A Valuable New Development Resource: Kansas Enacts the Community Improvement District District Act

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The American Bar Association Members/State Street Collective Trust (the "Collective Trust") has filed a registration statement (including the prospectus therein [the "Prospectus"]) with the Securities and Exchange Commission for the offering of Units representing pro rata beneficial interests in the collective investment funds established under the Collective Trust. The Collective Trust is a retirement program sponsored by the ABA Retirement Funds in which lawyers and law firms who are members or associates of the American Bar Association, most state and local bar associations and their employees and employees of certain organizations related to the practice of law are eligible to participate. Copies of the Prospectus may be obtained by calling (877) 947-2272, by visiting the Web site of the American Bar Association Retirement Funds Program at www.abaretirement.com or by writing to ABA Retirement Funds, P.O. Box 5142, Boston, MA 02206-5142. This communication shall not constitute an offer to sell or the solicitation of an offer to buy, or a request of the recipient to indicate an interest in, Units of the Collective Trust, and is not a recommendation with respect to any of the collective investment funds established under the Collective Trust. Nor shall there be any sale of the Units of the Collective Trust in any state or other jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such state or other jurisdiction. The Program is available through the Kansas Bar Association as a member benefit. However, this does not constitute an offer to purchase, and is in no way a recommendation with respect to, any security that is available through the Program.
A Valuable New Development Resource: Kansas Enacts the Community Improvement District Act
By Matthew S. Gough

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Notice of Proposed Change to KBA Bylaws

The Board of Governors is considering making the following change to the KBA Bylaws:

ARTICLE VIII — OFFICERS

Vice President. The Vice President shall automatically succeed to the office of President-elect at the close of the next Annual Meeting. The Vice President shall be responsible for such duties as are individually assigned by the President with the approval of the Board of Governors.

Members are encouraged to comment on the proposed change by e-mailing Executive Director Jeffrey Alderman at jalderman@ksbar.org no later than Wednesday, February 17, 2010.
Being a KBA member has its benefits.

There's someone you need to meet.

Come meet your group's newest member, the GEICO Gecko. KBA members could get an additional discount on car insurance.

Get a free quote today.

Don’t forget we offer savings on home, renter’s, umbrella and all the things that move you!
... serving the citizens of Kansas and the legal profession through funding charitable and educational projects that foster the welfare, honor, and integrity of the legal system by improving its accessibility, equality, and uniformity, and by enhancing public opinion of the role of lawyers in our society.

Kansas Law Center
1200 SW Harrison St.
Topeka, Kansas 66612-1806
Telephone: (785) 234-5696
Fax: (785) 234-3813
Web site: www.ksbar.org

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Jeffrey J. Alderman
Topeka

MANAGER, PUBLIC SERVICES
Meg Wickham
Topeka

JUNE 2010

Disclosed: A Possible Lifesaving Secret
By Matthew Keenan

Cover photos by Ryan Purcell and Susan McKaskle, KBA staff. Cover design by Ryan Purcell.
Barber Emerson, L.C. is counsel for the owner, Oread Inn, L.C.

Kansas Bar Association
ANNUAL MEETING & JOINT JUDICIAL CONFERENCE
2010

Hyatt Regency Hotel, Wichita, KS
June 9 – 11, 2010

The Journal of the Kansas Bar Association | February 2010 | 5
Members of the National Guard and Reserves have been a critical part of the country’s military readiness. This has especially been true during the extended wars in Afghanistan and Iraq. Most of you probably know at least one person who has taken time away from his or her usual occupation and been deployed overseas. Many KBA members have served their country, both during these wars and in past years. This month’s column is to recognize the contributions of our soldiers and to ask for your help with their efforts.

In the May 2009 edition of the KBA Journal, we listed members who have recently served and thanked them for their sacrifices. Indeed, over the years, the KBA has often recognized the important work done by our citizen soldiers. In 2002, the Association gave the 190th Air Refueling Wing of the Kansas Air National Guard the prestigious Phil Lewis Medal of Distinction. This award was in recognition of the unit’s critical work keeping the military’s airplanes refueled in order to perform their missions. In 2005, the Kansas Army and Air National Guard received the Phil Lewis award in recognition of providing in-flight fueling; radar surveillance and control; and weather medical, engineer, security, and other services to support U.S. military operations around the globe.

In the November/December 2005 Journal, Matt Keenan, wrote a moving article about Vince Gunter, a KBA member who was practicing law in Kansas City before being called up. Matt’s tribute details how Vince, who was a JAG officer working in Iraq, survived a helicopter crash in which two of his colleagues died. Vince received a Bronze Star for his work in Iraq.

In the May 2009 edition, Maj. Kristafer Ailslieger, a lawyer in the Kansas Attorney General’s Office, detailed his involvement in establishing the rule of law in the Kirkuk province of Iraq. This interesting article explains the process of rebuilding and maintaining a justice system and the progress that has been made over the years. His account demonstrates the extensive work required to bring justice to Iraq.

I suspect that we did not name all of the service members in our May article. If you should have been listed, please pardon our oversight. And, of course, there are many citizen soldiers who are not lawyers, rather they are employed throughout Kansas in a number of different occupations. We truly value the work that all have done in support of our country. As civilian KBA members, we can aid these veterans.

This fall, my friend and KBA member Dave White of the Foland Wickens law firm called and asked if I would be interested in attending “Boss Lift” sponsored by ESGR (Employer Support of the Guard and Reserve). Dave retired from the Army Reserves in 1999 as a lieutenant colonel after 27 years of service. Now he serves his country as a member of ESGR. This organization was formed in 1972 by the Department of Defense to help gain and maintain the support of those who employ the soldiers. Dave explained that the trip was to demonstrate the training the soldiers receive and to educate us about the National Guard and Reserves. I thought this would be valuable information. When Dave mentioned that the trip involved a Blackhawk helicopter flight to Fort Riley, the deal was sealed.

A small group of employers assembled at the Johnson County Executive Airport for the one hour helicopter flight to Fort Riley. Once there we learned about the important work of the reservists and National Guard members. We saw the careful refurbishing of the trucks, tanks, and other war implements. We witnessed the immense amount of work that is required to send these and other supplies halfway across the world. We also had an opportunity to spend time at the shooting range, driving a military humvee simulator, and visiting the medical training facility. I was humbled to learn that I had no, absolutely no, skill in firing weapons or avoiding suicide bombers trying to attack my convoy. Like the others in attendance, I was extremely impressed with the sophistication of the training and the professional nature of the operation.

Tim O’Brien may be reached by e-mail at tobrien@ksbar.org, by phone at (913) 551-5760, or post a note on our Facebook page at www.facebook.com/ksbar.
In addition to the interesting experiences, we learned about the sacrifices made by those who want to help protect our way of life. These sacrifices include being away from families, being thrown into a wartime situation, and even possible death. But sometimes, being deployed also means having concerns about civilian employment and other details about taking time off. That is where KBA members can help.

The first way to help is to support the work of those who make up the Reserves and National Guard. The KBA signed ESGR’s pledge to support our soldiers by respecting the laws and honoring those who serve. I perused the list of those who have signed the pledge on ESGR’s Web site, www.esgr.org, and found a few, but not many, Kansas lawyers and law firms. Please sign the pledge to demonstrate your support of our citizen soldiers.

ESGR also has a volunteer ombudsman program to increase awareness and understanding of the Uniformed Services Employment and Reemployment Rights Act (USERRA). USERRA is designed to minimize any disadvantages that arise when a service member is required to leave civilian employment. The statute requires that employers rehire returning veterans to their former positions, with no loss of salary, status, or seniority and protects veterans from discrimination based on their service. The Kansas ESGR leadership would like Kansas lawyers to become ESGR ombudsmen for those limited situations where there is a potential problem.

These cases often involve simple misunderstandings that are easily resolved by a third party working with the parties. There are resources available to help educate the ombudsmen in trying to mediate the dispute. Cases are usually resolved within a couple of weeks. This program is a great opportunity for lawyers, especially young lawyers, to provide real dispute resolution in a very quick and efficient method while helping our country’s efforts. In 2008, there were 19 cases assigned in Kansas and 15 of them were successfully mediated. Thus, as you can see, the likelihood that you would be assigned more than one or two of these cases is very low.

At the KBA, we are grateful for the efforts of those who have served their country by being in the military, Reserves or National Guard. We invite you, as Kansas lawyers and employers, to assist those who make this sacrifice. Please let me or Jeffrey Alderman, jalderman@ksbar.org, know if you would be available to serve as an ombudsman.

Kansas Lawyers Serve Their Country, State, and Profession

As KBA President O’Brien notes in his above article, the list of attorney-military persons, who have served their country after the events of Sept. 11 in the May 2009 issue of the Journal, was not all inclusive. Below are some who were not on that list. If you or someone you know should be but has not been recognized, please e-mail the information to Susan McKaskle, communications director, at smckaskle@ksbar.org.

Col. Victor J. Braeden
Kansas Army National Guard
Kansas Attorney General’s Office
Afghanistan

Col. Scott Dold
Kansas National Guard, Judge Advocate and Senior Legal Advisor to the Kansas Adjuntant General
Topeka

Capt. Vince Gunter
U.S. Army Reserves
Rasmussen, Willis Dickey & Moore LLC
Kansas City, Mo.

Capt. Faith A.J. Maughan
JAG Corps, U.S. Army Reserves
Maughan & Maughan L.C.
Wichita

36th Judge Advocate General U.S. Army
Dean, Washburn University School of Law
Topeka

Ret. Capt. Ray Simmons
Kansas Army National Guard
Ayesh Law Offices
Wichita

Robert K. Weary Award

The Board of Trustees of the Kansas Bar Foundation established the Robert K. Weary Award in 2000 to recognize lawyers or law firms for their exemplary service and commitment to the goals of the Kansas Bar Foundation.

Despite his objection, Bob Weary was selected as the initial recipient of the award in recognition of his decades of service to his community, the Kansas Bar Foundation, and the legal profession in Kansas. Sadly, Mr. Weary passed away in early 2001.

In 2009, this prestigious award was presented to Constance “Connie” Ackerberg. She was honored for her dedication to the Kansas Bar Foundation. The Foundation would not be where it is without her trailblazing efforts.

Nominations for the Robert K. Weary Award should be submitted to Jeffrey Alderman, KBF Executive Director, by e-mail at jalderman@ksbar.org or to 1200 SW Harrison St., Topeka, KS 66612-1806, by Friday, March 26, 2010.
Your kids will not remember if

Almost every parent/lawyer I talked to

8

waters of work life balance have told me:

lawyer and to still have a personal life.

additional tools to accomplish what you need to be a valuable

a valuable asset to your employer, do not be afraid to ask for

projects. After you have worked hard and proven yourself as

your ability to remotely connect to work’s e-mail accounts and

tied to performing research in a library! Make the most of

the pendulum is swinging back and forth.

a bad lawyer or a bad son/daughter/friend/mom just because

As a young lawyer, you must not tell yourself you are being

attention and times that your personal life needs your time.

times that work will simply command that you give it more

mands from career and family swing back and forth. There are

stantly trying to keep everything balanced and 50/50, de

pendulum. Rather than envision a scale where you are con

be at the top of your field and succeed if you make this choice.

As a relatively new mother and a very new partner in a law

firm, I must respectfully disagree. It is highly likely that I will

never be CEO of General Electric. In fact, rest assured I have

no plans of leaving the law to pursue such endeavors. But

does the very fact that I made the choice to become a mother

preclude me from succeeding as an attorney? Am I now forced

to make the decision of being a good mom OR a good lawyer?

Women attorneys have been demanding more flexibility

and balance in their careers for decades. What will surprise

most people of Jack Welch’s mind-set is that young male attor-

neys are also looking for balance. So what used to be a “wom-

an’s” issue is now an issue that covers the entire profession. In

today’s world, lawyers are expected to coach their children’s

sports teams, feed their families healthy meals made with nu-

tritious organic produce, bill 1,800 hours or more each year,

and generate new clients all while maintaining healthy mar-

riages, friendships, and families. No wonder young lawyers

are sleep deprived.

The reality is that so much has changed in the past few gen-

erations that the practice of law only loosely resembles what

the career looked like 50 years ago. Between advances in tech-

nology and changes in clientele, there is no reason for an at-

orney to commit to EITHER being with their family OR

being on the job.

A wise person recently described the work-life balance as a

pendulum. Rather than envision a scale where you are con-

stantly trying to keep everything balanced and 50/50, de-

mands from career and family swing back and forth. There are

times that work will simply command that you give it more

attention and times that your personal life needs your time.

As a young lawyer, you must not tell yourself you are being

a bad lawyer or a bad son/daughter/friend/mom just because

the pendulum is swinging back and forth.

Instead, take advantage of the fact that you are no longer

tied to performing research in a library! Make the most of

your ability to remotely connect to work’s e-mail accounts and

projects. After you have worked hard and proven yourself as

a valuable asset to your employer, do not be afraid to ask for

additional tools to accomplish what you need to be a valuable

lawyer and to still have a personal life.

Other advice from lawyers who have navigated the murky

waters of work life balance have told me:

• Learning to say “no.” Your kids will not remember if

you are the head coach of their soccer team or the assis-
tant coach. What your kids will remember is whether

you were at the games.

• Recognizing your limits. Almost every lawyer I polled

had either hired a housekeeper or a lawn mowing service.

While lawyers’ paychecks vary greatly, they all agreed it

was an expense well worth the investment because it

meant that time at home was quality time and not just

another “to-do” list.

• Support networks. One attorney suggested that the key

to both being a parent and being a lawyer was having a

support network. This attorney has a long list of people
to call when help is needed with the kids. (It takes a vil-
geage!) Just as important is to also have a long list of
coworkers and other attorneys in your office to call for
back up when a file blows up.

• Telecommuting. Most of us in Generation “Y” don’t

know what it’s like to work without remote access. Keep

it that way. Go home at a reasonable hour and then com-
plete that last project after you had dinner with

your family or tended to a social obligation with an old
friend.

• Open communication. If you can forecast that the next

week is going to be insane at work, then make sure every-

one knows that from your kids to your day care provider
to your spouse. If your mother was recently diagnosed
with cancer, TELL your co-workers and bosses (to per-
haps help explain your erratic work hours).

• Family first. Almost every parent/lawyer I talked to

admitted that they let a couple of career opportunities/
clients pass them by. They never regretted these deci-
dions because they would have had to sacrifice family
time instead. In fact, several polled attorneys said that
putting their family first actually helped them be a better
lawyer.

The reality is that the law is not a one size fits all profession.
Lawyers bring different skill sets to the table and different per-
sonalities. Recognizing where your priorities are and where
they should be will help you accomplish what you desire in
your professional and in your personal life.

Jennifer Hill may be reached at (316) 263-5851 or by e-mail
at jhill@mtsqh.com
The recent devastating events in Haiti give one cause to reflect. The difficult economic times in our country pale in comparison to the devastation shown on the nightly news following the recent earthquake in Haiti. Conservative estimates indicate there are more than three million people in need of immediate help. The numbers behind the outpouring of earthquake assistance are huge, yet despite those large numbers, they are overwhelmed by the statistics indicating the scope of the disaster and the number of victims who were in deep poverty even before this tragedy.

In reading estimates of numbers there are vast disparities. The Red Cross estimates 45,000-50,000 people have died and the Pan American Health Organization puts that number between 50,000 and 100,000. Reports indicate that more than 17,000 corpses have been collected for disposal or placed in mass graves and there are more than 3 million people in need of help. Fifty percent of the buildings have been damaged or destroyed and more than eight hospitals have been closed because of this disaster.

The outpouring of aid has been tremendous. The United Nations Emergency appeal is at 500 and 50 million. The United States has pledged the aid of $100 million. Total government aid pledged around the world is at four hundred million and more than 20 governments have already sent aid. The United Nations World Food Program hopes to feed more than a million people within 15 days and more than two million people within the first month. Distribution of basic services and even clean water is hampering all efforts.

By comparison, our troubles at home seem small. The economic woes and the state budget issues are significant but do not immediately impact life. I point this out without meaning to minimize the current financial dilemma of our state. It does however put our local troubles in perspective. We do need to balance the state budget. This may add to our tax burden but the services we have come to depend on are at stake. I am optimistic that our leaders will find a solution.

I have complained a lot about our weather since Christmas day. The beauty of a white Christmas is quickly overcome by the sweat and toil behind a snow shovel, the slips and falls, and the grit and grim of a slow melt. My complaints seem so foolish in light of the months and years of hardship and inconvenience that will be experienced by the Haitian people.

It is disturbing that some have used the tragedy as a platform for opportunism. Charges that the failure to reach an accord on climate at the Copenhagen Climate Summit caused the earthquake or that a pact with the devil was the source should be rejected without consideration of the truth of the assertions. The timing of the remarks and the opportunism of using tragedy to get a message out should be shunned.

As overwhelmed as the statistics of the tragedy are, it is equally overwhelming to note the global response and particularly the generosity of the American people. The money raised and the sacrifice of time and resources, at a time when people have acute personal needs, is a testament to the people of America. We should not be surprised by this. It is a source of reassurance that we have the will and persistence to conquer our own problems as well.

About the Author

John Jurcyk, McAnany, Van Cleave & Phillips P.A., Roeland Park, is a longtime member of the KBF and became a member of the Kansas Bar Association in 1984.

How You Can Help Here at Home

The Kansas Bar Foundation 50 Years of Giving a Hand Up

The Kansas Bar Foundation (KBF) was founded 50 years ago to help meet the needs of those less fortunate, as well as foster a greater understanding of our legal system. We place special emphasis on issues affecting children and families, and also support exceptional educational programs for youth.

Backed by the volunteer efforts of many dedicated members, this charitable arm of the Kansas Bar Association is reaching out to help strengthen our communities. This commitment is making a difference.

We need your help. By becoming a Fellow of the KBF you will be serving your community through grants, scholarships, and education. In addition you will be lifting up the reputation of the legal community.

Members of the legal profession are presently being asked to consider supporting our endeavors by joining us as a KBF “Fellow” with a pledge of at least $1,000 payable over 10 years. That’s only $100 per year and all contributions are tax deductible.

For more information call Meg Wickham, KBA public services manager, at (785)234-5696 or e-mail at mwickham@ksbar.org.

www.ksbar.org

The Journal of the Kansas Bar Association | February 2010 9
The KBA Nominating Committee, chaired by Immediate Past President Thomas Wright, Topeka, met on January 29 to consider nominations for KBA officers. Those nominations were not available at press time, but can be obtained by calling KBA Executive Director Jeffrey Alderman at (785) 234-5696. In addition to being nominated by the Nominating Committee, individuals can submit a petition, signed by 50 KBA members, to run for any KBA officer position. The deadline to return petitions is Friday, March 5, 2010. Petitions can be obtained from Kelsey Hendricks at (785) 234-5696 or via e-mail at khendricks@ksbar.org.

KBA President-elect
KBA Vice President
KBA Secretary-Treasurer
KBA Delegate to ABA House of Delegates

The Kansas Bar Association districts

Board of Governors

There will be four positions on the KBA Board of Governors up for election in 2010. Candidates seeking a position on the Board must file a nominating petition, signed by at least 25 KBA members from that district, by Friday, March 5, 2010. If no one files a petition, the Nominating Committee will reconvene and nominate one or more candidates for any open position(s). KBA districts open for election in 2010 are:

- **District 1:** Incumbent Kip A. Kubin is eligible for re-election. Johnson County.
- **District 2:** Incumbent Rep. Paul T. Davis is eligible for re-election. Atchison, Brown, Doniphan, Douglas, Franklin, Jackson, Jefferson, Leavenworth, Miami, Nemaha, Osage, Pottawatomie, and Wabaunsee counties.
- **District 7:** Incumbent Laura L. Ice is not eligible for re-election. Sedgwick County.
- **District 9:** Incumbent Hon. Kim R. Schroeder is not eligible for re-election. Clark, Comanche, Edwards, Finney, Ford, Grant, Greeley, Hamilton, Haskell, Hodgeman, Kearny, Kiowa, Lane, Meade, Morton, Ness, Pawnee, Rush, Scott, Seward, Stanton, Stevens, and Wichita counties.

For more information

To obtain a petition for the Board of Governors, please contact Kelsey Hendricks at the KBA office at (785) 234-5696 or via e-mail at khendricks@ksbar.org. If you have any questions about the KBA nominating or election process or about serving as an officer or member of the Board of Governors, please contact Thomas E. Wright at (785) 271-3166 or via e-mail at twright21@cox.net or Jeffrey Alderman at (785) 234-5696 or via e-mail at jalderman@ksbar.org.
The KBA Awards Committee is seeking nominations for award recipients for the 2010 KBA Awards. These awards will be presented at the Joint Judicial Conference and KBA Annual Meeting from June 9-11, in Wichita. Below is an explanation of each award, and a nomination form can be found on Page 12. The Awards Committee, chaired by Hon. Michael B. Buser, Topeka, appreciates your help in bringing worthy nominees from throughout the state of Kansas to the committee’s attention! Deadline for nominations is Friday, March 5.

**Distinguished Service Award:** This award recognizes an individual for continuous long-standing service on behalf of the legal profession or the public, rather than the successful accomplishment of a single task or service.
- The recipient must be a lawyer and must have made a significant contribution to the altruistic goals of the legal profession or the public.
- Only one Distinguished Service Award may be given in any one year. However, the award is given only in those years when it is determined that there is a worthy recipient.

**Phil Lewis Medal of Distinction:** The KBA’s Phil Lewis Medal of Distinction is reserved for individuals or organizations in Kansas who have performed outstanding and conspicuous service at the state, national, or international level in administration of justice, science, the arts, government, philosophy, law, or any other field offering relief or enrichment to others.
- The recipient need not be a member of the legal profession or related to it, but the recipient’s service may include responsibility and honor within the legal profession.
- The award is only given in those years when it is determined that there is a worthy recipient.

**Professionalism Award:** This award recognizes an individual who has practiced law for 10 or more years who, by his or her conduct, honesty, integrity, and courtesy, best exemplifies, represents, and encourages other lawyers to follow the highest standards of the legal profession.

**Outstanding Young Lawyer:** This award recognizes the efforts of a KBA Young Lawyers Section member who has rendered meritorious service to the legal profession, the community, or the KBA.

**Outstanding Service Awards:** These awards are given for the purpose of recognizing lawyers and judges for service to the legal profession and/or the KBA and for recognizing nonlawyers for especially meritorious deeds or service that significantly advance the administration of justice or the goals of the legal profession and/or the KBA.
- A total of six Outstanding Service Awards may be given in any one year.
- Recipients may be lawyers, law firms, judges, nonlawyers, groups of individuals, or organizations.
- Outstanding Service Awards may be given for the following:
  - Committee or section work for the KBA substantially exceeding that normally expected of a committee or section member;
  - Work by a public official that significantly advances the goals of the legal profession or the KBA; and/or
  - Service to the legal profession and the KBA over an extended period of time.

**Pro Bono Award:** This award recognizes a lawyer or law firm for the delivery of direct legal services, free of charge, to the poor or, in appropriate instances, to charitable organizations whose primary purpose is to provide other services to the poor. In addition to the Pro Bono Award, the KBA awards a number of Pro Bono Certificates of Appreciation to lawyers who meet the following criteria:
- Lawyers who are not employed full time by an organization that has as its primary purpose the provision of free legal services to the poor;
- Lawyers who, with no expectation of receiving a fee, have provided direct delivery of legal services in civil or criminal matters to a client or client group that does not have the resources to employ compensated counsel;
- Lawyers who have made a voluntary contribution of a significant portion of time to providing legal services to the poor without charge; and/or
- Lawyers whose voluntary contributions have resulted in increased access to legal services on the part of low and moderate income persons.

**Distinguished Government Service Award:** This award recognizes a Kansas lawyer who has demonstrated an extraordinary commitment to government service. The recipient shall be a Kansas lawyer, preferably a member of the KBA, who has demonstrated accomplishments above and beyond those expected from persons engaged in similar government service. The award shall be given only in those years when it is determined that there is a recipient worthy of such award.

**Courageous Attorney Award:** This award recognizes a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession. Examples of recipients of this type of award in other jurisdictions include a small town lawyer who defended a politically unpopular defendant and lost most of his livelihood for the next 20 years, an African-American criminal defense attorney who defended two members of the white supremacist movement, and a small town judge who lost his position because he refused the town council’s request to meet monetary quotas on traffic offenses. This award will be given only in those years when it is determined that there is a worthy recipient.

**Diversity Award:** This award recognizes a law firm; corporation; governmental agency, department, or body; law-related organization; or other organization that has significantly advanced diversity by its conduct, as well as by the development and implementation of diversity policies and strategic plans, which include the following criteria:

(Continued on next page)
A consistent pattern of the recruitment and hiring of diverse attorneys;
- The promotion of diverse attorneys;
- The existence of overall diversity in the workplace;
- Cultivating a friendly climate within a law firm or organization toward diverse attorneys and others;
- Involvement of diverse members in the planning and setting of policy for diversity;
- Commitment to mentoring diverse attorneys, and;
- Consideration and adoption of plans to continue to improve diversity within the law firm or organization, whereas;
- Diversity shall be defined as differences of gender, skin color, religion, human perspective, as well as disablement.

The award will be given only in those years when it is determined there is a worthy recipient.

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**KBA Awards Nomination Form**

**Nominee’s Name**

Please provide a detailed explanation below of why you have nominated this individual for a KBA Award. Attach additional information as needed.

- Phil Lewis Medal of Distinction
- Outstanding Service Award
- Outstanding Young Lawyer Award
- Distinguished Government Service Award
- Distinguished Service Award
- Diversity Award
- Professionalism Award
- Pro Bono Award/Certificates
- Courageous Attorney Award

---

**Nominator’s Name**

**Address**

**Phone**

**E-mail**

Return Nomination Form by Friday, March 5, 2010, to:

KBA Awards Committee
1200 SW Harrison St.
Topeka, KS 66612-1806
The Diversity Corner

Celebrating Black History Month

By Kelly Lynn Anders

Dear Kelly,

I’m a partner at a very small and collegial firm. Although none of the attorneys or staff is a member of a minority group, I would like to do something to celebrate Black History Month. I don’t mean to sound insensitive, but I would like to take a different approach than what is usually shown on television during this month, and I would like to focus on lawyers. I respect the great strides that were made during the Civil Rights era, but I think it might be more enlightening to my colleagues to expose them to something new. I am open to any ideas you may have. Also, this may sound like a silly question, but what’s the proper term – Black History Month or African-American History Month?

History Buff

Dear History Buff,

I think it’s great that you are seeking ways to learn more about African-American lawyers. As a self-described history buff, you know that one needn’t share the same demographics to have a lot in common. African-American legal history is simply legal history that focuses on African-Americans, and it is relevant to everyone. Although any month of the year would be a great time to get started, doing so in February is especially timely.

Several years ago, I created a display in the law library at McGeorge Law School with an emphasis that you might find interesting. Titled “Celebrating African-American Leaders in Law,” the display was divided into three topics. “In the Classroom” highlighted African-Americans who had historically served as law school faculty and deans. “On the Bench” focused on state and federal judges and justices. And “Under the Dome” addressed state and federal lawmakers.

A lot of this information is available online. The American Bar Association’s “Raising the Bar: Pioneers in the Legal Profession” pages are excellent, and they are available at www.abanet.org/publiced/raisingthebar.html. For interesting information about minority judges, you may want to visit the Just the Beginning Foundation’s Web site at www.jtbf.org/. The University of Maryland’s Thurgood Marshall Law Library offers a comprehensive collection of historical resources in its “African-Americans in the Law Collection,” which is available at www.law.umaryland.edu/marshall/specialcollections/aalsc/. These are just a few examples of what’s available, and a visit to your local library may produce other ideas.

Although you probably do not have time to devote to creating a display, you might consider trying something fun, such as a quiz game during a casual lunch in the conference room. The winner could be given a book about a famous African-American lawyer and jurist, such as a biography of Justice Thurgood Marshall.

As for terminology, this is far from a “silly” question. In fact, it is very sensitive and insightful. There has been a lot of discussion in the media about the “proper” term to use to describe African-Americans. Many people use the terms, “Black” and “African-American,” interchangeably. Unfortunately, there are no clear answers. My only suggestion would be to refrain from using anything other than these two, and to gently request guidance from African-American friends to see which term they may individually prefer.

Call for Questions

The Diversity Corner seeks questions about diversity issues for future columns. Names will be withheld by request. Please forward questions to: Kelly Anders, Associate Dean for Student Affairs, Washburn University School of Law, 1700 SW College Avenue, Topeka, KS 66621, or send an e-mail to kelly.anders@washburn.edu.

About the Author

Kelly Lynn Anders, associate dean for Student Affairs at Washburn University School of Law, is the 2009-10 chair of the KBA Diversity Committee and author of “The Organized Lawyer” (Carolina Academic Press, 2009).
Jim Logan had accomplished more in his life by the age of 35 that most do in a lifetime. Born in Quenemo, Kan., in 1929, one of six, he graduated from the University of Kansas (KU) in 1952, then Harvard Law School in 1955. Two years later he was on the KU faculty and became dean at the ripe age of 32, two years later. He served as dean for seven years. In 1968, he ran for the U.S. Senate, lost – (though early exit polling in Quenemo suggested a landslide) and along the way came to know a peanut farmer from Plains, Ga. In 1977, President Carter appointed him to the 10th U.S. Circuit Court of Appeals, and he was the only Kansas attorney on that appellate court until Judge Deannell Reece Tacha was appointed in 1985.

In September 1984, Logan hired three new law clerks. One of them was me.

And quickly I learned that of Logan's many talents, none was more impressive than his penchant for telling stories. Whether the subject was elaborate dreams he had the night, the week, the month previous, life with five siblings, his workout routine that included swimming laps in his indoor pool, or life with Bev, his wife of 57 years, every story shared two components: (1) they were interesting and (2) they were long. Consequently, my clerkship was less about 10th Circuit Precedent and more about another precedent – life. And it’s what he told me within the first month of the job that has stuck with me over the intervening 25 years.

You see, just five years before I worked for him, a federal judge – John Wood from the Western District of Texas – was murdered by one of the defendants appearing before him. The year was 1979. Thereafter, federal marshals stepped up courthouse security. But Logan, you see, wasn’t officed in a federal courthouse, with the elaborate security we know today. Instead, his chambers were in a bank building in Olathe, with no metal detectors or retired rent-a-cops who cleared all the visitors. The totality of Logan’s security was a cheap camera that hung from the ceiling outside the door, combined with a secure door that was routinely opened for anyone who stood outside and pushed a small button. Chuck-E-Cheese pizza is more secure.

But soon after starting, I learned of an additional level of security no visitor would ever appreciate. It happened the day Logan led me into his chambers. It was a large room – an office actually – maybe 300 sq. ft. in all; with a couch, a huge desk, a side table; the walls were covered with framed photographs of important people, like President Carter, other judges, old law clerks. At the end of the office, a good 50 ft. from the entrance, was a thick door with multiple locks. “I want to show you something,” he said. I was prepared to see the Holy Grail. He opened the door slowly; I could see it was a bathroom. Along the back wall was the toilet. Porcelain, with round seat and large tank behind it. It was big, but still, it was just a toilet. And it’s what he said next I will never forget.

“I’ve been told by the federal marshals that a person is most vulnerable when he is sitting on the ‘john.’ This is the most secure bathroom in all of Johnson County. Possibly North America.” Sometimes when the Judge speaks he gets a glass-eyed look to him – like his mind is in a far-away place. But this time he wasn’t recounting another dream. Rather, I was learning one of the inner secrets of the federal judiciary. Forget Palsgraf, Dred Scott, and countless other legal rulings that collect dust in an old library. This was real world, rubber-meets-the-road stuff. I was speechless; it made perfect sense yet remained a closely guarded secret of man’s vulnerability. “Wow,” I said. And then I went back to Shephardizing some Federal Employer’s Liability Act case.

And since that day, I’ve shared the good Judge’s wisdom with many others. Some openly scoff. Others nod, rub their chins, and tell me “that’s random but thanks for sharing.” But never has the notion been fully accredited until Hollywood jumped on the bandwagon.

It happened this fall. The movie “Zombieland” is a four-star blockbuster that foretells a time when zombies inherit the earth. Movie critics hailed the movie as a funny spoof on the unfunny zombie genre. But buried in the middle is a tidbit that gives credence to the Judge’s wisdom. The plot surrounds four survivors who spend their days dodging zombies. One of the lucky ones offers the viewers his tips for survival:

“Rule 2: Beware of Bathrooms: Really not just bathrooms; any good apocalyptic zombie survivor should know better than going into a bathroom, small closet or any other small place to run around before you get eaten.”

So the secret is no more. And the next time nature calls and your only option is an airport bathroom, a McDonald’s with a police officer stationed in the seating area, or that rest stop on mile marker 294 of westbound Interstate 70 – consider yourself forewarned. And then thank Jim Logan.

About the Author

Matthew Keenan has practiced with Shook, Hardy & Bacon since 1985. He may be reached at mkeenan@shb.com.
A friend of mine told me that she would have no clue what to say in a column directed at practicing attorneys but that if she wrote to incoming 1Ls, she would say law school is amazing! I was a little perplexed, given that she and I both complain about it to one another at least bi-weekly. I thought a little harder about her alleged enthusiasm, and then it hit me. She has never given me any indication – express or implied – that she worries about her grades. I’m not saying that she doesn’t study; I have personal knowledge that she puts in plenty of “butt time,” as one attorney told me I would have to do in law school, back when the suggestion seemed innocuous enough. Oh yes, I had replied, nodding and smiling like a very serious child, perhaps like Napoleon smiled when he was a teenage speaking to adults, I don’t expect it to be easy, etc. … But I think that a person’s preoccupation with grades is just a symptom of something else that, if my perception has served me correctly, enters the consciousness of even my highest-ranked peers. (Of course, I know who they are. I know you did, too.) I’m talking about the fear of failure.

When I signed up during my first semester at the University of Kansas School of Law for traffic court — in which 1Ls advocate for and against appellants to the KU Traffic & Parking Department, with 2Ls and 3Ls judging in panels of three – I didn’t plan on having a paradigm-shifting experience. During my turn as prosecutor, I should have won the second case of the day’s docket. I had prepared an immaculate evidence packet. I had highlighted the pertinent streets on the campus maps and the pertinent text in the applicable parking policies. I had taken and printed digital photos of the scene at night to recreate the conditions in which the appellant had committed her parking infraction. I also made the best arguments available for my case, and you’ll just have to take my word for it.

I should have won, and I didn’t. The defense attorney had not even made the dispositive argument; the judges had to drag it out of her by questioning! They told me, after graciously handing me the loss, as you know, counselor, this is a court of equity. In practice you will be able to research the judge’s predispositions beforehand and plan accordingly … how was I supposed to have felt? We all know that moral victories don’t get anybody into law school, and moral victories don’t fit on a one-page resume or among the class rankings.

Maybe any fears of failure we future attorneys experience lie with our personalities. The prototypical future attorney develops as follows: (1) future attorney wins in nearly all areas academic and therefore knows no other experience than “playing” aggressively, doing it instinctively because he or she cannot distinguish it from winning, (2) future attorney loses despite having put forth what is to his or her mind an empirically “winning” effort and consequently begins to doubt his or her own performance, (3) future attorney begins to play not-to-lose, i.e., over-prepares for small issues while skirting the large ones in fear, exhibits the inability to forget about legal work while off the clock, and (4) future attorney accepts that he or she may lose in spite of putting forth a “winning” effort and decisions, which once seemed risky once again become commonplace. Somewhere between steps 3 and 4 the future attorney learns that the arguments themselves – and not the person giving them – carry the most weight in the end.

I once read that in some bygone century people used to think that ideas — or for our purposes, arguments — were physical entities that floated around in the air independent of human minds. In that model of reality, I suppose, ideas themselves called the shots and we humans considered ourselves fortunate if a few good ones flew into our ears and took up residence. That’s not so bad a theory. After all, though we can map what areas of our brain light up when we think certain thoughts, our scientists seem stalled at correlation, leaving unanswered the question of where ideas come from in the first place. And after all, when our professors present us with a fact-pattern, they then ask us, “What arguments can each side make?” As if to say, “Tell me which arguments/ideas/issues are already present in this situation.”

I had begun to learn how to separate my emotional center from the arguments well before I stood and smiled politely and nodded at my peers while they praised my prosecutorial performance from the Traffic Court bench. I had realized the same thing when I finally stopped waiting for the apocryphal “perfect answer” to descend onto my tongue from the heavens and leave my transfigured body twitching on the floor when my Torts professor asked a question of the class. One day I was silent. The next day I began to speak and all of my sentences started with “Well, one could argue that …”

I do not mean to suggest that we future attorneys pick bad clients when we get out into the field. On the contrary, by looking first to the alleged facts and only then to the probability of our personal success, we will guarantee more wins about which to write home to Mom and Dad. I’m just trying to say that it is for the betterment of our psyches that telling a would-be client “No” will not be the only time we are acquainted with loss in this profession.

About the Author

Timothy Olson is probably not as jaded as the first paragraph of his column suggests. He received a degree in Latin American & Iberian Studies from Vanderbilt University before returning to Kansas, the state in which he grew up and in which his girlfriend and parents currently live. He enrolled in law school to serve the Spanish-speaking immigrant community better than he could as an intern at a nonprofit organization in the summer of 2007. Olson now lives in Lawrence with his two roommates.
Members in the News

Changing Positions

Stephen Cott joined the firm of Koehn, Cott & Tahirkhili LLC, Garden City.

Amy C. Edwards has joined Epiq Systems Inc., Kansas City, Kan.

Vincent E. Gunter has joined Rasmussen Willis Dickey & Moore LLC, Kansas City, Mo.

James E. Kelley Jr. has joined Cowell Law Firm, Overland Park.

Lori A. Leu is now with James & Leu LLP, Plano, Texas.

David C. LaPlante has joined the Fidelity National Title Group, Omaha, Neb.

Joseph P. Mastrosimone has joined the Kansas Human Rights Commission, Topeka, as chief legal counsel.

Matthew F. Rigdon has joined Account Recovery Services, Wichita.

Cailin M. Ringelman has joined the Wolf Law Firm P.C., Southlake, Texas.

Edward L. Robinson has joined Joseph & Hollander P.A., Wichita, as an associate.

Karin N. Tolleson has joined Bruce, Bruce & Lehman, Wichita.

Angel R. Zimmerman has become a partner with Valentine & Zimmerman P.A., Topeka

Changing Locations

The Law Office of Timothy L. Dupree P.A. has moved to 825 N. 7th St., Ste. 300B, Kansas City, KS 66101.

Matthew L. Hoppock has moved to 2005 Swift Ave., North Kansas City, MO 64116.

The Law Office of Frank J. Kamas has moved to 330 N. Main St., Wichita, KS 67201.

Victor C. Panus Jr. has started his own firm, Panus Law Firm LLC, 4131 N. Mulberry Dr., Ste. 200, Kansas City, MO 64116.

Miscellaneous

Shaye L. Downing, Topeka, was honored by Kansas Legal Services Corp. for providing pro bono services as part of the corporation's Legal Aid Program.

Edward L. Robinson, Wichita, recently became an active member of the American Arbitration Association's (AAA) roster of qualified arbitrators and also serves as a member of the board of directors of the AAA.

Jeff Kennedy, Wichita, has been selected to serve a four-year term as one of the 10 board members on the board of directors for TAGLaw.

Mira Mdivani, Overland Park, received the 2009 Robert L. Gernon Award, given by the Kansas Continuing Legal Education Commission.

Col. Charles R. Rayl, Cottonwood Falls, was inducted into the Kansas National Guard Hall of Fame.

Editor's note: It is the policy of The Journal of the Kansas Bar Association to include only persons who are members of the Kansas Bar Association in its Members in the News section.

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16 February 2010 | The Journal of the Kansas Bar Association
Lloyd Cecil Bloomer

Lloyd Cecil Bloomer, son of James Darrell Bloomer and Ida May Logsdon Bloomer, was born July 15, 1915, in Osborne. He died at the Osborne County Memorial Hospital on December 11 at the age of 94.

He graduated from Osborne High School in 1933 and attended Washburn University, where he played basketball, and graduated from law school in May 1941.

Bloomer served in World War II as a captain in the U.S. Army’s 80th Infantry. He embarked on the Queen Mary and landed on Firth of Clyde Scotland in July 1944, where he trained for several weeks before crossing the English Channel. In August 1944, he was assigned to Patton’s 3rd Army, landed on Utah Beach as an executive officer for a firing battery of field artillery in the Infantry, which advanced across France into Paris, and then served in the Army of Occupation. He received the Bronze Star Medal and Silver Star Medal for this service. At the end of World War II he returned to Osborne, where he was elected Osborne County attorney and served 12 years.

Bloomer served in various positions in Osborne County, including the Osborne School Board and as city attorney for the cities of Osborne, Downs, and Natoma. In 1964, he and 11 other Osborne businessmen planned and built the Parkview Care Nursing Center. He was an owner and served on the board of directors of the Farmers National Bank for more than 25 years. He was engaged in the practice of law for 64 years and actively practiced law until the time of his death in the law firm of Bloomer, Bloomer & Bloomer with his son, Robert, and daughter-in-law, Shelley.

He is survived by Arlene, his wife of 62 years; his sister, Dorothy Gabrian, of Clearwater, Fla.; his son, Robert, of Osborne; three granddaughters; and six great-grandchildren. He was preceded in death by his parents and his brother, Charles E. Bloomer.

Jo Ann Van Meter

Jo Ann Van Meter, 62, of Topeka, died October 8. She was born March 25, 1947, in Ada to J.E. “Skinney” and Hazel Van Meter. She was a dedicated attorney and former nurse.

She is survived by her daughters, Angela Oppenheim, of Denver, and Stephanie Teasley, of Lenexa, Kan.; her mother, Hazel, of Ada; her sister, Jeri Van Meter, of Minneapolis; her brother, Russ Van Meter, of Ada; and her grandson, Aiden Oppenheim. Van Meter was preceded in death by her brother, David Van Meter; and her father, J.E. Van Meter.
The technology prognosticators began excitedly proclaiming 2010 the “Year of the Tablet” almost before they had finished christening 2009 as “Year of the Netbook.” That bandwagon grew as evidence piled up supporting rumors of a tablet this year from Apple. The competition is expected to be fierce as others vie for the imagined tablet market.

Dell and Google are joining forces with a tablet running Google’s Android software. The device will be a small PC-companion complete with wireless access to support for subscription-based access to print and other media – a hopeful challenger to the Amazon Kindle. In that arena, Barnes & Noble’s Nook is dipping a foot into the tablet world with its configurable control touch screen. If the Computer Electronics Show has any predictive value, a slew of companies are poised to launch their own tablets as well.

The Tablet as Evolution – Not Revolution

The tablet is not new (Moses was an early adopter). Simply put, the idea is to merge a display with the input surface where commands and data are entered. A tablet is supposed to allow input just like pen and paper. The assumption is that it provides a more “natural” interface as we learn to touch and manipulate objects as well as how to hold a pen far earlier than we master keyboards.

More significantly, hardware makers long for an inexpensive way to reconfigure an interface without gearing up a manufacturing line for the plastic, metal, and silicon bits needed to build a keyboard or mouse. They want a means to alter input layouts for devices according to where it will be sold or to meet unique commercial client specifications. Reprogramming software on a tablet interface is considerably cheaper and faster even than new silkscreened lettering on a keyboard.

Computer makers have played with tablets their pen-based interface repeatedly with limited success. Tandy tried out a pen-based version of their Model 100 computer back in 1983. Apple took a swing at early tablet computing in 1993 with the Newton, and my wife still clings to the Hewlett-Packard tablet running Microsoft XP she bought in 2002. Each was an evolution in design but none advanced the concept significantly enough to eat away at the traditional, keyboard-based computing market. That changed in 2007 with Apple’s second try, the iPhone.

Apple Tries Again

Analysts believe the Apple iPhone may be the harbinger for a market segment poised to explode this year. The success of the iPhone and iPod Touch (40 million units sold) is credited to superior tablet design by Apple. The designers threw away the pen and selected a “multi-touch” screen, which can sense fingertips instead of specialized pens. The iPhone even includes sensors allowing software to detect movement of the device for input also.

Apple’s homerun with the iPhone helps the tablet concept along in two key ways. First, some pundits argue it proved pent up consumer demand for a tablet interface. Companies, which believed that niche dead, may now be willing to give it another shot. Second, iPhone sales volume helped generate an economy of scale for many of the components (i.e., touch screens) required for tablet devices.

Entertainment, Entertainment, Entertainment

The success of the iPhone is not a triumph of pen-like or touch interfaces. The keyboard is “natural” as a computer interface to most by now. The iPhone even has an on-screen keyboard for text entry and it competes against other smartphones with keyboards, including the BlackBerry line, Palm Pre, and Motorola Droid. A tablet interface does not seem to win with consumer so much as an interface as it can provide greater screen real estate for media and Internet access.

The broad appeal of the iPhone is its usefulness as the interface to Apple’s media offerings. Users wanted access to the iTunes Store for music and movies anywhere there was a phone signal. That same appeal drove many netbook sales in 2009 as the wireless phone companies realized the appeal of an ultra-portable, always-connected Internet device. Tablet or not, devices that hook consumers into desirable services (music, movies, TV, books, etc.) are going to continue to sell in 2010. Though indifferent about the interface, consumers are united in wanting easy access anywhere to entertainment.

About the Author

Larry N. Zimmerman, Topeka, is a partner at Valentine, Zimmerman & Zimmerman P.A. and an adjunct professor teaching law and technology at Washburn University School of Law. He has spoken on technology issues at national and state seminars and is a member of the Kansas Collection Attorneys Association and the American, Kansas, and Topeka bar associations. He is one of the founding members of the KBA Law Practice Management Section, where he serves as president-elect and legislative liaison.

To join the LPM Section or any other KBA section, you may register online at www.ksbar.org or call (785) 234-5696.

By Christy Molzen, staff attorney, Kansas Judicial Council, Topeka

The Kansas Judicial Council (Council) will introduce a number of bills during the 2010 legislative session. This article will summarize the most significant proposed legislation. Additional information about the proposed legislation and other Council reports can be found at the Council’s Web site: www.kansasjudicialcouncil.org.

The most significant piece of legislation recommended by the Council was drafted by its Civil Code Advisory Committee (CCAC). The CCAC recently completed a two-year review of the Kansas Code of Civil Procedure comparing the Kansas provisions with the corresponding Federal Rules of Civil Procedure, which have recently undergone “restyling” and related revisions. The CCAC recommends that, in most instances, the Kansas provisions be amended to parallel the federal rules. The Kansas Code was originally patterned after the federal rules and maintaining conformity with the federal rules carries the benefit of uniformity of practice in the state and federal courts. In addition, interpretation and analysis of the federal rules are available to assist in construing the corresponding Kansas provisions.

Restyling the Kansas Code will reduce the use of inconsistent terms, minimize the use of inherently ambiguous words, and minimize the use of redundant language. Other amendments include changes in the way time is computed under the Kansas Code. The time computation changes were described in a previous KBA Journal article by Nancy Strouse, “Kansas Judicial Council Report: Proposed Amendment to Time-Computation Methods in K.S.A. 60-206,” 78 J. Kan. Bar Ass’n 20 (Nov./Dec. 2009).

The CCAC also drafted two other bills of interest. The first bill contains an “apology law,” which would make evidence of statements of apology or condolence concerning an event inadmissible to prove liability for the event. The second bill amends K.S.A. 60-2006, which authorizes attorney fees to be taxed as costs in certain actions arising out of the negligent operation of a motor vehicle where property damages of less than $7,500 are sought. The bill increases the cap on the property damage amount from less than $7,500 to less than $15,000.

In the area of family law, the Council will introduce a bill to recodify the domestic relations statutes into a single chapter of the Kansas Statutes. The Council’s Family Law Advisory Committee (CFLAC) studied the various domestic relations statutes, decided on a logical order for the provisions and then, in some cases, broke down long and confusing statutes (such as K.S.A. 60-1610) into their component parts and created new sections. The CFLAC believes this recodification will result in a more “user friendly” and better organized domestic relations code that will benefit the general public as well as legal professionals. The proposed recodification makes no substantive changes; however, the CFLAC’s next project will be to conduct a substantive review of the statutes to bring them in line with current trends and practice in the domestic relations area.

The Council’s Administrative Procedure Advisory Committee recommends a number of amendments to the Rules and Regulations Filing Act, K.S.A. 77-415 et seq. Substantive amendments generally fall into two categories: (1) amendments to improve public access to and notice of the rulemaking process and (2) amendments to give the secretary of state’s office more flexibility in the filing and publication of rules and regulations. Amendments in the first category include a provision allowing agencies to publish nonbinding “guidance documents” to provide helpful information to both the public and agency staff; a requirement that agencies prepare a concise statement of the principal reasons for adopting or amending a rule, including reasons for not accepting substantial arguments made in testimony or public comments and reasons for any substantial change between the text of the proposed rule and the version finally adopted; and guidelines on when an agency is required to reinitiate the rulemaking process, including providing notice and another public comment period, because of changes to a proposed rule.

Amendments giving the secretary of state’s office more flexibility include the elimination of specific filing requirements for agencies. Instead, the secretary of state is given the authority to adopt its own rules specifying filing requirements, which could include electronic filing of proposed rules. Also, the amendments eliminate the requirement that the secretary of state’s office publish the Kansas Administrative Rules in written form. Although that office does not plan to completely discontinue print publication in the near future, giving the secretary of state the option to move toward electronic publication will save costs in the long term.

The Council’s Death Penalty Advisory Committee (DPAC) was asked to review 2009 S.B. 208, which would repeal the death penalty in Kansas. The DPAC was not asked to make a policy recommendation about whether the death penalty should be repealed; rather, the DPAC was asked to address the technical problems that were apparent when S.B. 208 was debated in the Senate in 2009 and draft a workable bill that would effectively repeal the death penalty if the Legislature decides that is the appropriate policy choice. The DPAC drafted a new bill to repeal the death penalty, which is expected to be substituted for S.B. 208.

Under the new bill, the death penalty would be repealed for offenses committed on or after July 1, 2010. Defendants already under a death sentence would remain under a death sentence, and defendants charged with committing capital murder before July 1, 2010, would still be eligible to receive (continued on next page)
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(Continued from Page 19)

a death sentence. The new bill defines a new crime of “aggravated murder” for which the penalty is life imprisonment without the possibility of parole. The definition of aggravated murder is identical to the current definition of capital murder in K.S.A. 21-3439. This means that any crime, which was eligible for the death penalty prior to July 1, 2010, would carry a penalty of life imprisonment without parole if committed on or after July 1, 2010.

The Judicial Council formed a new committee, the Homeowners’ Association Advisory Committee (HAAC), to study 2009 H.B. 2253 concerning homeowners’ associations and associations of apartment owners. After reviewing the bill, the HAAC recommended that it not be passed and that the Uniform Common Interest Owners Bill of Rights Act (UCIOBORA), with appropriate amendments drafted by the HAAC, be passed instead. The HAAC believes that the UCIOBORA is more comprehensive in scope and more balanced in its treatment of possible management/ownership flashpoints than H.B. 2253. Another benefit of the UCIOBORA is that it is written in plain English that can be read and understood by board members, unit owners, and other interested parties whether they are legally trained.

The Council’s Criminal Law Advisory Committee (CLAC) has drafted a bill relating to a defendant’s reimbursement of Kansas Board of Indigents’ Defense Services (BIDS). Before the court orders a defendant to reimburse BIDS, the court must consider the defendant’s ability to pay and the financial burden that ordering BIDS reimbursement would place on the defendant. They found that courts usually make this determination at sentencing; however, in some cases, courts find it difficult to transition from an emotionally charged sentencing proceeding to a discussion of financial matters. The CLAC recommends amendments allowing courts to defer discussion of BIDS reimbursement to a later proceeding when appropriate. Other amendments are intended to increase the potential for actually recovering such reimbursement by allowing courts to consider a defendant’s current and future ability to make payments and authorizing courts to postpone payments, rather than simply waiving them.

The Council’s Guardianship and Conservatorship Advisory Committee (GCAC) recommends two bills. The first bill is the result of the GCAC’s study of 2009 S.B. 235, which would enact the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. Although the GCAC found that adoption of the Uniform Act is not needed in Kansas, the GCAC did recommend two related changes. First, the GCAC recommends an amendment requiring that out-of-state guardianship and conservatorship orders be given full faith and credit in Kansas except when doing so would be in specific violation of Kansas law. The GCAC also recommends amending the petition sections of the Kansas Guardianship Act to require that a petitioner plead where and with whom a proposed ward has resided for the last five years. This would give judges more information enabling them to ascertain when a case might involve “granny snatching.”

The second bill recommended by the GCAC relates to restraint and seclusion of patients committed pursuant to the Care and Treatment Act for Mentally Ill Persons, the Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem, and the Sexually Violent Predator Act. The recommended amendments would clarify that medical restraints for the examination or treatment of a physical illness or injury and quarantine to prevent the spread of a communicable disease are not restraint or seclusion under those acts.

The Council will introduce three bills in the area of probate law, all drafted by the Council’s Probate Law Advisory Committee (PLAC). The first bill would amend K.S.A. 59-618 to allow a person to execute an affidavit and file a decedent’s will to preserve it for possible future probate if the estate contains real or personal property. The second bill would remove from the statutes all references to the Kansas inheritance tax, which was repealed in 1998. The third bill would amend the Uniform Principal and Income Act by enacting changes recommended by the Uniform Law Commissioners in 2008.

Last year, the Council’s Juvenile Offender and Child in Need of Care Advisory Committee (JCNCAC) recommended 2009 S.B. 88, which remains in Senate Judiciary. This year, the JCNCAC decided to make further amendments and to split S.B. 88 into two separate bills, one amending the Juvenile Offender Code (JO) and the other amending the Child in Need of Care Code (CINC). The amendments to the Juvenile Offender Code include changes to clarify the methods of jury trial in juvenile offender cases. The amendments to the CINC include changes to ensure that JO/CINC custody orders take priority over similar orders in other domestic cases.

Finally, the Council will introduce a bill drafted by its Municipal Court Manual Advisory Committee amending K.S.A. 12-4117 to clarify which municipal ordinance violations require the payment of an assessment.

One bill, which was introduced by the Council in 2009, remains viable in the House Judiciary Committee. That bill, 2009 H.B. 2109, would enact the Kansas Uniform Health-Care Decisions Act.

In addition to approving the introduction of the legislation described above, at its December 2009 meeting the Judicial Council also approved a number of Advisory Committee reports, which either recommend that pending legislation not be passed or that it be changed in some way.
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A Valuable New Development Resource:
Kansas Enacts the Community Improvement District Act

By Matthew S. Gough
I. Introduction and Background

On April 23, 2009, Gov. Kathleen Sebelius approved and enacted H.B. 2324, known as the Community Improvement District Act (CID Act). The CID Act permits the establishment of community improvement districts (CIDs and individually a CID) that create new revenue sources to finance real estate development, similar to the legislation passed in numerous other states. It confers powers for economic development purposes and any other purpose for which public money may be expended. The CID Act enables a municipality’s governing body to form a CID to finance the cost of a broad range of development, including operating expenses that are incurred post-construction. A CID is broader and can generate greater revenue than under the Transportation Development District Act (TDD Act). Furthermore, the CID Act has advantages over tax increment-based incentives (e.g., Tax Increment Financing (TIF) and Sales Tax Anticipated Revenue (STAR) bonds) and tax abatements because a CID does not affect the amount of sales or ad valorem property tax that taxing jurisdictions collect. Because the CID Act has the potential to positively impact real estate development projects both large and small, counsel who are conversant with the CID process can provide a meaningful benefit to their developer, lender, and municipal clients.

II. Scope of CID Projects

A CID can be used to finance any “cost” of a “project.” Under the CID Act, a “cost” means the cost of land, materials, labor, and other lawful expenses incurred in planning and doing any project, as well as costs to create the CID and employ “consultants” (including attorneys, financial advisors, engineers, and architects), and other administrative and preliminary expenses. The definition of “project” is likewise broad and nearly all-encompassing and includes land acquisition, horizontal and vertical construction costs, public infrastructure costs, and ongoing maintenance costs. Neither the TDD Act nor any tax increment-based incentive has such a broad definition of eligible projects. The only advantage a TDD district has over a CID project is that TDD revenues must be used solely to pay the cost of the project. While all CID revenues pay all eligible project costs or CID bonds, the municipality to the extent they exceed 3 percent of the municipality’s assessed valuation.

III. Methods of CID Financing

Subject to the requirements of the CID Act and the approval of the municipality’s governing body, a CID can use up to five different revenue sources to finance project costs: (a) prepaid special assessments; (b) special assessments paid in installments; (c) a CID sales tax; (d) the municipality’s full faith and credit to use its ad valorem taxing authority; and (e) any other funds appropriated by the municipality for the purpose of paying project costs, including the principal and interest of bonds issued pursuant to the CID Act. Every CID must have a separate fund (a CID fund) that holds any CID sales taxes the district collects, special assessments paid to the municipality, CID bond proceeds, or any other revenues the CID generates. The CID fund must be used to pay the cost of the project, through either the use of CID bonds or pay-as-you-go financing. If moneys remain in the CID fund after the expiration of the CID sales tax, such moneys shall continue to be used solely to pay the cost of the project. After CID revenues pay all eligible project costs or CID bonds, the municipality can spend any remaining funds as though they were local sales tax receipts.
...seq., and amendments thereto, except that unlike traditional benefit improvement districts, no part of the assessments may be levied against the municipality at large. Another distinction between CID special assessments and traditional special benefit districts is that annual CID sales tax income (or other municipally appropriated funds) can potentially reduce the annual special assessment installments property owners in a CID pay. This potential reduction, however, may not apply to prepaid special assessments, which might not be reimbursed.

2. Sales taxes

As an additional or alternative financing source, a municipality may impose a CID sales tax on sales within the CID. The amount of the CID sales tax may be in any increment of 0.10 percent or 0.25 percent, not to exceed 2 percent. By contrast, the TDD Act only permits TDD sales tax of up to one percent. The duration of the CID sales tax is coterminous with the maturity date of CID Bonds or, if pay-as-you-go financing is used, no longer than 22 years from the date the state director of taxation begins collecting such tax. The term of the CID sales tax may be shortened if the CID bonds or pay-as-you-go costs are paid in full. The CID sales tax is collected at the same time and in the same manner as all other moneys collected by a state agency pursuant to K.S.A. 75-4215. To defray the Kansas Department of Revenue’s CID administrative and enforcement expenses, 2 percent of all CID sales taxes remitted to the state treasurer are withheld and deposited in a CID sales tax administration fund, except that no more than $60,000 in the aggregate can be collected from all state CIDs in any state fiscal year. The remainder of the CID sales taxes is remitted at least quarterly to the municipalities from which the CID sales taxes were collected.

3. General obligation bonds

Although CID sales tax and special assessments will often constitute all or the majority of revenue sources in a CID, highly motivated municipalities have the authority to also pledge its full faith and credit to use its ad valorem taxing authority for the repayment of general obligation bonds under the CID Act, and also to appropriate funds for the purpose of paying project costs. By backing a CID project with the municipality’s full faith and credit, the municipality enables the issuance of general obligation bonds that greatly increase the marketability of CID bonds, and thereby enables a more immediate source of project funds and lower interest rates.

IV. Formation of Community Improvement Districts

The statutory requirements to form a CID depend upon the type of revenue sources requested and the level of property owner support within the proposed district. Fewer procedural requirements exist for CIDs that generate revenue solely from special assessments, which do not seek the use of full faith and credit bonds, and which have 100 percent support of the property owners within the district. In such instances, the formation process commences when such owners file a petition to the municipality that contains the following information:

(A) The general nature of the proposed project,
(B) the estimated cost of the project,
(C) the proposed method of financing the project,
(D) the proposed amount and method of assessment,
(E) a map of the proposed district, and
(F) a legal description of the boundaries of the proposed district.

Once the petition is filed, the governing body may proceed without notice or a hearing to make findings by resolution or ordinance as to the nature, advisability and estimated cost of the project, the boundaries of the district, and the amount and method of assessment. Upon making such findings by resolution or ordinance, the governing body may by simple majority authorize the project, effective upon publication of such resolution or ordinance. The resolution or ordinance must also be recorded with the office of the register of deeds in the county in which the district is located. When a proposed CID does not have 100 percent support from property owners, or when a CID sales tax or full
faith and credit bonds are proposed, the CID Act requires more procedural steps to form the district. At least 55 percent of the owners within the proposed district, both in terms of land area and assessed value, must file a petition with the governing body. The petition must contain the following information:

1. The general nature of the proposed project;
2. The estimated cost of the project;
3. The proposed method of financing the project including, if applicable, the issuance of full faith and credit bonds;
4. The proposed amount and method of assessment, if any;
5. The proposed amount of community improvement district sales tax, if any;
6. A map of the proposed district; and
7. A legal description of the proposed district.

After the petition is filed, the governing body must adopt a resolution to give notice of a public hearing on the advisability of creating or modifying a CID. The resolution must also be published at least once each week for two consecutive weeks in the official newspaper of the municipality and sent by certified mail to all owners within the proposed district. The second publication must occur no less than seven days prior to the date of the hearing and the certified mailed notice must be sent at least 10 days prior to the date of the hearing. The resolution must contain the same seven enumerated items identified above. Following the public hearing or any continuation thereof, the governing body may by simple majority create the district by adopting, publishing, and recording an ordinance or resolution.

Regardless of the type of petition submitted, the petitioners may not withdraw their signatures after the governing body commences consideration of the petition, or more than seven days after the filing of such petition with the clerk of municipality, whichever occurs first. The petition itself must include an acknowledgment of that fact, as well as the petitioners’ consent to any assessments to the extent described in the petition without regard to benefits the project may confer. Although the CID Act does not require the district to include all benefitted property or to subject all such property to an assessment, the failure to include and assess all benefitted property may affect the tax exempt nature of the bonds issued for the project, or have other state or federal tax consequences.

The Legislature wisely established a short statute of limitations for CID protests. No lawsuit to set aside the assessments, CID sales tax, or otherwise question the validity of the proceedings creating a CID or authorizing the project may be brought after the expiration of 30 days from the publication of the appropriate resolution or ordinance. When a municipality approves the use of full faith and credit bonds, the voting public can file a protest petition no later than 60 days following the public hearing discussed above. A valid protest petition requires the signature of at least 5 percent of the qualified voters of the municipality and must be filed with the municipality’s clerk. If a valid protest petition is timely filed, the municipality may not issue full faith and credit bonds until a majority of the voters voting at an election thereon approve the bond issue. If the voters do not approve the use of full faith and credit bonds, the municipality may use special obligation bonds instead.

V. Practice Tips

When forming a community improvement district, counsel for an applicant should work closely with the city’s staff and bond counsel. In communities that do not regularly consider the formation of TDDs or CID, counsel should make certain that the staff and members of the governing body understand that the CID will not decrease the city’s existing tax revenues. To the contrary, the CID project will probably create new tax revenue. Frequently there is confusion about the scope of the CID sales tax – the sales tax applies only within the CID, not to the city at-large. Most of the urban cities have adopted economic development policies that could affect a CID application. If a city’s policy requires more information or findings than the CID Act requires, the client should be made aware of such requirements. Ideally, the submittal of a CID petition occurs only after having discussed the proposed development with city staff and bond counsel. The creation of a CID involves both legal and political decisions, and the CID petition stands the best chance of approval if both have been addressed prior to submittal.

In addition to the legal and political concerns that are, perhaps, the most important to an attorney, counsel should also

(continued on next page)
remember that to the client, economics is the most important consideration in any CID project. The potential CID revenue is, after all, the primary benefit to the client (and the purpose for retaining legal counsel). In most instances, the developer will carry the risk of having a CID generate lower than expected revenues – local governments will probably only approve pay-as-you-go financing or special obligation bonds that are not backed by the city’s full faith and credit. Consequently, counsel should inquire whether a client has conducted reasonable due diligence regarding the amount and timing of anticipated revenues. Establishing realistic revenue expectations is critically important to the success of a project. Although the CID Act and the municipality may not require a feasibility study, spending time and money to obtain a good feasibility study will pay dividends in financial planning. This information is also valuable to the client’s commercial lender, because the lender will almost certainly take CID proceeds as collateral for the development loan.

Because a CID imposes additional taxes or assessments on real estate, a well-advised client interested in forming a CID should weigh revenue expectations with the impact such additional taxes will have on the project’s customers. For example, if an additional sales tax would prevent a retail establishment from competing against nearby stores, a CID may not be the appropriate development incentive. If the project relies upon local business and if the CID sales tax would be unpopular in the community, a CID could negatively impact the project’s business. On the other hand, retail businesses that derive a large portion of business from tourism and other transient clientele may not experience the same negative consequences from an additional sales tax.

Contemporaneously with or promptly following the municipality’s approval of a CID petition, the developer and the municipality will enter into a formal agreement to codify each party’s rights and obligations. This agreement will state with specificity any caps on and the payment priority of CID proceeds, any construction deadlines, the method for certifying eligibility of an eligible project costs, and the manner of reimbursement or repayment. The agreement determines and controls an applicant’s right to receive CID revenue. As such, banks and other lenders will collateralize CID proceeds by requiring the borrower-developer to assign all right, title, and interest in the agreement to the lender. Because of the agreement’s importance, lender’s counsel will frequently ask to be involved in the negotiation of the CID agreement, to ensure the lender’s interests are adequately addressed, and to confirm the municipality’s consent to the collateralization of CID proceeds.

VI. Comparison of Kansas and Missouri CID Acts

The state of Missouri adopted a Community Improvement District Act in 1998 (Missouri CID Act). Although the influence of the Missouri CID Act is evident in the Kansas CID Act, the Kansas CID Act has several philosophical, procedural, and economic distinctions that benefit development. Most notably, the Missouri CID Act has a lower maximum sales tax – the Kansas CID Act permits up to two percent of additional sales tax, while the Missouri CID Act caps the maximum sales tax at 1 percent. In Missouri, the term “district” is not only the geographic boundary of the project, but also an entity that is either a political subdivision of the state or a not-for-profit corporation. In Kansas, a CID means only the geographic boundary of the district and the improvements constructed therein. A Missouri CID, when a political subdivision, has a board of directors that must prepare an annual budget and manage the CID. From the perspective of a private developer, this additional red tape could require the developer’s continuing involvement in the management of the district, via ongoing participation in the CID board of directors, or could result in higher administration costs because of the board of directors’ duties and obligations.

The Kansas CID Act has more flexible eligibility requirements. The Kansas CID Act requires the support of at least 55 percent of the owners in the district – as determined by assessed value and land area. By contrast, the Missouri CID Act requires the consent of more than 50 percent of the owners in the proposed district, both in terms of assessed value and per capita. The per capita approach adopted in Missouri can be quite problematic to a developer, versus the land area approach used in Kansas. For example, in a proposed district where Owner A owns 99 acres and 99 percent of the appraised value and Owner B owns one acre and one percent of the appraised value, the Missouri CID Act requires Owner B’s support to file a CID petition (to obtain at least 50 percent per capita approval), while the Kansas CID Act does not (because Owner A owns more than 55 percent of land area and valuation). This distinction greatly reduces the likelihood of one or several holdout landowners causing delay in Kansas.

VII. Conclusion

In the present economic climate, in which credit markets have tightened considerably and commercial lenders are requiring more collateral for development loans, community improvement districts may become a routinely used tool to help finance development projects. An attorney with a basic understanding of the mechanics of the CID Act will be able to advise developer-clients to pursue such benefits, advise lender-clients to collateralize such benefits, and in each instance enhance the client’s economic position.

ENDNOTES
4. K.S.A. 2009 Supp. 12-6a27(h) (defining “governing body” as any governing body of a city or the board of county commissioners of a county).
5. K.S.A. 12-17,140 et seq.
7. K.S.A. 2009 Supp. 12-6a27(c) and (f).
8. K.S.A. 2009 Supp. 12-6a27(m), defining “project” as follows:
(1) Any project within the district to acquire, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, furnish, equip, or extend:
(A) Buildings, structures, and facilities;
(B) sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, pedestrian amenities, abandoned cemeteries, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heating and electrical services and connections located within or without the public right-of-way, water mains and extensions, and other site improvements;
(C) parking garages;
(D) streetscape, lighting, street light fixtures, street light connections, street light facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls, and barriers;
(E) parks, lawns, trees, and other landscape;
(F) communication and information booths, bus stops, and other shelters, stations, terminals, hangers, restrooms, and kiosks;
(G) paintings, murals, display cases, sculptures, fountains, and other cultural amenities;
(H) airports, railroads, light rail, and other mass transit facilities; and
(i) lakes, dams, docks, wharfs, lakes or river ports, channels and levees, waterways, and drainage conduits.
(2) Within the district, to operate or to contract for the provision of music, news, child care, or parking lots or garages, and buses, minibuses, or other modes of transportation;
(3) Within the district, to provide or contract for the provision of security personnel, equipment, or facilities for the protection of property and persons;
(4) Within the district, to provide or contract for cleaning, maintenance, and other services to public or private property;
(5) Within the district, to produce and promote any tourism, recreational, or cultural activity or special event, including, but not limited to, advertising, decoration of any public place in the district, promotion of such activity and special events, and furnishing music in any public place;
(6) Within the district, to support business activity and economic development, including, but not limited to, the promotion of business activity, development and retention, and the recruitment of developers and business;
(7) Within the district, to provide or support training programs for employees of businesses; and
(8) To contract for or conduct economic impact, planning, marketing, or other studies.
9. Id. (stating that all types of “projects” must be “within a district”).
12. Id.
13. Id.
14. Id.
15. K.S.A. 12-17,149.
19. K.S.A. 2009 Supp. 12-6a35(c) and 12-6a36(b).
22. K.S.A. 2009 Supp. 12-6a33(a) and (b).
25. Id.
27. Id.
30. Id.
32. Id.
33. K.S.A. 2009 Supp. 12-6a33(d) and (e).
35. Id.
37. Id.
40. K.S.A. 2009 Supp. 12-6a29(a). By contrast, the TDD Act requires 100 percent support within the TDD district regardless of the type of project. K.S.A. 12-17,142.
41. Id.
42. K.S.A. 2009 Supp. 12-6a29(c).
43. Id.
44. Id.
45. K.S.A. 2009 Supp. 12-6a29(c)(1) through (7).
46. K.S.A. 2009 Supp. 12-6a29(c) and (f).
47. K.S.A. 2009 Supp. 12-6a28(b) and 12-6a29(b).
48. Id.
49. K.S.A. 2009 Supp. 12-6a28(d) and 12-6a29(e).
52. K.S.A. 2009 Supp. 12-6a36(d).
53. K.S.A. 2009 Supp. 12-6a32 and 12-6a36(d).
55. Id.
60. K.S.A. 2009 Supp. 12-6a29(a).
ISSUES: (1) Ad valorem taxation and (2) charitable exemption

HELD: Court stated it was unnecessary to resort to rules of construction. Court stated it is not disputed that the MHAH property meets the plain-language requirements of K.S.A. 2008 Supp. 79-201 Fourth and Ninth and it was unnecessary to apply K.S.A. 79-201b. MHAH uses the property to provide both living quarters and counseling for severely mentally ill citizens. These services are provided at no cost or reduced cost to individuals who would otherwise likely be homeless and without access to public assistance programs. MHAH does not make a profit from these services. These are clearly benevolent, charitable, and humanitarian purposes. Court found its position consistent with the modern view of the status of nonprofit residential facilities targeting populations with limited resources and special needs. Court held because the plain language of both K.S.A. 2008 Supp. 79-201 Second and Ninth applies to the MHAH property, it is unnecessary to resort to statutory construction. Those provisions are not in conflict with K.S.A. 2008 Supp. 79-201b Fourth; it is possible, as the present case illustrates, for property to qualify under the former statutes without qualifying under the latter, and vice versa.

STATUTES: K.S.A. 77-621(c); and K.S.A. 79-201 Second, Ninth, -201b Fourth

FACTS: The Mental Health Association of the Heartland (MHAH) is a nonprofit corporation organized under the laws of Missouri and admitted to engage in business in Kansas as a foreign nonprofit corporation. MHAH is exempt from federal income tax and contributions to the corporation are tax deductible. MHAH built the Marion Home to provide housing to low-income, chronically homeless, and mentally ill individuals. The Board of Tax Appeals denied an exemption from ad valorem taxation because the Marion Home was not used exclusively for a charitable exempt purpose; because, it was actually and regularly used for housing for which MHAH received compensation from the tenants or federal government in the form of subsidized rents or grants. Court of Appeals held that because the Marion Home was primarily used as a low-income housing facility, K.S.A. 79-201b Fourth and Ninth was the applicable exemption statute and MHAH was not entitled to a tax exemption under K.S.A. 79-201b Fourth.

ISSUES: (1) Ad valorem taxation and (2) charitable exemption

HELD: Court held the district court did not abuse its discretion in joining the plaintiffs’ cases for trial. Court held the pretrial order sufficiently stated the plaintiffs’ claims under the KCPA, and the order superseded any petitions or amended petitions that the plaintiffs may have filed. The KCPA claims were properly submitted to the jury. The court ultimately found this to be harmless and denied Purina’s motion for new trial or, in the alternative, for judgment notwithstanding the verdict. The court granted Unruh’s and Carter’s motion for attorney fees based upon their successful KCPA claims. The Court of Appeals affirmed in part and reversed in part, finding that insufficient evidence supported the KCPA claims and the resulting award of attorney fees.

ISSUES: (1) Breach of warranty and (2) consumer protection

HELD: Court held the district court did not abuse its discretion in joining the plaintiffs’ cases for trial. Court held the pretrial order sufficiently stated the plaintiffs’ claims under the KCPA, and the order superseded any petitions or amended petitions that the plaintiffs may have filed. The KCPA claims were properly submitted to the jury. The court ultimately found this to be harmless and denied Purina’s motion for new trial or, in the alternative, for judgment notwithstanding the verdict. The court granted Unruh’s and Carter’s motion for attorney fees based upon their successful KCPA claims. The Court of Appeals affirmed in part and reversed in part, finding that insufficient evidence supported the KCPA claims and the resulting award of attorney fees.
support the jury's verdict on the KCPA claims. Court concluded the incorrect caption on the verdict form did not constitute clear error, having little, if any, impact on the jury. Court found the award of attorney fees, including appellate attorney fees, was reasonable and awarded a total of $76,665.25 in attorney fees and expenses.

STATUTES: K.S.A. 50-623, -626(b), -631, -634, -636, -657, -709, -715; and K.S.A. 60-216(e), -220(a), (b), -261, -454

COUNTIES WEBER V. BOARD OF COUNTY COMMISSIONERS OF MARSHALL COUNTY KANSAS MARSHALL DISTRICT COURT – AFFIRMED IN PART, REVERSED IN PART, AND REMANDED NOS. 100,846/100,847 – DECEMBER 4, 2009

FACTS: Marshall County treasurer filed two lawsuits challenging actions by Board of County Commissioners (Board) in setting her 2007 salary at $33,780 to include $10,200 she was due from state for motor vehicle registration, and in requiring Board’s preauthorization of purchases she made from motor vehicle fund. District court enjoined Board from using money in motor vehicle fund to pay county treasurer’s salary, and from requiring Board’s approval over treasurer’s purchase of equipment or supplies from the motor vehicle fund. District court also ordered Board to pay the county treasurer’s $33,780 salary from county general fund. Board appealed. Appeals consolidated.

ISSUE: Motor vehicle registration fund

HELD: Motor vehicle registration statutes examined. Analysis and holdings in Wyandotte County Comm’n v. Ferguson, 159 Kan. 80 (1944), remain valid. Board of county commissioners has no interest in special fund created by K.S.A. 2008 Supp. 8-145(b), except a contingent interest in any proceeds remaining at the end of a calendar year after county treasurer fulfills the state responsibilities for motor vehicle registration and titling as set out in the statutes. When calculating a county treasurer’s annual salary for fulfilling county responsibilities, a board of county commissioners may not consider the county treasurer’s extra compensation provided in K.S.A. 2008 Supp. 8-145(b). Such consideration would subvert the legislative intent to give the county treasurer the benefit of that additional compensation. Here, district court correctly found the county treasurer alone is statutorily vested with authority to administer and use motor vehicle fund without interference or usurpation by the Board, and correctly determined the Board subverted legislative intent to give county treasurer additional compensation for processing motor vehicle registrations and titling. District court’s injunctions against the Board are affirmed. District court’s order that treasurer be paid $10,200 from motor vehicle fund is affirmed. District court’s order setting $33,780 salary to be paid from county general fund is reversed, and case is remanded for determination of salary intended for treasurer’s county-based responsibilities.

CONCURRENCE (Johnson, J.): Agrees with majority. Writes separately to state that on remand, any attempt by Board to reduce treasurer’s salary less than her 2006 salary plus $600 raise given to all county employees would be viewed as an attempt to indirectly appropriate motor vehicle funds for county use.


MANDAMUS S.M. V. JOHNSON ORIGINAL ACTION IN MANDAMUS GRANTED IN PART NO. 101,472 – DECEMBER 24, 2009

FACTS: Shawnee County district judge released juvenile (S.M.) on pretrial supervision, pending adjudication of multiple violations. Pretrial supervision conditions included order to attend school with no unexcused absences or tardies. S.M. subsequently entered no contest plea. At sentencing hearing, court services officer informed court of S.M.’s three unexcused absences from school while on supervision. In addition to sentencing S.M. on her plea, and pursuant to district court judge’s “school rule,” S.M. ordered to serve five days in detention for each unexcused absence from school. S.M. filed mandamus petition to seek release from juvenile detention and to challenge imposition of district court’s “school rule.” Mandamus petition rendered moot in part by S.M.’s release from detention, but Supreme Court directed parties to address implementation of “school rule” as an unresolved issue capable of repetition.

ISSUE: Detention of juvenile for violations of preadjudication supervision conditions

HELD: Statutory procedure mandated by K.S.A. 38-2343 for detaining juvenile taken into custody is examined. To detain juvenile in a juvenile detention facility for more than 48 hours exclusive of Saturdays, Sundays, and legal holidays, court must conduct a detention hearing pursuant to K.S.A. 2008 Supp. 38-2343, and must make an initial finding, based on substantial competent evidence, that juvenile is dangerous to self or others or that juvenile is not likely to appear for further proceedings. Local court rule imposing five-day detention sanction for each violation of preadjudication supervision condition prohibiting unexcused absences from school is not a statutorily authorized sanction, and the order to detain S.M. in juvenile detention facility for a total of 15 days, with initial detention of five days, was not supported by requisite statutory findings. Petition for mandamus is granted in part. Respondent is directed to follow statutory mandates governing detention of a juvenile in a juvenile detention facility.

STATUTES: K.S.A. 2008 Supp. 28-2302(l), -2302(s), -2302(t), -2330, -2330(a)(1)(-6), -2330(c), -2330(d)(1), -2331, -2331(b), -2331(b)(10), -2343, -2343(a)-(e), -2361(f)(1)-(2); K.S.A. 12-1204a; K.S.A. 20-1201 et seq.; and K.S.A. 60-801


FACTS: This is a property damage case arising out of a public improvements project in Frontenac, Kan., Southwestern Bell Telephone Co. d/b/a AT&T Kansas (SBT) obtained judgment against Beacher Construction Co. Inc. (Beacher) for damages negligently caused to an SBT underground telephone cable, which SBT had relocated at the city’s request to accommodate Beacher’s project construction. The district court determined that Beacher breached the statutorily imposed duty to exercise reasonable care by failing to ascertain the depth of SBT’s cable prior to excavation with a backhoe. It also determined that SBT breached no duty, found Beacher 100 percent at fault, and awarded full damages of $4,365.13 to SBT.

ISSUES: (1) Negligence, (2) duty, and (3) public right-of-way

HELD: Court stated that the city ordered a provider to move its utility line “in order to accomplish construction” of the city’s sewer line by a contractor and the duty of reasonable care cannot rest entirely upon the contractor. This conclusion is particularly valid when, as here, the utility has been given an advance copy of the construction plans. Court stated that it simply makes no sense for SBT to be allowed to relocate its cable to a place which it knows, or should have known, is in Beacher’s planned “construction path” – so long as the cable will not be in conflict with the completed sewer line. Court held that when a provider is requested by a city under K.S.A. 17-1902(l) to remove, relocate, or adjust its facilities “in order to accomplish construction ... activities directly related to improvements for the health, safety, and welfare of the public,” the
provider's duty implicitly contains an obligation to use reasonable care. This obligation includes the specific need to avoid interfering with the construction plans to be executed by the contractor. Accordingly, the district court erred as a matter of law in essentially overriding SBT's statutory duty by limiting SBT's obligation to simply avoid conflicts occurring after construction. However, Court stated that because the district court relied upon an erroneous legal conclusion, it focused on the wrong group of facts and the Court was in no position based on the appellate record to decide whether SBT breached its duty, whether Beachner breached its duty and that Beachner was wholly at fault. Court held the best course of action was to remand to the district court for that court's application of the correct legal standard to the evidence at trial. The district court may then address the specific allegations of SBT negligence that Beachner claims were essentially rejected by the court's holding that SBT breached no duty because its cable relocation successfully “avoided any conflicts” after completion of construction.

STATUTES: K.S.A. 17-1902(l); K.S.A. 20-3018(c); K.S.A. 22-4506(b), -4522(e)(4); K.S.A. 38-1681; and K.S.A. 66-1801, -1802(p), -1805, -1809(a).
order individual sentences to be served concurrently or consecutively. Nothing in provisions of K.S.A. 21-4643, Jessica’s Law, alters or restricts a sentencing judge’s discretion to impose consecutive sentences.

STATUTES: K.S.A. 2008 Supp. 60-460(a); K.S.A. 21-4608(a), -4643, -4643(b), -4720(b); and K.S.A. 22-3434, -3601(b)(1)

STATE V. MONDRAGON
SEDGWICK DISTRICT COURT – AFFIRMED
NO. 100,510 – DECEMBER 4, 2009

FACTS: Mondragon entered guilty plea to two counts of aggravated indecent liberties with a child. Pursuant to Jessica’s law, concurrent life sentences imposed without parole for 25 years and post-release supervision for life. On appeal, Mondragon claimed his age of 63 years, employment history, criminal history score, medical ailments, family support, and self-initiated treatment provided substantial and compelling reasons for departure, and claimed the district court abused its discretion in denying motion for durational departure. He also argued for first time that his life sentences were cruel and unusual punishment in violation of Kansas and U.S. constitutions.

ISSUES: (1) Downward departure sentence and (2) cruel and unusual punishment

HEL D: No abuse of discretion in trial court’s denial of motion for downward durational departure sentence. District court considered all of Mondragon’s arguments, acknowledged mitigating circumstances Mondragon asserted, and explained why the cited factors were not substantial and compelling reasons to impose departure sentences.

Because Mondragon made no effort in district court to present issue of whether a Jessica's Law sentence is cruel or unusual, the issue cannot be raised for first time on appeal. Mondragon’s argument that a mandatory hard 25 or hard 40 sentence is cruel or unusual in light of procedures and treatment available under Sexually Violent Predator Act does not change this analysis.

STATUTES: K.S.A. 2006 Supp. 21-3504(a)(3)(A), -4643(a)(1), -4643(d), -4643(d)(1)-(6), K.S.A. 59-29a02(a), -29a07(a); K.S.A. 22-3601(b)(1), and K.S.A. 59-29a01 et seq.

STATE V. WELLS
RILEY DISTRICT COURT – REVERSED AND REMANDED
NO. 99,813 – DECEMBER 11, 2009

FACTS: Wells convicted of aggravated criminal sodomy of fiancée’s 5-year-old daughter. Trial court allowed evidence of Wells’ prior identical actions with victim and similar prior acts with victim’s older sister, finding motive was a disputed material fact because Wells claimed he was in victim’s room for an innocent purpose, and finding probative value of this evidence outweighed its potential prejudice. On appeal, Wells claimed trial court erred in admitting this evidence of prior bad acts. He also claimed he was denied his theory of defense and a fair trial by trial court’s limitations on defense expert witness.

ISSUES: (1) Admission of prior bad acts and (2) limitations on expert witness testimony

HEL D: Trial court’s admission of evidence of Wells’ prior bad acts constituted reversible error. Use of Wells’ prior bad acts to ostensibly prove motive for entering bedroom is a dangerous short step from simply using prior bad acts to prove motive for committing the current, virtually identical bad act. Motive for committing the crime of aggravated criminal sodomy was not a disputed material fact in this case, and intent not disputed where Wells denied any touching. Magnitude of error was not harmless in light of evidence presented to jury.

On facts of case, no error in trial court prohibiting certain expert witness testimony on how specific interviewing procedures and techniques could adversely affect the reliability and accuracy of a child’s statements. Wells was not denied a fundamentally fair trial. Extensive discussion of Kansas’ opinions, including unpublished opinion State v. Criqui, 2003 WL 22119226 (Kan. App. 2003).

STATUTES: K.S.A. 21-3506; K.S.A. 22-3601(b)(1); and K.S.A. 60-401(b), -455, -456, -456(b), -1507

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Citation to Supplemental Authorities

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COURT OF APPEALS

CIVIL

CEMETERY PROPERTY, ABANDONMENT, AND LIENS
STATE EX REL. V. GRAHAM & ASSOCIATES LLC
SHAWNEE DISTRICT COURT
REVERSED AND REMANDED
NO. 100,999 – DECEMBER 4, 2009

FACTS: In May 2005, the state filed a petition to dissolve West Lawn Memorial Gardens Inc., to declare the corporations cemetery property in Shawnee County as abandoned, and to transfer title of all personal and real property of the corporation to Shawnee County (County). In late June 2005, the state sought and received a temporary restraining order against Mike W. Graham & Associates LLC and West Lawn Memorial Gardens Inc., concluding that these defendants had engaged in unconscionable acts violative of the Kansas Consumer Protection Act and violative of the Cemetery Corporations Act and the Prearranged Funeral Act. The order sequestered all assets and transferred these assets to the treasurer of Shawnee County as receiver. The order also directed the appointment of Charles Heinsohn and his wife as caretakers of the cemetery property. In late 2005, Heinsohn obtained a judgment against Mike W. Graham and Associates LLC d/b/a West Lawn Memorial Gardens for $45,717.15 plus interest and costs, based on his work in the general upkeep and maintenance of the cemetery property. After procuring his judgment, Heinsohn sought to intervene in the dissolution action pending between the state and his judgment debtors. After an order permitting Heinsohn's intervention, the Legislature amended the operative statute to retroactively nullify judgment liens, and the state and the defendants then entered into a consent judgment declaring the cemetery property abandoned and purporting to transfer all assets of the defendants to County “free and clear” of all mortgages, liens, judgments, and any other encumbrances, pursuant to K.S.A. 2008 Supp. 17-1367. The state then moved to dismiss all remaining claims and liens against the defendants, but Heinsohn objected to the dismissal of his claim. The district court cited the amended version of K.S.A. 17-1367 and summarily dismissed all other claims — including Heinsohn’s — and ordered the county take the cemetery property with no liens attached.

ISSUES: (1) Cemetery property, (2) abandonment, and (3) liens

HELD: Court noted that a judgment lien has long been considered a statutory right that should receive the most liberal construction. Although a judgment lien may be considered a remedial right, this feature alone did not defeat Heinsohn's due process interests. Court held that Heinsohn's remedial rights were not merely modified in some way, they were quashed, nullified, and rendered void and unenforceable. Court also held that although the County argued that Heinsohn had substitute remedies, any such alternatives were certainly not provided to him by the amendment and were speculative at best. Court also addressed the public interest concerns. Court held that the public interest in cemetery property is not directly challenged by Heinsohn's lien, and the only remaining consideration is the protection of cemetery property not already devoted to burial lots. Court noted that other jurisdictions find no public policy impediment for allowing execution against assets of a cemetery corporation not used for burial. Court concluded that it is clear beyond a substantial or reasonable doubt that the 2008 amendment of K.S.A. 17-1367, which was intended to retroactively invalidate Heinsohn's valid judgment lien, was unconstitutionally applied to defeat his preexisting lien rights, thus infringing upon due process of law. The district court erred in applying the amended statute.

COMMERCIAL DRIVER’S LICENSE
CUTHBERTSON V. KANSAS DEPARTMENT OF REVENUE
NORTON DISTRICT COURT – AFFIRMED
NO. 101,494 – DECEMBER 4, 2009

FACTS: Officer Hendrickson arrested Cuthbertson on July 22, 2007, for driving under the influence (DUI). Cuthbertson had a commercial driver's license (CDL), but was driving a noncommercial vehicle when he was arrested. Pursuant to K.S.A. 2007 Supp. 8-1001(f), Hendrickson provided Cuthbertson implied consent advisories in both oral and written form. At the scene after the arrest, Cuthbertson agreed to take the breath test at the station. Hendrickson transported Cuthbertson to the police station. Before taking the breath test at the station, Cuthbertson asked what effect a test failure would have on his CDL. Hendrickson told Cuthbertson that the effect would be the same on his CDL. Cuthbertson failed the breath test. The Department of Revenue suspended his regular license for one year and his CDL for life.

ISSUE: Commercial driver's license

HELD: Court held that when a person is stopped for a suspected DUI while driving a noncommercial vehicle, an officer is not required to provide notice of the effect a breath test refusal or failure will have on that person's commercial driver's license. However, if the officer provides gratuitous information concerning the nonmandated notice, the officer must provide a correct statement of the law. If any gratuitously provided information is incorrect, the driver must still demonstrate prejudice to prove reversible error. Finding no prejudice, the court affirmed.

STATE: K.S.A. 8-1001(f), -2,142, -2,145

GOVERNMENTAL LIABILITY
LOVITT V. BOARD OF SHAWNEE COUNTY COMM’RS
SHAWNEE DISTRICT COURT – AFFIRMED
NO. 101,159 – DECEMBER 18, 2009

FACTS: Lovitt had an accident when she suffered a seizure while driving. Her uninjured minor son called 911, but 911 operator did not believe the call and hung up. Son quickly flagged down motorist who called 911 and help was sent. Lovitt filed action on behalf of son on theories of outrage and negligent infliction of emotional distress, seeking damages for son's mental and emotional distress. District court granted summary judgment to defendants on three alternative grounds finding the action was barred by public duty doctrine, by immunity under the discretionary function exception to Kansas Tort Claims Act (KTCA), and by lack of admissible evidence of causation. District court also found Lovitt had abandoned claim for negligent infliction of emotional distress or chose not to pursue it because son suffered no physical injury. Lovitt appealed.

ISSUES: (1) Public duty doctrine, (2) KTCA discretionary function exception, (3) negligent infliction of emotional distress, and (4) outrage or intentional infliction of emotional distress

HELD: Application of public duty doctrine on such facts has not been directly addressed in Kansas. Issue raised for first time on appeal is considered pursuant to appellate court's de novo review of summary judgment, and is rejected consistent with other jurisdictions. Argument based on county's representations to public about need for emergency 911 service is directed to duty to public at large rather than to specific individuals and no detrimental reliance by son on 911 operator's unprofessional representations. District court did not err in finding county was entitled to judgment as matter of law by application of public duty doctrine.

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The district court refused to grant summary judgment canceling this time, Trivestco did not pay or tender shut-in royalties to unitized acreage was the gas well at issue. In 2004, Trivestco Energy exercised this option, and the failure to pay or tender such shut-in royalty payments was not due to any force majeure event, the default (failure to pay shut in royalties) was not due to the unavailability of purchasing and transporting services. Therefore, the force majeure clause in this lease was not triggered. Lastly, court held the oil and gas lease expired by its own terms when production from the only producing well on the acreage ceased due to financial failure of the gas purchaser, the well was shut in, production was not recommenced nor was additional drilling achieved within the 60 days required under the lease, shut-in royalty payments were not paid when they would have been due had lessee exercised this option, and the failure to pay or tender such shut-in royalty payments was not due to any force majeure event. Court entered directions to cancel the lease.

STATUTES: K.S.A. 2008 Supp. 75-6103(a), -6104(c); K.S.A. 60-256; and K.S.A. 75-6101 et seq.

HABEAS CORPUS
JOHNSON V. STATE
SEDGWICK DISTRICT COURT – AFFIRMED
NO. 101,011 – DECEMBER 11, 2009

FACTS: Pursuant to plea agreement, Johnson entered nolo contendere plea to charges of first-degree premeditated murder and aggravated robbery. District court denied Johnson's subsequent motion to withdraw plea, in which Johnson alleged defense counsel was ineffective, failed to investigate, was on supervised probation and had tested positive for cocaine during his representation of Johnson. Johnson later sought relief on same allegations in K.S.A. 60-1507 motion. District court denied relief after holding evidentiary hearing with appointed counsel, finding trial counsel's performance had been competent and no prejudice to Johnson.

ISSUE: Ineffective assistance of counsel and drug addiction
HELD: Denial of 60-1507 relief is affirmed. An attorney's use of drugs or alcohol does not establish ineffective assistance of counsel per se. Critical inquiry remains whether counsel's performance was deficient and whether that deficiency prejudiced the defendant. Under facts of case, Johnson failed to meet burden of showing his trial counsel's representation was deficient. Although it was undisputed that trial counsel was using cocaine during his representation of Johnson, record establishes counsel was still able to represent Johnson in an effective manner and adequately advise him about his case.

STATUTES: K.S.A. 21-3401(a), -3427; and K.S.A. 60-447, -448, -449, -1507, -1507(b)

OIL AND GAS
WELSC H V. TRIVESTCO ENERGY COMPANY
EDWARDS DISTRICT COURT
REV ERS ED AND REMANDED WITH DIRECTIONS
NO. 101,566 – DECEMBER 18, 2009

FACTS: The oil and gas lease was entered into in May 1975. In 1978, the lease acreage was unitized with adjoining leases to create a unit of approximately 682.4 acres. The only producing well on the unitized acreage was the gas well at issue. In 2004, Trivestco Energy Co. (Trivestco) shut in the gas well because the gas purchaser for the well ceased making payments for produced gas. The well remained shut in until late March 2007. In the interim, bankruptcy proceedings ensued involving the gas purchaser and related entities. During this time, Trivestco did not pay or tender shut-in royalties to Welsh. Welsh brought the action to declare the lease terminated. The district court refused to grant summary judgment canceling the lease or award summary judgment to Trivestco Energy Co., the successor in interest to the lessee in that lease, thus preserving the lease on the basis that the shut-in royalty provisions of the lease created a covenant with entitlement to money damages rather than a condition with entitlement to lease termination. Alternatively, the district court relied on a construction and application of the force majeure clause in the lease and the doctrine of temporary cessation of production.

ISSUES: Oil and gas
HELD: Court held the oil and gas lease provided to the lessee an option to pay shut in royalty payments in order to allow the only well on the leased acreage to be “considered” to produce gas in paying quantities sufficient to satisfy the habendum clause and extend the lease in full effect, but because the lessee did not exercise this option and pay the shut in royalties, the result is that the lease expired by its own terms. Court also held that given the force majeure clause that required for its application that some default was due to a force majeure event, the default (failure to pay shut in royalties) was not due to the unavailability of purchasing and transporting services. Therefore, the force majeure clause in this lease was not triggered. Lastly, court held the oil and gas lease expired by its own terms when production from the only producing well on the acreage ceased due to financial failure of the gas purchaser, the well was shut in, production was not recommenced nor was additional drilling achieved within the 60 days required under the lease, shut-in royalty payments were not paid when they would have been due had lessee exercised this option, and the failure to pay or tender such shut-in royalty payments was not due to any force majeure event. Court entered directions to cancel the lease.

STATUTES: No statutes cited.

TAX APPEAL AND PROPERTY VALUATION
IN RE TAX APPEAL OF DILLON STORES
RENO DISTRICT COURT – REVERS ED
NO. 100,499 – AUGUST 21, 2009 (MOTION TO PUBLISH)

FACTS: Dillon Real Estate Co. Inc. and city of Hutchinson/Dillon Stores (Dillon) appeal the district court's order setting aside the Kansas Board of Tax Appeals’ (BOTA) property tax valuation of $5.5 million for a Dillon Distribution Center (DDC) in Reno County for tax years 2001 and 2002, and adopting in its place a valuation of $7.9 million. The subject property, or DDC, is held under a single ownership and used for a common purpose, which is as a storage and distribution center to support Dillon's network of retail grocery stores. Dillon contended that the county's valuations did not reflect the fair market value of the subject property for each of the years at issue and specifically violated appraisal standards prohibiting a summation approach to value. The county argued that its valuation represented the fair market value, and specifically, that the existence of valuable refrigerated space had not been adequately considered by Dillon's appraiser.

ISSUES: (1) Tax appeal and (2) property valuation
HELD: Court reversed the district court's valuation and concluded that BOTA's adjustment to value adequately accounted for the value of the freezer/cooler space and supported by the evidence. Court held the district court was incorrect to set aside BOTA's valuation. The court disagreed with the county's appraiser and the assessment for the highest and best use, which required an appraisal of the property in separate parcels. Court held the county appraiser's violation of the appraisal standards so contaminated his appraisal that it was of no utility in valuing the property and BOTA correctly so concluded. Court held the district court should have affirmed BOTA's valuation.

STATUTES: K.S.A. 74-2426(c)(2); K.S.A. 77-621(c); and K.S.A. 79-501, -505, -506
FACTS: Bulis was operating a school bus for USD 266. Bulis stopped the bus at an intersection in Wichita in order to make a left turn. Kingsley was stopped at the intersection and her vehicle prevented Bulis from being able to make the left turn. After a while, Bulis gestured with his hand for Kingsley to cross the intersection so that Bulis could make the turn. Kingsley proceeded to cross the intersection and collided with Downing's vehicle. Downing died in the collision. Downing's estate sued Kingsley, Bulis, and USD 266 for wrongful death. The district court granted summary judgment to the defendants finding that by gesturing to Kingsley, Bulis did not assume a duty to ensure her safe passage across the intersection and that Kingsley still had a duty to yield the right-of-way and that her duty could not be delegated to Bulis by reliance upon his hand gesture.

ISSUES: (1) Traffic intersections, (2) signal by another driver to proceed, and (3) duty

HELD: Court held that under the facts of this case in which a school bus driver signaled to another motorist to cross an intersection, which resulted in a collision with a third motorist, the district court did not err in granting summary judgment in favor of the school bus driver and his employer on the issue of liability. Court found the case was substantially similar to the Kansas Supreme Court case of Dawson v. Griffin, 249 Kan. 115. Court held if the signaling driver owed no duty of care to the plaintiff in Dawson, it was hard-pressed to find that Bulis assumed a duty of care to Downing when he signaled to Kingsley to cross the intersection. Without the existence of a duty, Downing cannot establish a negligence claim against Bulis and USD 266.

STATUTE: K.S.A. 8-1527

STATE V. DALE
SALINE DISTRICT COURT – AFFIRMED IN PART, VACATED IN PART, AND REMANDED WITH DIRECTIONS
NO. 101,199 – DECEMBER 4, 2009

FACTS: Dale pled guilty to vehicle burglary. He had two prior juvenile adjudications for nonresidential burglary. The presentence investigation (PSI) report indicated the special rule set forth in K.S.A. 21-4704(l)(2) (now at K.S.A. 2008 Supp. 21-4704[1]) was applicable since Dale had two prior juvenile adjudications for burglary. Dale filed an objection to the PSI report. He argued that his juvenile adjudications for burglary were improperly counted as convictions under K.S.A. 21-4704(l)(2). The district court overruled the objection, finding that Dale's juvenile adjudications should be considered as convictions for the purposes of K.S.A. 21-4704(l)(2). The district court sentenced Dale to a prison term of nine months with a postrelease supervision term of 12 months, pursuant to the enhancement provision in K.S.A. 21-4704(l)(2). Had the special rule not applied, Dale's sentence would have been nine months' probation.

ISSUES: (1) Criminal history and (2) juvenile convictions

HELD: Court stated that whether a juvenile adjudication may or may not be treated the same as a criminal conviction for purposes of sentencing under our criminal code depends on the language and intent of the specific statute at issue. When the statute refers to convictions but excludes mention of adjudications, where other statutes refer to both terms, it is presumed the Legislature intended that adjudications be excluded from consideration as convictions. Court held that K.S.A. 21-4704(l)(2) refers to convictions and not adjudications. Had the Legislature intended juvenile adjudications to be counted as convictions for the purposes of enhancing a sentence it could have included adjudications when drafting the statute. By specifically excluding mention of adjudications, the Legislature has expressed its intention that adjudications not be considered as convictions under K.S.A. 21-4704(l)(2). Court held it was improper for the district court to consider Dale's juvenile adjudications as convictions in order to enhance his sentence.

STATUTE: K.S.A. 21-3715(c), -4603(f), -4704(l)(2)
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Building Resiliency in the Practice of Law
Anne McDonald, Kansas Lawyers Assistance Program, Topeka
Telephone CLE

**Tuesday, February 9, Noon – 1 p.m.**
The Use & Misuse of Technology by School Personnel & Students
Cynthia Lutz Kelly, Topeka Public Schools, Topeka
John Rasmussen, Kansas Association of School Boards, Topeka
Telephone CLE

**Friday, February 12, 6 – 8 p.m. (Reception)**
Social Security Disability Practice Update: 10th Circuit Winter Meeting
Hyatt Regency, Wichita

**Thursday, February 24, Noon – 1 p.m.**
Resting in Pieces: Properly Counseling Clients on Factors Impacting Family Harmony
Timothy P. O’Sullivan, Foulston Siefkin LLP, Wichita
Telephone CLE

**Friday, February 25, Noon – 1 p.m.**
Resting in Pieces: Drafting Estate Planning Documents to Preserve Family Harmony
Timothy P. O’Sullivan, Foulston Siefkin LLP, Wichita
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**FEBRUARY (CON’T.)**

**Friday, February 26, 9 a.m. – 12:10 p.m.**
Administrative Law - The Conflict Between Federal and State Agency Jurisdiction: Don’t Be A Casualty
Kansas Law Center, Topeka

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*Pending CLE credit approval

**Tuesday, March 2, Noon – 1 p.m.**
Intro to Practice before the Court of Tax Appeals*
Shawn Leisinger, Office of the Shawnee County Counselor, Topeka
Telephone CLE

**Tuesday, March 9, Noon – 1 p.m.**
The Use and Misuse of Psychology Experts in Civil Litigation*
Brian P. Russell, Attorney & Psychologist, Lawrence
Telephone CLE

**Tuesday, March 23, Noon – 1 p.m.**
Litigation in Guardianships, Conservatorships, Probate and Trust Administration*
Matthew H. Hoy & Leslie M. Miller, Stevens & Brand LLP, Lawrence
Telephone CLE

**Wednesday, March 24, Noon – 1 p.m.**
Integration of Common Law & Islamic Sharia Law*
Steven W. Graber, Steven W. Graber P.A., Manhattan
Telephone CLE

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