no cash flow without the personal service of the debtor generating income. In these types of situations, a bankruptcy trustee will examine the assets of the business to determine if anything can be liquidated quickly, and in most cases abandon it when it becomes clear that the business has few or no assets from which to realize proceeds. When a business has no assets to liquidate, the bankruptcy trustee will usually quickly abandon the ownership interest in that entity. In a chapter 11 or chapter 13 context, the individual debtor can in most cases retain ownership of the entity, but must devote some of the net income to repayment of creditors through a plan.

One final thing to remember is that, while the automatic stay of Bankruptcy Code section 362 instituted after a bankruptcy filing is very powerful, the automatic stay of a debtor who is a business owner does not bar a lawsuit against the business itself. Indeed, the automatic stay does not stop actions against anyone who has not filed bankruptcy. Chugach Timber Corp. v. Northern Stevedoring & Handling Corp. (In re Chugach Forest Products), 23 F.3d 241 (9th Cir.1994). In rare cases, a bankruptcy court may issue an injunction to bar certain collection activity against nondebtors whose identity is closely related to the debtor in bankruptcy, but this is a function of the bankruptcy court’s discretion, not the automatic stay. Similarly, the automatic stay does not stop actions against property of an LLC when the owner of the LLC has filed bankruptcy.

Prior to undertaking a bankruptcy filing, a debtor must carefully review the value of any business ownership interest from a liquidation standpoint. If that review reveals that there may be value in the business, a chapter 7 filing for the debtor’s owner could possibly result in a loss of that value. On the other hand, a chapter 7 filing for the business itself is rarely the best option. The debtor and creditors of that debtor should, in any case, realize that the automatic stay of bankruptcy only extends to the debtor, not related entities such as ones owned by the debtor.

ABOUT THE AUTHORS:

Jeffrey A. Deines Shane J. McCall

Jeffrey A. Deines is a partner at Lentz Clark Deines PA and focuses on representing debtors and other parties in bankruptcy, insolvency, reorganization, receivership and workout matters. He is Board Certified in business bankruptcy law by the American Board of Certification, and is a member of the American Bankruptcy Institute. Jeff has been listed as Rising Star for 2010 by Super Lawyers and has been listed in the Kansas City Business Journal as Best of the Bar in bankruptcy for 2010. In addition to representing clients, Mr. Deines has authored numerous articles and publications on bankruptcy topics, and has served as a member of the Kansas Bankruptcy Bench-Bar Committee. He received his undergraduate degree in Business Administration from the University of Kansas, and his law degree from Loyola Law School of Los Angeles.

Shane J. McCall is an associate at Lentz Clark Deines PA and has worked there since the summer of 2009. He has dealt with debtor and creditor issues throughout his career. Mr. McCall received his undergraduate and law degrees from the University of Kansas. While in law school, he served on the Kansas Law Review as the symposium editor, was a member of the Moot Court Council, and was elected to the Order of the Coif. Mr. McCall also served as an intern for the Honorable Dale L. Somers of the United States Bankruptcy Court for the District of Kansas and was recognized with the 2010 Medal of Excellence from the American Bankruptcy Institute in recognition of his class work and research in the field of bankruptcy.

Fisher Patterson Sayler & Smith

Experience Counts

Mediation services for civil litigation.

E. Dudley Smith
Overland Park
(913) 339-6757

Included in The Best Lawyers in America 2014/Mediation
The Best Lawyers in America© 2014. Copyright 2013 by Woodward/White, Inc., Aiken, SC.
Aliens residing in the United States without immigrant status are often reluctant to report crimes committed against them because they fear that doing so will result in deportation. However, Congress has passed several laws that offer immigrant victims of crime the chance to obtain important immigration benefits in exchange for cooperating with law enforcement and reporting crimes. In general, these laws and the benefits they provide are not well understood, and many aliens might be unaware of them altogether. One of the broadest of these potential benefits is the “U nonimmigrant status.”

U nonimmigrant status is a temporary status that allows certain noncitizen (“alien”) victims of crime to reside in the United States for a certain amount of time and obtain employment authorization. Additionally, family members of such individuals may be eligible for “derivative” nonimmigrant U status, thus allowing them to remain in the U.S. and obtain work authorization as well. Three years after being awarded U nonimmigrant status, many of these aliens will be eligible to “adjust status” — i.e., obtain a green card while remaining in the United States. Additionally, U nonimmigrants residing outside of the United States are eligible to obtain a “U visa,” which allows them to enter and depart the United States. Although practitioners often colloquially refer to the status as a “U visa,” in fact, a U visa allows the recipient to enter the U.S., while U nonimmigrant status allows the recipient to remain in the U.S.


To be eligible for U nonimmigrant status, an alien must (1) have suffered “substantial mental or physical abuse” as a result of having been a “victim” of “qualifying criminal activity,” (2) possess credible and reliable information establishing that he or she has knowledge of the details surrounding the criminal activity, and (3) have assisted, be currently assisting, or be likely to assist a “certifying agency” in the investigation and/or prosecution of the criminal activity. INA §101(a)(15)(U).

In most cases, the “qualifying criminal activity” must have occurred in the United States. Id. “Qualifying criminal activity” includes activities that violate federal, state, or local criminal laws and qualify as one or more of the following activities: blackmail, domestic violence, extortion, false imprisonment, felonious assault, female genital mutilation, hostage-holding, incest, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, peonage, perjury, prostitution, rape, sexual assault, abusive sexual contact, sexual exploitation, slave trade, torture, trafficking, unlawful criminal restraint, and witness tampering. Id. Attempt, conspiracy, or solicitation to commit any of these crimes also qualifies, as do criminal offenses in which “the nature and elements of the offenses are substantially similar to the . . . [above] enumerated list of criminal activities.” 8 C.F.R. §214.14(a)(9).

In general, an alien is a “victim” if he or she has suffered direct harm as a result of qualifying criminal activity and bears no culpability for the crime’s commission. 8 C.F.R. §214.14(a)(14). “Substantial physical or mental abuse” means substantial harm to the victim’s person or emotional or psychological well-being. 8 C.F.R. §214.14(a)(8).

To gauge the substantiality of harm, USCIS will consider several factors, including (1) the nature of the injury, (2) the severity of the criminal conduct, (3) the duration of the harm, and (4) whether these was “permanent or serious harm to [the victim’s] appearance, health, or physical or mental soundness . . . including aggravation of pre-existing conditions.” 8 C.F.R. 214.14(b)(1). This list is not all-inclusive, and no particular factor is necessarily required to establish that the abuse was substantial. Id.

USCIS has sole jurisdiction over the adjudication of applications (“petitions”) for U nonimmigrant status. An applicant (“petitioner”) applies by filing Form I-918, “Petition for U Nonimmigrant Status,” with USCIS. The petition must contain (1) a signed statement by the petitioner describing the facts of the victimization, (2) Form I–918, Supplement B, “U Nonimmigrant Status Certification,” signed by a “certifying official” within the six months immediately preceding the filing of Form I–918, and (3) any additional evidence demonstrating the petitioner’s eligibility for U nonimmigrant status. 8 C.F.R. §214.14(c)(2).

Although the petitioner’s per-
personal statement is vitally important, a successful petition requires more. A well-constructed petition contains numerous other forms of evidence corroborating the petitioner’s eligibility for U nonimmigrant status. Additional evidence might include news article clippings about the crime, police reports describing the crime, statements from anyone with knowledge of the crime or the effect that it had on the petitioner, and letters from the petitioner’s doctor describing the mental or physical harm suffered by the petitioner. Because petitions are awarded on a discretionary basis, statements written by a petitioner’s children or spouse might have particular emotional and persuasive effect.

As mentioned above, a Petition for U Nonimmigrant Status must include Form I-918 Supplement B “U Nonimmigrant Status Certification.” Special mention should be made of this certification requirement, because it is often the most difficult step in the application process. Supplement B must be signed by a “certifying official,” defined as “the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or [a] Federal, State, or local judge.” The certification should state that (1) the certifying agency is a federal, state, or local law enforcement agency, or prosecutor, judge or other authority, who has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity, (2) the petitioner has been a victim of qualifying criminal activity that the certifying official’s agency is investigating or prosecuting, (3) the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim, and (4) the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of the criminal activity.

The decision to issue a certification is discretionary, and an agency cannot be compelled to issue a certification or otherwise cooperate with a petitioner’s efforts. Although many law enforcement agencies are cooperative, a few agencies have developed reputations for frequently refusing to cooperate. There are many reasons why agencies may decline to issue certifications, chief among them a general lack of understanding of the U nonimmigrant process. There is a common misconception that issuing a certification automatically confers some sort of immigration status on the petitioner. In reality, obtaining the certification is merely one step in the process, and USCIS will adjudicate the petition based upon all of the evidence provided. By truthfully certifying that a crime victim has been, is being, or likely will be cooperative in the prosecution of the crime against him or her, an agency is providing USCIS with important information to allow it to make an informed decision regarding the victim’s eligibility for U nonimmigrant status.

The number of U visas and U nonimmigrant statuses is annually capped at 10,000. If a petition is approved after the cap has been reached, the petitioner receives
IMMIGRATION LAW (Continued from page 13)

a “Notice of Conditional Approval,” is placed on a waiting list, and is granted deferred action or parole. 8 C.F.R. §214.14(d)(2). The cap is reached very quickly; for example, on December 11, 2013, USCIS announced that it had approved the statutory maximum 10,000 petitions for fiscal year 2014 (http://www.uscis.gov/news/alerts/uscis-approves-10000-u-visas-5th-straight-fiscal-year). It is not uncommon for petitioners to wait for well over a year to receive U nonimmigrant status or a U visa.

Petitioners who are currently in removal proceedings in Immigration Court, or who have been ordered removed by an Immigration Judge, may file a Motion to Reopen and/or a Motion to Terminate Proceedings while USCIS is adjudicating the I-918 petition. 8 C.F.R. §214.14(c)(1). Although the mere filing of a petition does not officially confer any immigration benefits, USCIS guidelines do discourage the removal of U visa applicants while their U nonimmigrant petitions are being adjudicated. See 72 Fed. Reg. at 53015.

If a petitioner’s U nonimmigrant status petition is approved, USCIS will issue the alien an employment authorization document. 8 C.F.R. §214.14(c) (7). U nonimmigrant status is issued for a 4-year period, but USCIS may issue an extension if the petitioner’s presence in the United States continues to be necessary to aid in the investigation and prosecution of the qualifying criminal activity, or if the Department of Homeland Security determines that such extension is justified by “exceptional circumstances.” INA §214(p)(6).

An alien with U nonimmigrant status is eligible to become a Lawful Permanent Resident - in other words, obtain a green card - if he or she (1) lawfully obtained a U visa or U nonimmigrant status, (2) continues to hold this status at the time he or she applies to become a Lawful Permanent Resident, (3) has been physically present in the U.S. for a continuous period of three years, (4) has not unreasonably refused to assist the law enforcement agency with prosecuting or investigating the crime, and (5) is able to show that his or her continued presence in the U.S. is justified on the basis of “humanitarian grounds, to ensure family unity, or is otherwise in the public interest.” INA §245(m). Five years after becoming Lawful Permanent Residents, many aliens will be eligible to naturalize and become U.S. citizens. INA §316(a).

Despite difficulties with obtaining certifications and the backlog created by the 10,000 visa annual cap, U nonimmigrant status and the U visa can be important tools for law enforcement agencies interested in detecting, investigating, and prosecuting crimes committed against immigrant victims. By working closely with immigrant clients and law enforcement agencies to explain the U nonimmigrant classification, practitioners can help prevent the exploitation of immigrant populations and ensure that immigrant crime victims receive the help they deserve.
A Personal Injury Lawyer’s Guide to an IRS Audit-Proof Practice

It’s that time of year again when attorneys and law firms piece together financial information for our accountants for tax reporting purposes. In doing so ourselves, we are reminded of several of our colleagues who have run the unfortunate gauntlet of audit this year, particularly in the personal injury arena. There seems to be some common confusion on what reporting is required with respect to 1099s and the general taxability of personal injury settlements as a whole. Perhaps even more important to a personal injury lawyer’s individual tax situation, there is often confusion as to what documentation a lawyer must maintain to provide proof that 1099 income received on behalf of a personal injury client does not constitute income to the lawyer. Additionally, in the unfortunate event that a personal injury practice is involved in an audit, it is also critical to recognize the ethical considerations that come into play.

With respect to the black letter law regarding the taxability of personal injury settlements, the law is well-settled. Pursuant to IRC § 104(a)(2), any damages received (other than punitive damages), whether by suit or settlement, which damages are awarded on account of personal physical injuries or physical sickness are excluded from gross income. The courts have additionally held on a consistent basis that compensatory damages (lost wages, medical expenses, pain and suffering, loss of consortium damages to spouse) are also excludable under this section given that they are deemed “on account of physical injury.” The issue becomes more difficult where the awards in a case are based on “emotional distress” or where punitive damages are involved. Awards for emotional distress generally are not found to derive on account of a physical injury and thus are often includable in income. Punitive damages remain includable in income unless a particular taxpayer meets the limited exception allowing exclusion of such damages under IRC § 104(c) for wrongful death in a state where the state statute itself indicates that only punitive damages are available to compensate a plaintiff.

In our experience, audit concerns arise when settlement proceeds are issued with a corresponding 1099 to the attorney, the plaintiff or both. Frequently, these 1099s will be sent to an attorney for the full value of the settlement. It is incumbent on the attorney to know whether the attorney has a corollary duty to issue his or her client a 1099 and what documentation the attorney must maintain to prove what income reported on the 1099 constitutes client proceeds, expenses and attorney fee. In most cases, a defendant’s insurance company will document the full amount of a recovery payment to the attorney in Box 14 of the Form 1099-MISC. A 1099 reported in this manner initially protects the Service that the payment represents merely the gross proceeds of a settlement and not necessarily the income associated therewith to the lawyer or the client. In a case where damages are excluded from income due to the fact that they are derived solely from a personal injury, the lawyer has no duty to file a 1099 with respect to the payment from the lawyer’s trust account to the plaintiff.

If, however, the settlement contains both exempt personal injury damages and non-exempt damages, the portion of the damages which is not on account of personal injuries or sickness requires the submission by the attorney’s firm of a 1099-MISC reporting said award as income under Box 3 thereof. In some cases, awards includable in income have resulted from emotional distress awards with corollary physical symptoms like insomnia, headaches or stomach disorders or within awards under the Age Discrimination in Employment Act of 1967. Once the issue of whether the attorney has a duty to issue a 1099 to his client has been resolved, the question of whether there is income attribution to the attorney takes center stage.

Often an attorney’s actual income will represent roughly 1/3 of the gross income reported on a 1099 issued to the attorney’s firm by a defendant insurance company or other such payees. This can and does frequently trigger an audit assessment, as the 1099 income will be far in excess of the income actually reported by the attorney’s firm or the individual attorney on his Schedule C. Upon audit, the attorney/firm will need to have certain records to prove the extent that 1099-MISC gross proceeds establish income and, conversely, do not constitute income, such as the payment of expenses on behalf of a client or payments to clients of their portion of a settlement or award.

The burden rests on the taxpayer-attorney to have a complete record of income and expenses associated with each personal injury settlement; that record must ultimately reconcile to the income reported on the attorney’s return. To that end, it is important to maintain the following documents from an internal accounting standpoint in order to efficiently dispense with an otherwise potentially nasty, time-consuming and expensive audit process:

1. Attorneys/firms should maintain a copy of each settlement agreement for the tax file (names
redacted and replaced with client identifiers) in order to prove, on behalf of the firm and on behalf of the client, that none or only a portion of a settlement is taxable. Whenever possible, the settlement agreement should depict that the award is paid on account of personal injury.

2. In the event any part of an award is not on account of personal injury, a 1099-MISC must be sent to the client. On this form, Box 3 must document the taxable portion of the award to the client. A copy of the 1099-MISC should be maintained in the client file and will establish a proper deduction from the attorney’s income when sent.

3. A ledger of expenses associated with the client (expert fees, depositions, medical records, etc.) and copies of the front and back of the corollary checks actually issued to each such provider must be maintained to deduct the expenses paid on a given matter from the attorney’s income.

4. A copy of the front and back of each check issued to a client for the client’s award should be maintained in the tax file to deduct the fees paid to a client from the 1099 income issued to the attorney (with names redacted and replaced with client identifiers).

5. Finally, a copy of the front and back of each check from the attorney’s trust account to the attorney representing fees, setting forth the client identifier in the memorandum area of the check should be maintained.

Upon audit, the taxing authority will require proof of personal injury income and expenses through all of the foregoing documents. By systematically producing the above documents, the attorney/firm can meet the burden of proof as to what is and, more importantly, what is not income to the attorney’s firm as associated with the gross proceeds reported on the attorney’s 1099.

In an audit setting where the Service requests information on a case by case basis, such that a client’s settlement agreement, name or other private information becomes relevant to the audit inquiry, we have been advised by the disciplinary administrator’s office that to provide the information in the absence of a summons issued by the taxing authority could constitute the improper submission of confidential information under Rule 1.6 (Client-Lawyer Relationship; Confidentiality of Information). Once a summons is properly issued, however, we are further advised that no action needs to be taken to contest the summons if the attorney believes the summons properly relates to the audit of the attorney. In that instance, the provision of checks, a settlement agreement or other client information would properly fall under the exception under Rule 1.6 as a lawyer may reveal information under Section 1.6(b) (2) “to comply with requirements of law or orders of any tribunal.”

While keeping these records can be cumbersome, it will make a firm’s ability to compute taxable income a much easier task.

Play Family Feud with judges and lawyers, and learn about changes and ethical considerations in Kansas federal practice based upon Judge J. Thomas Marten’s Rule 1 Task Force.

“The Ethics of Just, Speedy, and Inexpensive Litigation”

1:30 to 4:30 p.m., May 22, 2014
(Reception to follow)

Robert J. Dole U.S. Courthouse
500 State Avenue
Kansas City, Kansas 66101

Contact Tara Eberline for a registration form at: teberline@foulston.com or 913-253-2136

2.0 Hours of Ethics CLE Credit
1.0 Hour of Regular CLE Credit
(KS & MO Pending)
easier exercise at the end of each year. Moreover, in the event of an audit, the firm will not have to seek out old bank statements, deposit statements and all of the cancelled checks associated with a given case to meet the attorney’s burden associated with proving fees and expenses properly deducted from the gross proceeds 1099 issued to the lawyer. Such work can be a hugely labor-intensive task if an audit period is for prior years. To be sure, if records are lost, destroyed or otherwise unavailable (a bank closure), an attorney’s ability to limit income to actual income may become difficult, if not impossible. Taxing authorities can and will assert that an attorney’s income may be as high as each 1099-MISC for which appropriate payments to clients or payments to third parties relating to expenses within a case cannot be proven.

**SUMMARY OF SERVICES**

**Child Custody Evaluations**

Flat rate* $2500 - $3000**

Custody evaluation completed in full to address issues of custody and parenting time, and a formal report to the court. CCEs include between 25 to 35 hours of work. From start to finish Child Custody Evaluations will be completed in eight weeks. Child Custody Evaluations include at least two meetings with the parents, at least four meetings with child(ren) who have reached verbal age, at least one home observation in each parents home, personal and collateral contacts, and a report to the Court. TLP will do out of state cases at an additional cost based on the distance to be traveled. Parents will have the option of a final meeting with the custody evaluator to discuss the recommendations with the parents for a flat rate of $150. The option of mediation will be offered through for a flat rate of $500 flat rate for up to five hours.***

**Limited Custody Evaluations**

Flat rate $1250 - $1500**

Limited Custody Evaluations address specific issues as outlined by court order, and includes between 10-15 hours of work. From start to finish Limited Custody Evaluations will be completed within five weeks. Limited custody evaluations will include at least one meeting with each parent, at least two meetings with the child(ren) who are of verbal age, possible home observation in each home depending on the issue to be addressed, contact with professional collateral contacts, and a report to the Court. Parents will have the option of a final meeting with the custody evaluator to discuss the recommendations with the parents for a flat rate of $150. The option of mediation will be offered for a flat rate of $500 flat rate for up to five hours.***

**Child Interviews**

$200 - $250** per child

Child(ren) will be interviewed two times for 45 minutes each. Each parent will bring the child to the office within two weeks of the order being entered assuming Mother and Father’s cooperation, and potentially sooner.

**Supervised Parenting Time**

$50 to $60 an hr.

Licensed social workers or mental health professionals supervising parenting time for up to 6 hours a week per family. Sliding scale fee is based on parent(s) income.

**Supervised Exchange**

$20 ($10 per parent) per exchange

Child(ren) are dropped off at The Layne Project by parent A and picked up at The Layne Project 15 minutes later by parent B. Arrival and Departures times are documented by The Layne Project staff.

**Changes class**

$65 per child

4 hour class designed to help children learn coping mechanics for living within two homes. The class teaches children how to approach their parent with concerns, upsets and coping with changes. Helps children to realize they are not alone and their feelings are okay.

---

* in excess of 35 hrs of work will be billed out at $85.00 an hr.
** sliding fee scale at the discretion of the court
*** in excess of 5 hours will be billed out at $85.00 an hr.
NEW PROGRAMS OFFERED TO FAMILIES AT JOHNSON COUNTY COURT SERVICES

Parents Forever Program Replaces GRASP

Johnson County Domestic Court Services is pleased to announce our newest program. “Parents Forever” is a required two-hour educational class for parents filing new divorce or paternity actions in Johnson County. This orientation style class is designed to educate parents about the profound effects of separating families on both the children and parents, how to create a business-like parenting relationship, practical strategies for problem solving and decision making, and an introduction into developing a parenting plan. Parents will receive a booklet that includes a list of suggested readings and a list of resources available for families in our community. The class also provides basic information about the litigation process and what to expect if court involvement becomes necessary.

The primary goal of Parents Forever is to provide parents information and strategies for navigating the divorce process with as little negative impact on their children as possible. By providing this educational information early in the case we hope to set the stage for parents to develop a positive co-parenting relationship even though their intimate relationship is dissolving.

Parents Forever replaces the long-standing General Responsibilities as Separating Parents, or GRASP program. GRASP has been an invaluable service to separating families for many years. This ground breaking program was created and nurtured by Carol Roeder-Esser and the Johnson County Mental Health Department. The Johnson County Family Courts supported GRASP and believed in the positive impact of early exposure to effective co-parenting skills for parents in an emotionally volatile time. Johnson County Court Services hopes to build on the wonderful services provided by the GRASP program through Parents Forever.

Local Rule 24 has been modified to require this class instead of GRASP and attorneys should read the new rule. It can be found at: http://courts.jocogov.org/local_civ24.aspx. To attend Parents Forever, a parent must generally have a court order signed by a Johnson County District Court Judge. However, the class is mandatory and parents may attend any time after their case is filed. The cost is $75.00 per parent which is paid to the Court Trustee (at the class location) by cash, credit card or money order prior to attending the class. The Court Trustee cannot, at this time, accept personal checks. Parents Forever is held at 588 East Santa Fe, Suite 4000 in Olathe (about 5 blocks east of the main Courthouse). Classes are on Mondays at 5:15pm and Wednesdays at 8:15am, unless closed for a holiday. Parents are encouraged to allow time to arrive and be checked in prior to start time. No one will be admitted after the class has started. Parents are advised that no children will be allowed in the class so they should make the proper arrangements.

For more information or questions, call Court Services at 913-715-7590. If you are in need of an interpreter please call (913) 715-7519 in advance. Information may also be found on the web at http://courts.jocogov.org/cs_parents_forever.aspx.

“Conciliation” Available as an Alternative to Mediation.

Another change at Domestic Court Services is our new “conciliation” service. Conciliation is another alternative dispute resolution process, similar to mediation, which promotes a positive relationship between parents while working towards an agreed resolution of parenting plan disputes. The process can be thought of as another form of mediation but with the added twist that conciliation is non-confidential. Currently mediation in Kansas is defined and controlled by Supreme Court Rule 901, et seq. Supreme Court Rule 902 defines conciliation as a “proceeding in which a neutral person assists the parties in reconciliation efforts.” This rule also allows the conciliator more leeway to express alternative options or make suggestions. The 10th Judicial District now joins several other judicial districts in Kansas in utilizing conciliation.

The conciliation process, like mediation, begins as an opportunity for parents to make their own decisions in the best interest of their children. If parenting issues remain unresolved, the conciliator will offer information to the judge identifying the issues that remain unresolved as well as suggestions regarding what additional resources might help the parents move beyond their impasse and on to resolution.

In response to burgeoning domestic court dockets and the heavy emotional and financial toll of protracted litigation, the judges of the 10th Judicial District have approved and promoted the implementation of Parents Forever and conciliation as an opportunity to provide earlier, more efficient and more satisfying resolutions of disputed cases. These two new programs also reflect the increasing recognition that courts have an opportunity to render affirmative, constructive assistance to parents and children as they navigate the difficult separation process.

For questions about these programs or any other service or parent education class offered by Court Services call Erin Poolman, Director of Domestic Court Services at (913) 715-7481.
NEW MEMBERS

Ryan R. Cox
Sanders Warren & Russell LLP
9401 Indian Creek Parkway, Ste 1250
Overland Park, KS 66210
(913) 234-6100; Fax: (913) 234-6199
rcox@swrllp.com
Law School: Drake University
Yr. Graduated: 1998

Andrew M. Esselman
Addleman Law Firm, LLC
255 NW Blue Parkway, Suite 200
Lee’s Summit, MO 64063
(816) 994-6200; Fax: (816) 396-6240
andrewe@addlemanlawfirm.com
Law School: UMKC
Yr. Graduated: 2012

Christopher C. Barnds
Copley Roth & Wilson LLC
7500 College Boulevard, Ste 700
Overland Park, KS 66210
(913) 451-9500; Fax: (913) 451-9501
chris@crwlawyers.com
Law School: University of Cincinnati
Yr. Graduated: 2012

Andrew M. Buser
12721 Century
Overland Park, KS 66213
(913) 766-5600
Law School: UMKC
Yr. Graduated: 2012

Chris R. Pace
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4520 Main Street, Ste 400
Kansas City, MO 64111
(816) 471-1301; Fax: (816) 471-1303
chris.pace@ogletreeadeakins.com
Law School: University of Kansas
Yr. Graduated: 1995

Justin M. Dean
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4520 Main Street, Suite 400
Kansas City, MO 64111
(816) 471-1301; Fax: (816) 471-1303
justin.dean@ogletreeadeakins.com
Law School: Univ. of MO/Columbia
Yr. Graduated: 1999

Emily R. Davis
Lathrop & Gage
10851 Mastin, Ste 1000
Overland Park, KS 66213
(913) 451-5127; Fax: (913) 451-0875
edavis@lathropgage.com
Law School: Univ. of Iowa, College of Law
Yr. Graduated: 2012

Lora M. Jennings
Martin, Pringle, Oliver, Wallace & Bauer, L.L.P.
6900 College Boulevard, Ste 700
Overland Park, KS 66211
(913) 491-5500; Fax: (913) 491-3341
lmjennings@martinpringle.com
Law School: Washburn University
Yr. Graduated: 2005

Michael B. Thompson
Church of the Nazarene
17001 Prairie Star Parkway
Lenexa, KS 66220
(913) 577-0612; Fax: (913) 577-0895
mthompson@nazarene.org
Law School: Valparaiso Univ., School of Law
Yr. Graduated: 1995

Rebecca D. Martin
Mc Dowell, Rice, Smith & Buchanan, P.C.
605 W. 47th Street, Suite 350
Kansas City, MO 64112
(816) 753-5400; Fax: (816) 753-9996
rmartin@mcdowellrice.com
Law School: UMKC
Yr. Graduated: 1989

Adam J. Gasper
Mc Dowell, Rice, Smith & Buchanan, P.C.
605 W. 47th Street, Ste 350
Kansas City, MO 64112
(816) 753-5400; Fax: (816) 753-9996
agasper@mcdowellrice.com
Law School: University of Kansas
Yr. Graduated: 2008

Timothy S. Davidson
Adam & McDonald, P.A.
9300 W. 110th Street, Ste 470
Overland Park, KS 66210
(913) 647-0670; Fax: (913) 647-0671
tdavidson@mam-firm.com
Law School: UMKC
Yr. Graduated: 1997

LeAnn E. Harrod
YoungWilliams
500 N. Rogers Road, Suite 100
Olathe, KS 66062
(913) 210-7001; Fax: (913) 210-7002
leann.harrod@dcf.ks.gov
Law School: Washburn University
Yr. Graduated: 2006

Laura J. Montgomery
YoungWilliams
500 N. Rogers Road, Ste 100
Olathe, KS 66062
(913) 210-7001; Fax: (913) 210-7002
lauramontgomery@dcf.ks.gov
Law School: University of Kansas
Yr. Graduated: 2001

NEW MEMBERS (Continued on page 20)

The Right Mediator Does Make a Difference

Vance C. Preman
Kansas City Mediation & Arbitration Service (KCMAS)
816-756-2323
vpremanlaw@aol.com
4330 Belleview, Kansas City, MO 64111
Out of Area Call 800-245-8731
Fax: 816-756-3389
Certified in Missouri and Kansas
NEW MEMBERS (Continued from page 19)

Steven Trebbe
Young Williams
500 N. Rogers Road, Ste 100
Olathe, KS 66062
(913) 210-7014; Fax: (913) 210-7002
steve.trebbe@dcf.ks.gov
Law School: University of Kansas
Yr. Graduated: 1994

Steve N. Gatzoulis
Evans & Mullinix, P.A.
7225 Renner Road, Ste 200
Shawnee, KS 66217
(913) 962-8700; Fax: (913) 962-8701
sgatzoulis@emlawkc.com
Law School: Washburn University
Yr. Graduated: 2005

Sara T. Ballew
Brady & Associates
10901 Lowell Avenue, Ste 280
Overland Park, KS 66210
(913) 696-0925; Fax: (913) 696-0468
sgold@mbradylaw.com
Law School: University of Kansas
Yr. Graduated: 2012

Bradley K. Kavanaugh
Brady & Associates
10901 Lowell Avenue, Ste 280
Overland Park, KS 66210
(913) 696-0925; Fax: (913) 696-0468
bkavanaugh@mbradylaw.com
Law School: UMKC
Yr. Graduated: 1998

Jenny L. Conner
District Attorney’s Office
100 N. Kansas Avenue
P.O. Box 728
Olathe, KS 66051
(913) 715-3148; Fax: (913) 715-3040
jenny.conner@jocogov.org
Law School: University of Kansas
Yr. Graduated: 2013

Kevin J. O’Connor
District Attorney’s Office
100 N. Kansas Avenue
P.O. Box 728
Olathe, KS 66051
(913) 715-3122; Fax: (913) 715-3050
kevin.oconnor@jocogov.org
Law School: University of Kansas
Yr. Graduated: 1992

Alex M. Scott
District Attorney’s Office
100 N. Kansas Avenue
P.O. Box 728
Olathe, KS 66051
(913) 715-3000
alex.scott@jocogov.org
Law School: UMKC
Yr. Graduated: 2012

Ryan W. Walkiewicz
District Attorney’s Office
100 N. Kansas Avenue
P.O. Box 728
Olathe, KS 66051
(913) 715-3008; Fax: (913) 715-3060
ryan.walkiewicz@jocogov.org
Law School: University of Kansas
Yr. Graduated: 2007

Jonathan A. Zodina
District Attorney’s Office
100 N. Kansas Avenue
P.O. Box 728
Olathe, KS 66051
(913) 715-3231
jonathan.zodina@jocogov.org
Law School: Washburn University
Yr. Graduated: 2011

QUALITY PROFESSIONAL SERVICE
FOR ALL YOUR PRINTING NEEDS.
- FREE DELIVERY IN JOHNSON COUNTY -

- Business Cards
- Letterhead
- Envelopes
- Announcements
- Postcards
- Folders

Cornerstone Printing
913-645-3681
cornerstoneprinting.co@gmail.com
www.cornerstoneprintingco.com
ADDRESS CHANGES

Branden A. Bell  
Brown & Ruprecht, P.C.  
911 Main Street, Suite 2300  
Kansas City, MO 64105  
(816) 292-7000; Fax: (816) 292-7050  
bbell@brlawkc.com

Eric R. Blevins  
Norton Hare, L.L.C.  
9200 Indian Creek Parkway, Suite 450  
Overland Park, KS 66210  
(913) 906-9633; Fax: (913) 906-9985  
eric@nortonhare.com

Shari Boppart  
Stewart Title  
6700 College Boulevard, Suite 300  
Overland Park, KS 66211  
(913) 825-5104; Fax: (913) 825-5105  
sboppart@stewart.com

Erin Davis  
JurySync LLC  
25255 W. 102nd Terrace, Suite 200  
Olathe, KS 66061  
(913) 829-8838; Fax: (913) 829-8858  
edavis@jurysync.com

Susan Saper Galamba  
11903 W. 119th Street  
Overland Park, KS 66213  
(913) 239-9688; Fax: (913) 239-9788  
susan@susansapergalamba.com

James D. Griffin  
Scharnhorst Ast & Kennard  
1100 Walnut, Suite 1950  
Kansas City, MO 64106  
(816) 268-9420; Fax: (816) 268-9409

Charles E. Hammond  
Johnston, Ballweg & Modrinc, L.C.  
9393 W. 110th Street, Suite 450  
Overland Park, KS 66210  
(913) 491-6900; Fax: (913) 491-4930  
hammlaw@sbcglobal.net

Sandy A. Norris  
The Norris Law Firm, LLC  
1310 Carondelet, Suite 303  
Kansas City, MO 64114  
(816) 942-1900; Fax: (816) 942-2671  
sandyanorris@gmail.com

Derrick A. Pearce  
The Pearce Law Firm, LLC  
917 SW Redback Circle  
Lee’s Summit, MO 64081  
(816) 807-1164  
19angler68@gmail.com

Erica N. Perkin  
4745 W. 136th Street, Suite 110  
Leawood, KS 66224  
(913) 225-0323; Fax: (913) 402-6001  
ericaplaw@gmail.com

Tucker L. Poling  
Sanders Warren & Russell LLP  
9401 Indian Creek Parkway, Ste 1250  
Overland Park, KS 66210  
(913) 234-6100; Fax: (913) 234-6199  
t.poling@swrllp.com

Genniveve D. Ramsey  
Polsinelli PC  
6201 College Boulevard, Suite 500  
Overland Park, KS 66211  
(913) 451-8788; Fax: (913) 451-6205  
gracey@polsinelli.com

Talia B. Ravis  
Law Office of Talia Ravis, PA  
7930 Santa Fe Drive, Suite 100  
Overland Park, KS 66204  
(913) 428-8955; Fax: (800) 694-3016  
travis@erisakc.com

Shannon Sorensen  
Waits, Brownlee, Berger & DeWoskin  
401 W. 89th Street  
Kansas City, MO 64114  
(816) 363-5466; Fax: (816) 333-1205  
s.sorensen@wbbdlaw.com

Kellie K. Warren  
Property Law Firm LLC  
4630 W. 137th Street, Suite 100  
Leawood, KS 66224  
(913) 663-1300; Fax: (913) 663-3834

Christopher K. Wilson  
Pershing Yoakley & Associates, PC  
9900 W. 109th Street, Suite 130  
Overland Park, KS 66210  
(913) 232-5145; Fax: (865) 673-0173  
cwilson@pyapc.com

MEDIATION

Experience the Difference  
(Compare Rates and Call)

HENRY COX  
MEDIATOR  
ARBITRATOR

Amazing things happen with the right settlement approach

Over 1,000 Neutral Cases Over 20 yrs.  
Commercial Law, Personal Injury, Employment,  
Civil Rights, SEC, Construction, Estates, IP Law,  
Professional Malpractice, Abuse, Debtor/Creditor,  
Business Dissolution, Land Use

Trial Lawyer over 30 years  
Mediator Trainer 20 years  “Best of the Bar” 2002 - 2012  
“Super Lawyers” Kansas/Missouri

(913) 707-0331 or (816) 268-1022  
HENRY@HENRYCOX.COM  
WWW.HENRYCOX.COM  
KANSAS AND MISSOURI

DONALD ALBRACHT  
ASIT CONSULTING LLC  
SECURITY INVESTIGATIONS TRAINING

(913) 201-7084  
DJALBRACHT@GMAIL.COM

RETIRED FBI SPECIAL AGENT  
LICENSED PRIVATE INVESTIGATOR  
LICENSED FEDERAL FIREARMS DEALER  
CERTIFIED TACTICAL FIREARMS INSTRUCTOR  
CONCEALED CARRY INSTRUCTOR
Mr. Long brings more than 25 years of experience and represents clients in all aspects of real estate, lending, general corporate and business transactional law, including acquisitions, ownership structuring, entity formation and the sale, leasing, development, financing, construction and management of projects. Complimenting his real estate practice, he has extensive experience in lending and finance—including new markets, historic and other tax credit and public incentive financing.

Mr. Long earned his J.D. from Hamline University and his B.S. from Kansas State University. He is admitted to the Missouri and Kansas Bars. He is a member of the Kansas City Metropolitan Bar Association, the Kansas Bar Association, The Missouri Bar and the American Bar Association.

The Honorable Teresa J. James has been appointed as the newest United States Magistrate Judge for the District of Kansas in Kansas City, Kansas, effective January 16, 2014. Judge James is a Kansas native who graduated with a Bachelor of Science in Business from the University of Kansas in 1981 and a Juris Doctor from the University of Kansas School of Law in 1984. Following graduation, Judge James practiced law in the Wichita legal community with the Adams Jones Law Firm and Wallace, Saunders, Austin, Brown & Enochs until she joined the Overland Park branch of Martin, Pringle, Oliver, Wallace & Bauer, LLP in 2003.

Mr. Long’s practice areas include: Banking & Financial Services, Corporate & Business Transactions, and Real Estate Law.

Judge James served as Secretary (2002) and Vice-President (2003) of the Wichita Bar Association. Judge James succeeds the Honorable David J. Waxse, who has retired but still serves the court on recall status. A swearing in ceremony is scheduled to take place on February 21, 2014, at the Robert J. Dole U.S. Courthouse.

Property Law Firm, LLC is proud to welcome Kellie K. Warren to the firm. Formerly with Shook Hardy, Kellie will join Michelle Burns and Doug Patterson in handling business litigation and transactions, property litigation and transactions, commercial foreclosures, condemnation, redevelopment and land use matters throughout the Greater Kansas City Area.

Steven C. Willman, Darren B. Neil, Frederick K. Starrett, and Joel I. Krieger have joined the law firm of Douthit Frets Rouse Gentile & Rhodes, LLC.

Mr. Willman has been practicing law for over 30 years primarily in the areas of business transactions, energy and utilities law and trusts and estates, focusing a significant portion of his practice in renewable energy transactions.

Mr. Neil brings over 13 years of experience to the firm in representing real estate owners, developers, and tenants in various commercial real estate transactions, including purchases, sales, commercial leases and renewable energy transactions.

Mr. Starrett has tried more than 50 jury trials in his 37 plus years of litigation throughout federal and state trial and appellate courts, primarily in the areas of copyright infringement, residential, commercial, and heavy construction, injuries and professional and product liability.

Mr. Krieger, who is also a Certified Public Accountant, brings 30 plus years of experience to the firm in the areas of professional liability litigation, commercial matters, business formations, and handling of tax controversy matters.

New Law Library URL & Website

The Law Library’s new URL is: http://www.jocogov.org/dept/law-library. Johnson County Government has reorganized its website with a new common design and navigation style that will work as well on your smartphones and tablets as it does on your computers.

WestlawNext Training April 22nd & 23rd

“Research Fundamentals on WestlawNext” will be presented at 10:00 am and again at 2:00 pm on both Tuesday, April 22, 2014 and Wednesday, April 23, 2014 in courthouse. Westlaw representative Laurie Minchew will be the instructor.

Bradley Child Support Calculator 2014

The 2014 version of the Bradley child support calculator is now available at the law library for printing or downloading.
Office Space

Leawood Office Space – Offices suites available in new office building located in the 135th Street and Roe, Leawood area. All attorneys occupy the suite now with 4 offices available. Full service or al a carte. Thirty minutes from Olathe Courthouse or Jackson County KC. Easy access to I-435. Property Law Firm (Michelle Burns and Doug Patterson) and others you know call this home. Wi-Fi, galley, parking, phone/voicemail/DD, etc. included. E-libraries also available. Contact Doug Patterson (913) 395-5105 or Doug@Propertylawfirm.com.

Office Space Available – Mission Forest Office Bldg., 5505 Foxridge Drive, Mission, KS. Great highway access to entire metro area. Several suite options from 123sf - $200 to 187sf - $375. Drive-up parking and exterior Monument signage available. Contact Curry Real Estate Services, Jim Hogan at (816) 414-5200.

Leawood Law Office – Large, bright, freshly repainted, first floor, corner office with large windows available immediately. Conveniently located near 79th and State Line Road. Ample attorney and client parking. Use of reception area, kitchen, conference room and receptionist included. Other services available. Contact Bill Mayer at (913) 341-9595.

Westwood Office Space – Two-room suite or single offices. Straight lease or full executive suite services including phone answering, voice mail, receptionist, secretarial services, conference room, copier, kitchen, free parking and paid utilities. Several attorneys in the building. Centrally and conveniently located just west of the Plaza at 4800 Rainbow, Westwood, KS. Contact Jeff Jones (913) 362-8990.

Historic downtown Olathe office space available – Reception, telephone, cable, copier and internet services provided in well established office. Call Brian Paden or Lewanna Bell-Lloyd at (913) 782-5544 for more information.

Office space near Johnson County Courthouse – Large, totally furnished, 240 sq. ft. office available. Access to equipment, reception, kitchen and conference room. $500 per month. If interested, contact Clark Davis at (913) 764-6879.

Law offices located in downtown Overland Park – Remodeled historic building, free parking, reception area, kitchen, conference room, fax, scanner, copier, phones, voice mail, high speed internet access. The offices are in walking distance of coffee shops, restaurants and retail stores. Fourteen highly respected attorneys in an office-sharing/networking arrangement. Contact Jim Shetlar at (913) 648-3220.

Office space available – Have your own private window office and share reception and conference space with established attorney. Fax, internet and phone system available. Very reasonable – tailored to your needs. Well located in northern Johnson County for easy access to Johnson, Wyandotte and Jackson Counties. (913) 706-9336.

Professional Opportunity

DO YOU FEEL UNDERVALUED BY YOUR END OF YEAR COMPENSATION? Now that we have your attention, would you like to forget the firm politics, stop wasting time in useless committee meetings and focus on practicing law? Do you have your own stable client base which is portable? Do you have an entrepreneurial spirit and ready to try something new? Tired of paying for large firm overhead and want to try a smaller firm format? Or perhaps you are a solo practitioner and you are so busy that you no longer want to do it all yourself. Do you have an established clientele who are resistant to billing rate increases required to keep up with national firm norms or competition in other cities? Looking for a way to maintain a first-class law practice with a reputable law firm. If so, please consider joining our small south Kansas City law firm with easy access to I-435, I-69 and I-35. This long-standing firm may be the right place for you. We are looking for hard working lawyers who can bolster our multi-specialty practice in Kansas and Missouri. Open to plaintiff and defense business, with proven track record. Don’t pay a head hunter or recruiter. Send a resume and letter cover to the Johnson County Bar, c/o The Bar Letter, 130 N. Cherry, Ste. 202, Olathe, KS 66061. Replies will be kept confidential.

Attorney Services

Need that occasional conference room? – Established attorney in northern Johnson County will share conference room on occasional or regular basis. (913) 706-9336.

HEAVY CASELOAD? OVERWORKED? NEED TOP-NOTCH HELP MEETING A DEADLINE? Have an EXPERIENCED ATTORNEY (20 yrs.), with superior writing skills, successful track record, and excellent work history (small and large firm); assist you on a contract basis. Available to prepare MOTIONS to DISMISS, MOTIONS for SUMMARY JUDGMENT, other motions, trial court and appellate BRIEFS, PLEADINGS, memoranda, other documents; also available to assist with RESEARCH, DISCOVERY requests and responses. Quality work; flexible. Experience includes litigation, wills/trusts, probate, debt collection, bankruptcy, contracts, domestic. Paula McMullen (913) 940-4521, wordsmith25@juno.com.

APPEALS AND DISPOSITIVE MOTIONS - No time to prepare a critical appeal brief or dispositive motion? Let an attorney and writer with 15 years experience and a proven track record of success prepare it for you, likely at considerably less than you would charge your client. Contact James L. (“Jay”) MowBray at (816) 805-1376 or see lawofficeofjaymowbray.com for a list of successful appeals.

Qualified Domestic Relations Orders – Experienced attorney will assist you on a flat fee basis with preparation and qualification of QDROs. Contact Frank Taylor at (913) 782-2350.
Supporting Legal Professionals. ADVANCING CAREERS.

Visit the JCBA Career Center, where we’re bringing Johnson County’s legal professionals and top employers together. Recruit top talent, find legal jobs and get connected.

Visit the JCBA Career Center today! www.jocobar.org/jobs