A Pro Bono Update
P10

20/20 Vision
The Kansas Supreme Court Adopts Changes to the Rules of Professional Conduct
P22

Zombie PIK Instructions
P27

ANALYZING A TRADE SECRET CASE IN KANSAS: Marvelous Manufacturer and the Capable Chemist
THE CORRECT WAY TO ACCEPT PAYMENTS!

Trust your credit card transactions to the only merchant account provider recommended by 37 state and 48 local bar associations!

- Separate earned and unearned fees
- 100% protection of your Trust or IOLTA account
- Complies with ABA & State Bar guidelines
- Safe, simple, and secure!

Reduce processing fees and avoid commingling funds through LawPay.

Process all major card brands through LawPay

Secure web payments

866.376.0950
LawPay.com/ksbar

NOW AVAILABLE EXCLUSIVELY THROUGH THE KANSAS BAR ASSOCIATION

Affinipay is a registered ISO/MSB of BMO Harris Bank, N.A., Chicago, IL

Proud Member Benefit Provider...
28 | Analyzing a Trade Secret Case in Kansas: Marvelous Manufacturer and the Capable Chemist
By Tony Rupp and Jeff Hurt

10 | KBF: Your Opportunity to Create!
10 | A Pro Bono Update
12 | Thinking Ethics: The Risky Business of Jointly Representing A Company and Its Constituents
   By Mark M. Iba
20 | 2014 KBA Awards

22 | 20/20 Vision: The Kansas Supreme Court Adopts Changes to the Rules of Professional Conduct
   By J. Nick Badgerow
26 | Zombie PIK Instructions
   By The Hon. Stephen D. Hill

Regular Features

6 | KBA President
   By Dennis D. Depew
8 | YLS President
   By Jeffrey W. Gettler
13 | The Diversity Corner
   By Sunee N. Mickle
14 | Law Students’ Corner
   By Michael L. Fessinger
15 | Law Practice Management Tips & Tricks
   By Larry N. Zimmerman
16 | Substance & Style
   By Tonya Kowalski
18 | Members in the News
19 | Obituaries
36 | Appellate Decisions
37 | Appellate Practice Reminders
46 | Classified Advertisements
The Journal of the Kansas Bar Association

2013-14
Journal Board of Editors

Richard D. Ralls, chair, rallslaw@turnkeylaw.com
Terri Savely Bezek, BOG liaison, tbezek@ksbar.org
Joan M. Bowen, joan@jlbcest.net
Hon. David E. Bruns, brunsd@kscourts.org
Boyd A. Byers, byers@joulston.com
Toby J. Crouse, tcrouse@foulston.com
Emily Grant, emily.grant@washburn.edu
Connie S. Hamilton, jimandconniehamilton@gmail.com
Katharine J. Jackson, jacksonkatie@gmail.com
Michael T. Jilka, mjilka@jilkalaw.com
Lisa R. Jones, lisa.jones@washburn.edu
Hon. Janice Miller Karlin, judge_karlin@ks.uscourts.gov
Casey R. Law, claw@topeka.org
Julene L. Miller, jmliller@ksbar.org
Hon. Robert E. Nugent, judge_nugent@ks.uscourts.gov
Professor John C. Peck, jpeck@ku.edu
Rachael K. Pirner, rkpiner@twgfirm.com
Karen Renwick, krenwick@lawfirm.com
Teresa M. Schreft, tschreffler@gmail.com
Richard H. Seaton Sr., seatonlaw@sbcglobal.net
Sarah B. Shattuck, bootes@ucm.com
Richard D. Smith, rich.smith@ksag.org
Marty M. Snyder, marty.snyder@ksag.org
Matthew A. Spurgin, spurgin@lawyer.com
Catherine A. Walter, cwalter@topeka.org
Beth A. Warrington, staff liaison, bwarrington@ksbar.org
Issaku Yamaashi, iyamaashi@foulston.com

The Journal Board of Editors is responsible for the selection and editing of all substantive legal articles that appear in The Journal of the Kansas Bar Association. The board reviews all article submissions during its quarterly meetings (January, April, July, and October). If an attorney would like to submit an article for consideration, please send a draft or outline to Beth Warrington, communication services director, at bwarrington@ksbar.org.

The Journal of the Kansas Bar Association (ISSN 0022-8486) is published monthly with combined issues for July/August and November/December for a total of 10 issues a year. Periodical Postage Rates paid at Topeka, Kan., and at additional mailing offices. The Journal of the Kansas Bar Association is published by the Kansas Bar Association, 1200 SW Harrison St., Topeka, KS 66612-1806; Phone: (785) 234-5696; Fax: (785) 234-3813. Member subscription rate is $25 a year, which is included in annual dues. Nonmember subscription rate is $45 a year.

The Kansas Bar Association and the members of the Board of Editors assume no responsibility for any opinion or statement of fact in the substantive legal articles published in The Journal of the Kansas Bar Association. Copyright © 2014 Kansas Bar Association, Topeka, Kan.

For display advertising information contact Bill Spillman at (877) 878-3260 or email bill@innovativemediasolutions.com.

For classified advertising information contact Beth Warrington at (785) 234-5696 or email bwarrington@ksbar.org.

Publication of advertisements is not to be deemed an endorsement of any product or service advertised unless otherwise indicated.

POSTMASTER: Send address changes to The Journal of the Kansas Bar Association, 1200 SW Harrison St., Topeka, KS 66612-1806.

2013-14
KBA Officers & Board of Governors

President
Dennis D. Depew, ddepew@ksbar.org
President-Elect
Gerald L. Green, gggreen@ksbar.org
Vice President
Natalie Haag, nhaag@ksbar.org
Secretary-Treasurer
Stephen N. Six, ssix@ksbar.org
Immediate Past President
Lee M. Smithyman, lsmyman@ksbar.org
Young Lawyers Section President
Jeffrey W. Gettler, jgettler@ksbar.org

District 1
Toby J. Crouse, tcrouse@ksbar.org
Charles E. Branson, cbranson@ksbar.org
Hon. Sally D. Pokorny, spokorny@ksbar.org
District 2
Eric L. Rosenblad, eroenblad@ksbar.org
District 3
Brian L. Williams, bwilliams@ksbar.org
District 4
Cheryl L. Whelan, cwhelan@ksbar.org
District 5
Terri S. Bezek, tbezek@ksbar.org
District 6
Bruce W. Kent, bkent@ksbar.org
District 7
Matthew C. Hesse, mhesse@ksbar.org
J. Michael Kennalley, mkennalley@ksbar.org
Calvin D. Rider, crider@ksbar.org
District 8
John B. Swearer, jswearer@ksbar.org
District 9
David J. Rebein, drebein@ksbar.org
District 10
Jeffery A. Mason, jmason@ksbar.org
District 11
Nancy Morales Gonzalez, ngonzalez@ksbar.org
District 12
William E. Quick, wquick@ksbar.org

At-Large Governor
Christi L. Bright, cbright@ksbar.org
KDJA Representative
Hon. Thomas E. Foster, tfoster@ksbar.org
KBA Delegate to ABA
Linda S. Parks, lparks@ksbar.org
Rachael K. Pirner, rpirner@ksbar.org
ABA Board of Governors
Thomas A. Hamill, thamill@ksbar.org
ABA State Delegate
Hon. Christel E. Marquardt, cmquardt@ksbar.org
Executive Director
Jordan E. Yochim, jyochim@ksbar.org

The Kansas Bar Association is dedicated to advancing the professionalism and legal skills of lawyers, providing services to its members, serving the community through advocacy of public policy issues, encouraging public understanding of the law, and promoting the effective administration of our system of justice.

The Journal of the Kansas Bar Association

Let your VOICE be Heard!
DON'T FORGET TO MARK IT TODAY!

April 2  Brown Bag Ethics – Social Media for the Family Law Lawyer (and Everyone Else)
Kansas Law Center, Topeka
1.0 CLE credit hour, including 1.0 hour ethics and professionalism

April 4  2014 Bankruptcy & Insolvency Law CLE
Doubletree by Hilton, Overland Park
7.0 CLE credit hours, including 1.0 hour ethics and professionalism

April 9  Brown Bag Ethics – Disciplinary Case Update
Kansas Law Center, Topeka
1.0 CLE credit hour, including 1.0 hour ethics and professionalism

April 11  2014 Health Law Update
Hilton Garden Inn, Overland Park
7.0 CLE credit hours, including 2.0 hours ethics and professionalism

April 11  2014 Litigation CLE
The Oread, Lawrence
6.0 CLE credit hours, including 1.0 hour ethics and professionalism

April 16  Brown Bag Ethics – Professionalism Codes and Guidelines for Litigation Conduct
Kansas Law Center, Topeka
1.0 CLE credit hour, including 1.0 hour ethics and professionalism

April 24  Corporate Counsel
Hilton Garden Inn, Overland Park
4.0 CLE credit hours, including 1.0 hour ethics and professionalism

April 25  Family Law
The Oread, Lawrence
CLE credit hours TBD

CLE is pending approval in Kansas and Missouri.
Elected Official Professionalism

We have watched with sadness in recent years the deterioration in working relationships and polarization in both Washington, D.C., and Topeka. This deterioration encompasses not only relationships between our elected officials but also the relationships between the three branches of government. At a growing frequency, civility has been reduced or lost completely.

The KBA approved the Pillars of Professionalism for Kansas lawyers in 2012. That document is available either online at www.ksbar.org/pillars or as a free pamphlet. In the Pillars there is much that can also be applied to our elected officials at all levels of government.

Borrowing heavily from the outstanding work of the KBA Commission on Professionalism, I offer my suggested Pillars of Professionalism for Elected Officials:

Pillars of Professionalism for Elected Officials

With Respect to Your Constituents:

1. Treat them with courtesy, respect, and consideration.
2. Act with candor, honesty, and fairness toward your constituents.
3. Make efforts to communicate regularly with constituents about developments, both positive and negative.
4. Remember that you represent ALL constituents, not just those who voted for you.

With Respect to the Institution in Which You Serve:

1. Respect your constituents' goals as participants in the process of government.
2. Counsel constituents to behave courteously, respectfully, and with consideration toward the officers and personnel of your institution.
3. Participate in training and always work to educate yourself to learn, demonstrate and share the best practices for dealing ethically and professionally with all participants in the governance process.
4. Take opportunities to improve the system of governance in which you participate.
5. Give back to your community through volunteerism, charitable involvement, mentoring, or other local public service.
6. Strive to prevent animosity between opposing interests from infecting the relationship between officials.
7. Be mindful of how technology could result in unanticipated consequences. A public official's comments and actions can be broadcast to a large and potentially unanticipated audience.

With Respect to the Public:

1. Be mindful that, as members of a governing institution, elected officials have an obligation to act in a way that does not adversely affect the institution.
2. Be mindful that, as members of a governing institution, you have an obligation to the rule of law and to ensure that the benefits and burdens of your actions are applied equally to all persons.
3. Participate in training and always work to educate yourself to learn, demonstrate and share the best practices for dealing ethically and professionally with all participants in the governance process.
4. Strive to prevent animosity between opposing interests from infecting the relationship between officials.
5. Be willing and available to cooperate with opposing officials and constituents to attempt to resolve differences amicably whenever possible.

With Respect to the Process of the Institution in Which You Serve:

1. Focus on those issues that are disputed to avoid the assertion of extraneous claims and argument.
2. Frame requests for facts and explanation of opposing viewpoints to elicit only the information pertinent to the issue at hand, and frame your responses to opponents' requests carefully to provide that which was properly requested.
3. Work with all other officials and constituents to determine whether the need for the requested information is proportional to the cost and difficulty of providing it.
4. Maintain proficiency not only in the process but also in the subject matter of the issue at hand. If you lack proficiency in the subject matter, then seek the assistance of those who are proficient.
5. Be prepared on the substantive, procedural, and ethical points involved in the issue at hand.

Footnote

8. In all of your activities, act in a manner which, if publicized, would reflect well on you and the others with which you serve.

9. Always remember that you work for the public. They are your boss and you are their servant.

Imagine how different things would be for us as a state and nation if all of our elected officials behaved in accordance with these guidelines!

About the President

Dennis D. Depew is an attorney with the Depew Law Firm in Neodesha. He currently serves as president of the Kansas Bar Association.

ddepew@ksbar.org
(620) 325-2626

STUDENT AND EMPLOYEE DISMISSAL AND DISCIPLINARY CASES

CLIFFORD A. COHEN
Attorney at Law

Public and Private School Cases
Public Employee Due Process Claims
Federal and State Court
25 Years Experience

COHEN McNEILE & PAPPAS P.C.
4601 College Blvd. #200
Leawood, Kansas 66211
(913) 491-4050 Fax (913) 491-3059
e-mail: ccohen@cmplaw.net
Licensed in Kansas and Missouri

The ABA RETIREMENT FUNDS PROGRAM ("the Program") was created as an American Bar Association member benefit in 1963. The size and strength of the Program's membership means you have access to a comprehensive and affordable retirement plan no matter the size of your firm.

Call an ABA Retirement Funds Program Regional Representative today at (866) 812-1510.
www.abaretirement.com
joinus@abaretirement.com

The Program is available through the Kansas Bar Association as a member benefit. 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, and is not a recommendation of any security. Securities offered through ING Financial Advisers, LLC (Member SIPC). The ABA Retirement Funds Program and ING Financial Advisers, LLC, are separate, unaffiliated companies and are not responsible for one another's products and services.

CN0311-8583-0415
Parallels

Operating on the premise that readers of The Journal read my column faithfully, my article last month was a springboard to this month’s article. I didn’t realize it at the time, but it just seemed that the parallels between the legal profession and scouting made me ponder other parallels (or the perception thereof) in my chosen profession.

As a young attorney employed in the general practice of law in a somewhat smaller geographic area, I am fortunate enough to handle a large variety of cases. This keeps life interesting and the parallels all the more evident. I am fully cognizant of the fact that these parallels are not unique to me, but are very common in the profession, so I am certain my epiphanies will come as no surprise to seasoned attorneys, but I have a page to fill.

Parallel 1

I am a Father. I have never had a child, yet I am asked questions on a regular basis for which I am expected to know the answers . . . right then . . . without looking them up. Working in a general practice firm in a small town, I am occasionally asked legal advice on unique matters for which I have limited knowledge. “Go ask your Mother,” is not an appropriate response to any of these questions. This is the situation when, as an associate, it is most helpful to be in a firm where you can call “Grandpa” (partner) in at the beginning of your career to answer some of the more dicey questions until you learn the ropes. Having been a partner for a few years, now I am called upon by our associate as he learns the ropes; but aren’t we all always learning?

Parallel 2

I am perceived as a Fortune Teller. Very similar to Parallel 1. Many of the questions I am asked are based in the future, i.e., “What if” questions. What if the other party does this? What if the other party does that? I cannot tell the future. I can give an educated guess based on past cases I have participated in and probable outcomes, but I most assuredly cannot foreshadow the future with any certainty.

Parallel 3

I am an Accountant. I do not have an MBA but I spend an inordinate amount of time dealing with numbers. Child support numbers, prorated real estate taxes, amortization schedules, property equalization. I did not realize during law school that a spreadsheet program would become as important to me as a word processing program. Thank goodness for calculators and computers.

Parallel 4

I am a Teacher. I spend a good portion of each day explaining the legal process in layman’s terms to potential clients. From the initiation of a lawsuit and pleadings to be filed, to the required court appearances and court etiquette, most new clients are in completely unfamiliar territory. The closest many have come to the legal system are what they have observed on television, and we all know how realistically some of those shows portray our profession. My personal favorites, by the way, are “Suits,” “Franklin & Bash,” and the new series, “Rake.”

Parallel 5

I am a Mediator. As we all know, oftentimes the best resolution to a case is settlement. In order to come to a settlement, the parties require mediation. Many times mediation will take place between the parties and their attorneys in a private office setting without an official paid mediator. In that case, the attorneys play the role of mediator of their respective clients, often talking them off the ledge and back to common ground. In the long run, this is usually best for all involved and a very satisfying feeling for the attorneys involved if their clients are satisfied. I am a big advocate of ADR and, hopefully, soon be a Kansas Supreme Court-approved mediator.

. . . these parallels are not unique to me, but are very common in the profession, so I am certain my epiphanies will come as no surprise to seasoned attorneys . . .

Parallel 6

I am a Best Friend. There are many occasions, most generally in the courtroom setting, when I am the only familiar face my client can pick out. Whether that client has retained my services or I have been court-appointed to represent them, I have just become their new best friend. When overcome with nervousness and a long wait before their case is called, frequently they will feel compelled to share information that, in most situations, would be reserved for “friends,” not someone who is being paid for representation.

Parallel 7

I am a Student. I continue to attend CLE seminars not only to satisfy the requirements of my profession, but also to make the most of the opportunities I have to hone the craft I have chosen as a career. I enjoy learning new information to share with my partners and associates, and I acquire more confidence in the answers I give clients in my “Father,” “Accountant,” “Teacher,” “Friend,” and “Mediator” roles.

Contrary to the many roles I play, ultimately, I am just a man, just an attorney, not Superman. But in a parallel universe . . .

About the YLS President

Jeffrey W. Gettler is a partner at the Independence law firm of Emert, Chubb & Gettler LLC. He is also the prosecutor for the City of Independence.

jgettler@sehc-law.com
Lawyer Referral Service

“... [LRS] is a good source for a steady flow of persons seeking assistance with the kinds of cases I handle. The benefits of working with LRS far exceed the costs of enrollment. It is the most effective use of advertising budget I can imagine.”

~ Joseph Seiwert, Snider & Seiwert LLC, Wichita

For more information about the KBA Lawyer Referral Service program, visit us online at www.ksbar.org/LRS or call 785-234-5696
KBF: Your Opportunity to Create!

As I write this, I don’t believe any of us know whether we are in winter, spring, or some radical Wizard of Oz funnel. What we do know is that absolutely nothing is predictable in this life. For all our planning, good intentions, and hard work, and yes, even schedules, we never know the final outcome until it is actually the final outcome. What we can do as lawyers is try to set up the best possible structure and assistance for bettering the legal profession and providing for our families, clients, and communities. The Kansas Bar Foundation can provide a wonderful structure for protecting, growing, and maximizing your gifts to a broad community and leaving a legacy. The KBF has recently opened three new opportunities for giving, which came about as the result of particular interests of our members:

• The Equal Justice Scholarship for 2L and 3L female law students who show leadership and community involvement;
• The National Association of Women Judges fund; and
• The Past President’s Scholarship.

These are just a few of the new opportunities for giving and maximizing your giving dollars. We are so blessed to have a foundation that is healthy enough to support law-related projects, disaster relief, and philanthropy. Any group, firm, or individual can create a scholarship or law-related project that promotes the ideals of the foundation. Contact me or one of our great staff members if you have a special project or person you would like to honor through a gift, or if you would like to add to an existing fund. The KBF protects and manages your legacy and interests with accountability and care.

About the KBF President

Kathy Kirk has been involved in bar and foundation activities for many years. Prior to being in small firm practice with the Law Offices of Jerry K. Levy P.A., she served as the first ADR coordinator for the Kansas Supreme Court. Kirk is currently president of the Kansas Bar Foundation and treasurer of the Kansas Association for Justice.

kathykirk@earthlink.net

A Pro Bono Update

The KBA works closely with Kansas Legal Services and both Kansas law schools to provide pro bono programs, opportunities and recognition. In 2014, look for some exciting new programs and opportunities to get involved. Soon, KBA marketing staff members will be meeting with staff at KLS, KU, and Washburn to design a program to highlight new initiatives. Here is a brief update on recent activity from our partner organizations.

Kansas Legal Services

Pro Bono

In October, 2013, KLS became the first organization eligible to host retired and inactive Kansas attorneys to provide legal services under modified Supreme Court Rule 208. Opportunities for participation include:

• Elder Law Advice Line. Participating attorneys take calls during a pre-arranged four-hour shift from their office or home. Callers are screened and directly transferred to the volunteer attorney. Most calls involve providing legal information or advice about a matter of concern to a Kansas senior citizen.

• Serving Our Troops. Volunteer attorneys receive contact information of a service member, veteran, or family member by email. The volunteer initiates contact when convenient. Volunteers can specify geographic or subject matter preferences for the calls they receive. There is no expectation of pro bono services beyond the initial contact.

• Work in a Kansas Legal Services Office. Eleven KLS offices are open to hosting a volunteer attorney on a regular basis. Work can include mentoring young KLS staff, appearing in court if desired, contact with low-income persons to provide advice about a variety of legal matters. Last year, volunteers assisted with Protection from Abuse litigation and mortgage foreclosure defense.

• Assistance with Document Preparation Events. KLS will team with local indigent health care clinics on April 16 for National Health Care Directives Day. During those events, volunteers will assist by preparing advance directives (living wills and health care power of attorney) for clinic patients.

If you are interested in any of these opportunities, contact Marilyn Harp at harpm@klsinc.org or complete the pro bono application at http://www.kansaslegalservices.org/probono. These opportunities are also available to attorneys with active licenses.

University of Kansas School of Law

Student Pro Bono Initiative

The University of Kansas School of Law Pro Bono Initiative began with a meeting among a group of students, faculty, and administrators in the Fall of 2013. This initiative provides students with opportunities to gain practical lawyering experience by serving persons of limited means while cultivating a sense of professional and social responsibility.
In accordance with ABA Standards for Approval of Law Schools, Standard 302, Interpretation 302-10, the Initiative defines pro bono broadly to include activities for the benefit of persons of limited means, involving meaningful services, whether or not law-related. In addition, work done for a not-for-profit with 501(c) (3) status will also qualify.

The Pro Bono Initiative is voluntary. Students are strongly encouraged to engage in a variety of volunteer activities throughout the year. At the end of each academic year, first-year law students who have logged at least 10 hours of pro bono work, and second- and third-year law students who have logged at least 20 hours of work, will receive a Certificate of Recognition in honor of their contributions. In addition, the top three students in each class who volunteer the most hours will be recognized by the law school for their outstanding service.

The Career Services Office, student organizations, and individual students will work together to identify and inform students of pro bono opportunities on the local, regional, and national levels while working to build partnerships with legal aid organizations and law firms throughout the state of Kansas and the Kansas City metro area.

For additional information contact:

Leah Terranova, J.D.
Director of Career Services
University of Kansas School of Law
(785) 864-4357
leah@ku.edu

Washburn University School of Law
Pro Bono Update

The Washburn Law Pro Bono Program provides opportunities for students to engage in law-related community service and recognizes graduates who donate significant time to pro bono matters. Candice Farha, a second-year student participating in the Program, was recently recognized by the Topeka Bar Association for her pro bono contributions to the Topeka office of Kansas Legal Services. Many Washburn Law students have donated time to KLS in Topeka and Manhattan. Recently Washburn Law students assisted with the Kansas Bar Association’s outreach to the Kansas Sheriff’s Association by authoring an article on living wills for the Sheriff’s Association fall magazine, and drafting living wills and durable powers of attorney at the KSA’s Administrative Managers School. Kayla Roehler was recognized at the meeting for authoring the article, after which she drafted several documents for attending sheriffs. Document preparation clinics offer a unique opportunity to meet and work with pro bono clients and work alongside area volunteer attorneys. Washburn Law students continue to assist many area organizations, including Kansas Coalition Against Sexual and Domestic Violence, Kansas Appleseed, Topeka Correctional Facility, YWCA, Volunteer Income Tax Assistance, Board of Indigent Defense Services, Kansas Legal Services, Kansas Bar Association, and CASA.

The Washburn Law Pro Bono Program is one of many ways Washburn Law provides experiential learning opportunities to its students, as are the Law Clinic and Externship programs.

For additional information, contact:

Margann Bennett, J.D.
Director of Professional Development & Pro Bono
Washburn University School of Law
(785) 670-1703
margann.bennett@washburn.edu

KBA Pro Bono Award

In addition to the pro bono programs at our partner organizations, the KBA has many members who provide pro bono services on their own or through programs at their firms. Now is the time to recognize their work by nominating a KBA member for the 2014 Pro Bono Award. Learn more about the award and view past recipients online at http://www.ksbar.org/awards. The deadline to submit nominations is Friday, April 4.
The Risky Business of Jointly Representing a Company and Its Constituents

Many lawyers, especially in-house counsel, find themselves jointly representing a corporation and one or more of its directors, officers, employees, or other constituents. Before taking on this type of joint representation, it is critical to identify and deal with any potential conflicts of interest. A recent case in California highlights the problems lawyers may experience when they represent both a corporation and its employee without sufficiently recognizing potential conflicts of interest.

In Yanez v. Plummer, 221 Cal. App. 4th 180, 164 Cal. Rptr. 3d 309 (Cal. App. 2013), a former Union Pacific machinist sued one of the company’s in-house lawyers for legal malpractice, breach of fiduciary duty, and fraud. Mr. Yanez was a witness concerning an injury that a co-worker suffered from a fall while working in the machine shop. Following the accident, Yanez provided two inconsistent statements about the accident. In the first, he said he was outside when his colleague slipped and fell; in the second, he said he saw his co-worker slip and fall. After the injured worker brought a FELA claim, Yanez was deposed about his statements and the conditions of the machine shop.

During a meeting with the company’s in-house counsel to prepare for his deposition, Yanez expressed concern that his testimony might be unfavorable to the company and asked who would protect him at the deposition. The lawyer responded that he would be his attorney at the deposition and told him that his job would not be affected as long as he told the truth at the deposition. According to Yanez, the lawyer did not advise him about any potential conflict of interest between his interests and those of the company. He also claimed that the lawyer failed to explore with him the discrepancy between the two witness statements he had given.

At the deposition, the injured worker’s counsel elicited from Yanez that he had not actually witnessed the accident. On cross examination, the company’s lawyer, representing both Yanez and the company, had Yanez identify the second witness statement in which he erroneously said he had actually seen the accident. The lawyer did not examine Yanez about the first statement and did not give Yanez an opportunity to explain the discrepancy between the second statement and his direct testimony that he had not witnessed the accident. After a supervisor reviewed the transcript of the deposition, Yanez was fired for dishonesty, contrary to in-house counsel’s promise that his job would not be affected if he testified truthfully.

Reversing summary judgment that had been entered for the company, the court found that a reasonable jury could find that the lawyer’s failure to obtain the proper conflict waiver and his effort to highlight the false witness statement without giving Yanez an opportunity to explain it at the deposition constituted malpractice, breach of fiduciary duty, and fraud that led to Yanez’s discharge.

What should a lawyer do to avoid this type of problem? Rule 1.13(e) of the Kansas Rules of Professional Conduct (KRPC) plainly allows these types of joint representations, but only if the lawyer satisfies the requirements in Rule 1.7 governing conflicts of interest. Counsel should carefully evaluate whether the interests of the corporation and constituent are aligned, whether they are likely to remain aligned throughout the engagement, how their interests differ, the implications of any differing interests, whether there has been any wrongdoing on the part of the employee, and whether the representation of one or more of the clients would limit or adversely affect the representation of the other clients. This is a fact-specific analysis and needs to be revisited as the matter progresses.

If the conflict of interest can be waived, the lawyer must take care to communicate “adequate information and explanation about the material risks of and reasonably available alternatives to” the joint representation so both clients may give the necessary informed consent. See Kansas Rules of Professional Conduct Rules 1.7(b) and 1.0(f). This discussion would involve such things as the advantages and risks involved in the joint representation, any limitations in the joint representation, and the implications of possibly having to withdraw at some future point in the representation. The circumstances may be such that it is more prudent to make sure the employer and employee are represented by separate counsel. Certainly that would have been more advisable in the Yanez case. While the lawyer in Yanez should have been concerned as soon as he saw that Yanez had given inconsistent witness statements, alarm bells should have been ringing when Yanez expressed concern that his testimony might be unfavorable to the corporation. At that point, counsel would have been well advised either to make sure that the discrepancies between the statements could be reconciled consistent with both clients’ interests, or to withdraw from the representation of Yanez, if not both clients.

About the Author

Mark M. Iba is a partner with Stinson Leonard Street LLP, practicing in the firm’s business litigation division, where he focuses on complex civil litigation and arbitration. He received his J.D. from the University of Chicago and is a member of both the Kansas and Missouri bars.

mark.iba@stinsonleonard.com
Encouraging Diversity with Volunteer Organizations

As attorneys, we are often asked to participate on boards or volunteer our time with organizations that can benefit from the perspectives and knowledge that we’ve developed through our legal careers. In fact, the Pillars of Professionalism guide us to “give back to the community through pro bono, civic or charitable involvement.” And if you are like me, you are happy to serve on boards and committees sponsored by the KBA, your local bar association or community organizations. Volunteerism is not only an opportunity for you to help others. It also allows you to network with other attorneys and spend time with friends you made years ago while attending law school or living in your local community. Also, most workplaces – whether it is a private law firm, corporation, or governmental agency – encourage us to participate in volunteer programs to help our business organizations demonstrate their support for the local community and increase goodwill. Volunteerism often is a win-win situation for everyone.

Moreover, the organizations that you donate your time to often appreciate having an attorney’s opinions and contributions even if you are not offering legal advice or services as part of your volunteer activities. Despite anecdotal stories and surveys which often indicate the public has a strong dislike for lawyers, there are still many people who value the experiences an attorney can bring to a volunteer organization. However, I’d like for you to take a step back for a moment to consider your own diversity and the ability to recognize different forms of diversity as one of the most valuable assets that you and other attorneys can offer the volunteer organizations that you work with.

I’m not necessarily talking about diversity from the perspective of race, age, disability, or sexual orientation, but rather diversity based on other, less obvious, factors. Don’t get me wrong, I believe it is critical for boards and organizations to make a conscious effort to seek out new members who fit into the “traditional” diversity categories. It helps the board or committee ensure it will gather opinions from people who represent the demographics of the community. But diversity can be defined in many other ways including a person’s economic standing within the community or one’s political ideologies.

Income Disparity and Diversity

During the last several years, there has been more attention to the growing income disparities in our country. There are many Kansas-based organizations working to identify a variety of ways to reduce income disparities regardless of the cause, and each of these organizations has volunteers who spend time with the people they assist. Some of these organizations make an effort to go one step further and include the people they assist as part of a key committee or board. But it is also important for us to consider recruiting people with lower and middle incomes to work as volunteers within organizations that don’t necessarily exist to solve a social or economic issue. Reaching out to neighbors, co-workers, family, and attorneys who may be in the early stages of their career can bring fresh ideas to meetings and may attract others to support the group’s efforts. Their ideas on program planning, fundraising and the focus of the organization can identify areas that may have been unintentionally overlooked as a result of working with a group that is financially non-diverse.

I recognize that many boards and committees seek certain types of volunteers to guarantee that the organization will continue to receive donations and gifts from its members, but participants who may not have the financial means to make large monetary donations may be able to offer extra time or personal services in lieu of a financial pledge. In addition, members who are bringing a different financial perspective to the group can benefit from networking the same way that you and other non-attorney members do. The experience can lead to making everyone more aware of the types of economic challenges people are facing. Furthermore, it may lead to a new job opportunity or provide the lower to middle income volunteers with new skills they can use to advance in their current position at work.

Politics and Diversity

In the past, I have worked on boards and committees that were dominated by one political party, and others that constantly focused on finding new members with different political viewpoints. While it can be easier to work with people who have the same political leanings, it can also limit opportunities for growing an organization’s mission, fundraising, and gathering support for the volunteer organization’s platform within the community. I am encouraged when the volunteer organizations that I work with recruit people from different political parties and diverse backgrounds even if I don’t see eye to eye with their opinions. It demonstrates that the organization understands that people with different political philosophies may still have similar values and the ability to support a common cause. Similarly, it reassures me that my own diversity is appreciated by fellow volunteers and it encourages me to remain mindful of the Pillars of Professionalism. Things as simple as civility and consideration of different forms of diversity can lead us one step closer to being continually recognized as being part of a respected and honorable profession.

About the Author

Sunee N. Mickle is the director of government relations at Blue Cross and Blue Shield of Kansas Inc. in Topeka. She earned her B.S. in public health from Rutgers University and her J.D. from Washburn University School of Law. Mickle is a 2008 graduate of Leadership Kansas, a nationally recognized program sponsored by the Kansas Chamber of Commerce.

sunee.mickle@bcbsks.com
Washburn Law’s Legal Analysis, Research, and Writing Program—A View from the Inside

As it is often said, skilled legal writing is vital to the effective practice of law. Most judges will affirm that cases are commonly won and lost on the parties’ briefs, and that learning how to write clear, concise, convincing legal arguments is a skill built over the span of a career. Or so I’ve heard. I’m at the beginning of my legal career, and as such I inherited those truisms from those who went before me. I believe what I’ve been told, though, because writing in law school has proven to be one of the most difficult—yet satisfying—skills I have studied.

I came to law school in a somewhat non-traditional manner with an undergraduate background in classical music and psychology. I knew little about writing beyond my undergraduate endeavors, but understood it was central to the practice of law. I was aware that Washburn Law possessed a prestigious legal writing program and that was one of the major reasons I chose to study at Washburn. However, with respect to legal writing, I was essentially a blank slate. Yet, during my time at Washburn, I have made progress in various aspects of student legal scholarship, whether I was writing in-class assignments, a brief for moot court, or an article for the Washburn Law Journal. The skills I have learned here have also assisted me in professional settings. In short, Washburn Law provided an environment in which I could find success.

Washburn’s legal writing program is consistently ranked as one of the best in the nation. U.S. News recently released its 2014 Best Graduate Schools rankings, in which Washburn’s writing program was ranked 11th nationwide. The U.S. News ranking is calculated based on voting by peer legal writing programs across the nation. What is it about Washburn’s program that has garnered such a high ranking?

Washburn’s legal analysis, research, and writing classes prepare students for the hands-on aspects of law practice. I can still remember one of the early days during my 1L year when my legal writing professor surprised each member of the class with a hypothetical and directions to analyze and draft an email memo in twenty-five minutes. The ensuing frantic stress in the classroom was palpable that morning. Similarly stressful were the simultaneously assigned yet completely unrelated drafting projects. I also remember the time that our class submitted our first appellate brief only to have the same brief immediately reassigned, that time advocating for the opposite side. Really, all we could do was chuckle and start over.

A practicing attorney would no doubt look at such exercises as fundamental, but as a 1L, managing time to complete those tasks was demanding. I feel that was exactly the point, as such exercises were built to prepare us for the rigors of practice and advocacy. Washburn Law’s curriculum cultivates real-world skills, as does its faculty.

Washburn has made the decision to invest in professors with legal writing as their main specialization. I am in the fortunate position of having worked as a legal writing TA throughout my 2L and 3L years for various legal writing faculty members. I’ve experienced Washburn’s legal writing classes as a student and, vastly more enjoyably, as a non-student. Watching 1Ls adjust to the expectations of law school reminds me of my first year of law school—preparation for traditional Socratic method classes is hard enough, yet 1Ls at Washburn Law must also juggle its rigorous legal writing program. Yet, from my vantage point I can say that Washburn’s legal writing faculty is consistently passionate about legal writing, generously spending their time counseling students collectively and individually.

Washburn Law is rare in that it primarily staffs full-time, tenure-track legal writing faculty members who have the ability to pass that investment on to each individual student in the legal writing program. It is not unusual for those professors to schedule hour-long conferences with each student after submitting large projects. From personal experience, Washburn’s legal writing professors remain in contact with their second- and third-year students as well, working with Washburn’s academic publications and moot court teams to ensure that students have every chance to perform their best in those extracurricular programs. Moreover, Washburn’s commitment to legal writing allows its curriculum to extend beyond the first year, offering several upper division writing courses aimed at developing practical legal skills such as transactional drafting and writing for litigation. I’m actually currently enrolled in such courses—they’re great.

I would speculate it is these and other aspects of Washburn Law’s legal writing program that continuously prompt the U.S. News to rank Washburn highly. Because of Washburn’s emphasis on practical education paired with individual instruction, Washburn Law graduates are ready to hit the ground running in their legal careers. This curricular emphasis represents forward-thinking on the part of Washburn’s faculty that is not often shared by other institutions. Maybe it should be, because Washburn is a place that even someone like me, entirely lacking a legal background prior to law school, can find the tools for success.

About the Author

Michael L. Fessinger is a third-year law student at Washburn University School of Law. He is a member of the Washburn Law Journal and the Philip C. Jessup International Law Moot Court team.

michael.fessinger@washburn.edu
MediaWiki: A Lawyer’s Own Wikipedia

If you wander around the Internet at all, you are likely familiar with Wikipedia. Launched in 2001 by Jimmy Wales and Larry Sanger, Wikipedia has become the largest general reference site worldwide. Volunteers collaboratively write over 30 million articles in 287 languages and approach the same level of accuracy as the venerable Encyclopedia Britannica. There is more to this resource for lawyers than plot summaries of all 202 episodes of “The X-Files,” however. MediaWiki, the software behind Wikipedia, is free, powerful, and perfectly suited for law firm use.

Wiki

“Wiki” is a Hawaiian word for “fast” or “quick” and hints at the speed at which a knowledge database can be shared. MediaWiki software is powerful enough to drive Intellipedia, the online data sharing system for the U.S. intelligence community, but scalable enough to host a law firm’s policies and procedures. MediaWiki can power a Wikipedia article on Chief Justice Lawton Nuss (but omit his cowboy poetry) or it can enable lawyer to compile biographies and timelines for litigation. It is stable, robust, and old enough to predate YouTube, Facebook, and Twitter but is still every bit as relevant as a tool for information gathering, cataloging, and sharing.

My firm needed MediaWiki for a client audit requirement. The client demanded specific written policies and procedures for key functions. Those policies and procedures were to be accessible to all employees and centralized so everyone would be on the same page. Something like Microsoft SharePoint collaboration software was recommended but the $100 per month price tag on the cloud-based options was above our budget until we could determine what we truly needed and wanted. We were also faced with a terrible time crunch of less than a week to put something together. I needed something fast – something “wiki” fast.

Prototyping on Pi

Way back in 2012, I wrote a column about the Raspberry Pi. The Pi is a tiny computer barely larger than a deck of cards but fully functional as a desktop PC and selling for $40. The Pi is made for hobbyists and educators looking for inexpensive power to unleash on experimental projects. My son’s was still sitting here in my office dangling off the wall from its Ethernet cable. As it turns out, someone had already gone to the work of explaining how to configure the Pi as a MediaWiki server. (A text version is available at trevorappleton.blogspot.com or the video tutorial I used is available from Daniel Foreman at you.tu.be/TrfvnV3lxo.)

About 30 minutes after powering up the Raspberry Pi, users on our network could pull up a main page for our internal firm wiki. My computer skills consist mostly of ready access to Google and YouTube but configuring a MediaWiki server does not appear to require much skill beyond a law degree. There are simpler alternatives, however. It is possible to create a wiki that resides in a single file you can host on a shared drive or swap on a USB thumb drive. Download TiddlyWiki (tiddlywiki.com) and you can replicate some of the best features of MediaWiki. A hosted wiki in the cloud is also an option with a provider like PBWorks (pbworks.com).

MediaWiki for Lawyers

Once the MediaWiki server is configured, it requires users and content. Users are easily configured with certain permissions and groups to help control who has access to read, edit, or delete articles. An article page for nearby restaurants’ menus and delivery numbers might logically be opened for any and all to edit but the page for the firm password policy ought to be locked down for just a few users to change.

Content creation is wonderfully straightforward. Simply type your information, or cut and paste it from another document, and click Save. That is all that is necessary. Learn a few more tricks and you are rewarded with more power. For example, double-brackets create links to new pages. You might write, “No outbound email may contain [[non-private information]].” The brackets around “non-private information” would turn it into a link to a page called “Non-Private Information” where you can define that term. Another example is the equal sign (=) used in multiples to create headline levels. As you write an article with equal signs surrounding your headlines, MediaWiki automatically builds a clickable table of contents for the page. There is even simple code to create footnotes linking out to the original sources. Cutting and pasting our office policies and procedures to our MediaWiki took a few hours but provided a centralized, searchable, fully footnoted site hyperlinking related information complete with a full table of contents for every page. Nothing on paper comes close to its usefulness.

MediaWiki has been around long enough and is open enough to encourage lots of tinkerers to build add-on features (extensions). One of the first we added was called Access Log. That extension allows the administrator to look at any page to see who viewed it and when to verify that information is disseminated to the necessary audience. Additionally, administrators can enable email notice to users to alert when pages change to ensure that all are on notice when new policies and procedures roll out.

Wikipedia has become such an integral part of the Internet landscape that it is being cited in cases and the software backbone of Wikipedia now contributes to our national defense. It is probably about time law firms begin leveraging some of its free power for our own uses.

About the Author

Larry N. Zimmerman is a partner at Zimmerman & Zimmerman P.A. in Topeka and an adjunct professor teaching law and technology at Washburn University School of Law. He is one of the founding members of the KBA Law Practice Management Section.

klslpm@larryzimmerman.com
Much Ado About Issue Statements

Issue statements are one of those things that legal writing “geeks” can debate endlessly. Which is better: the simple, clean “whether”-style question we all learned in law school, or a longer statement that includes some helpful factual background, and maybe even a rule? Many lawyers and judges strongly prefer one over the other.

While a “whether” statement remains strongly suited to pure questions of law, a mixed question of law and fact is difficult to grasp without context. The critique of fuller issue statements usually lies in two places: (1) they are too long and inefficient; and (2) they tend to lapse into argument and thus lack objectivity. The critics make a good point. However, those valid concerns really have more to do with undisciplined writing, and not with the medium itself. Any style of well-executed issue statement can be both efficient and objective.¹

The keys to an effective multi-sentence issue statement include (1) increasing objectivity by acknowledging and countering facts harmful to the client’s position; (2) writing efficiently by limiting to 75 words;² removing extraneous details, and using legally decisive facts rather than general background. The examples below come from the newsworthy contraceptive health coverage cases in the Seventh Circuit. Both briefs employ an increasingly popular³ hybrid model: a paragraph of context followed by a series of short “whether” statements.

Improved Objectivity

To improve objectivity while retaining just a touch of subtle persuasion, use the contrastive signal words “although,” “but,” or “however” to juxtapose the obviously weak facts in your client’s case against the favorable facts that neutralize them:

Before: The Grote Family members are Catholic and operate their business, Grote Industries, in accordance with their faith, including the Catholic Church’s teachings regarding the moral wrongfulness of abortifacient drugs, contraception, and sterilization. * * * Can the government establish the high standard of strict scrutiny in support of implementing the Mandate against Grote, especially when the government exempts millions of other Americans and has a variety of alternative measures available?⁴ [70 words after significant editing]

After: The Grote Family members are Catholic and operate their business, Grote Industries, through their faith, including the Catholic Church’s teachings that it is a grave moral wrong to support abortion, contraception, or sterilization. Although the company is for-profit and does not hire by religion, it operates as an extension of the Grote Family members. The government exempts millions of Americans and has a variety of alternative measures. Can the Affordable Care Act survive strict scrutiny? [75 words]

Notice that the technique is like the “neutralizing” strategy in persuasive statements of fact: state a harmful fact, then immediately soften with an ameliorating or explanatory fact. Here, assuming the company’s for-profit, secular status is one of its biggest hurdles, it needs facts making the business inextricable from the family. Naturally, the government would use the same strategy to neutralize the allegation that it has myriad other regulatory alternatives.

It is this very interplay between “weak” and “strong” facts that naturally gives rise to the question presented. The lawyer has served the court by helping it quickly locate the crux of the issue, but has also injected a touch of persuasion by highlighting the client’s case theory.

Improved Brevity and Relevance

The next example demonstrates how to eliminate extra baggage for a streamlined statement that highlights the client’s problem, rather than several distracting, low-priority details:

Federal regulations enacted pursuant to [enforcing] the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (March 23, 2010) (hereafter “the Affordable Care Act”) require many employers, under pain of penalty, to include in their employee health benefit plans coverage for contraceptives, including abortion-inducing drugs, sterilization, and related patient education and counseling (hereafter “the Mandate”). Plaintiffs Cyril and Jane Korte own the controlling interest in Plaintiff K & L Contractors, Inc. (hereafter “K&L”). Plaintiffs’ Catholic religious beliefs specifically forbid them from paying for or providing these products and services, directly or indirectly, as the challenged Mandate requires them to do. The district court denied Plaintiffs’ motion for a preliminary injunction, and a motions panel of this Court thereafter granted Plaintiffs’ emergency motion for an injunction pending appeal. App. 23, 28. The issues presented are: [72 words]

Here, I’ve eliminated the following types of information:

1. Longer prepositional phrases such as “pursuant to,” where a simple preposition such as “under”—or a better verb—would convey the same meaning.

Footnotes
1. The outdated “under x act, where y facts occurred, does z prevail” method provides some context but generates an unreadable, run-on sentence.
2. The 75-word guideline comes from multiple works by Bryan Garner, including Legal Writing in Plain English 59-61 (2001).
2. Full, formal names of statutes when the act is easily recognized by a shorter name.

3. Citations that will be provided shortly in the sections to come.

4. “Hereafter + short name” parentheticals, which are sorely overused in almost all legal writing. The device is not needed when there is no serious chance the reader would be confused.

5. Redundant or implicit concepts: here, it is axiomatic that a federal statute mandating activity also does so under “pain of penalty,” and “as required.”

6. Procedural history that is already clear from the preceding jurisdictional statement and not central to the issues under review.

About the Author

Tonya Kowalski is a professor of law at Washburn University School of Law, where she teaches both legal writing and government. She has also taught legal writing in India and the Caucasus.

Tonya.Kowalski@washburn.edu

Quintairos, Prieto, Wood & Boyer, P.A.
Attorneys At Law

A multi-office national law firm is seeking ATTORNEYS in the Kansas City, Lawrence, Topeka or Wichita area. Must have experience in civil trial and/or insurance defense litigation. Portable book of business is a plus.

E-mail resume to resume@qpwbllaw.com

CONGRATULATIONS TO OUR FORMER PARTNER, JUDGE TERESA J. JAMES, ON HER SELECTION AS UNITED STATES MAGISTRATE JUDGE

Martin | Pringle
Attorneys At Law
Overland Park (913)491.6500
Kansas City (816)753.6006
Wichita (316)265.9311
MartinPringle.com
Members in the News

Changing Positions

Sara B. Anthony, Stacy M. Bunck, and Justin M. Dean have been elected to shareholders at Ogletree, Deakins, Nash, Smoak & Stewart P.C., Kansas City, Mo. Brandon R. Bieker has joined the Johnson Law Office P.A., Iola, as an associate. Diane L. Bellquist has joined the Johnson Law Office P.A., Topeka, as of counsel. Eric R. Blevins has joined Norton Hare, LLC, Overland Park, as an associate. Michael T. Crabb has joined Kuckelman, Torline, Kirkland & Lewis, Overland Park. Kristen M. Dekker has been elected to partnership at Spencer Fane Britt &c Browne LLP, Kansas City, Mo. David A. Schatz has joined the firm as a partner. Ryan D. Farley has been promoted as member of Hinkle Law Firm, Wichita. Kelly T. Feimster and Jason M. Zager have become partners at Shook Hardy & Bacon LLP, Kansas City, Mo.

Foulston Siefkin LLP has announced that the following attorneys have joined its Wichita office: Sarah E. Burch has joined as an associate, Cydni K. Gilman has joined as special counsel, Joel A. Griffiths has joined as an associate, J. Steven Massoni has joined as special counsel, Phillip W. Pemberton has joined as an associate, Rebekah L. Pinkston has joined as an associate, Alex W. Schulte has joined the general litigation team, and F. Robert Smith has joined as partner. Steven W. Hirsch has become district attorney for Sheridan County, Oberlin. Chasen R. Katz has joined Thompson, Arthur & Davidson, Russell, as a partner; thus, the firm has changed its name to Thompson, Arthur, Davidson & Katz. Daniel E. Lawrence has recently become a member of Fleeson, Googin, Coulson & Kitch, Wichita. Jacqueline K. Levings has joined Freddy’s Frozen Custard & Steakburgers LLC, Wichita, as general counsel. Scott P. Waller has been promoted to Shareholder for Gilmore & Bell P.C., Kansas City, Mo.

Miscellaneous

Shaye L. Downing, Topeka, has been appointed to a four-year term with the Topeka Housing Authority. Sen. Jay S. Emmer has been appointed to the Kansas Corporation Commission, McPherson. Salvatore D. Intagliata, Wichita, has been appointed to serve on the Kansas Judicial Council Criminal Law Advisory Committee, Wichita.

At its 2014 annual meeting, McDowell Rice Smith & Buchan, Kansas City, Mo., announced that Linda C. McFee was elected to its executive board along with the re-election of R. Pete Smith as chairman, Thomas R. Buchanan as president, Brian J. Nicswanger, Kristie Remster Orme as general counsel, and Louis J. Wade.

Tamara L. Niles, Arkansas City, has been chosen to serve a three-year term on the University of Kansas School of Law Alumni Board of Governors.

Charles Peckham, Atwood, has been reappointed to a two-year term on the Solid Waste Grants Advisory Committee.

Sandage Bell LLC has merged with Brown Ruprecht P.C., Kansas City, Mo.

Walter F. Schoemaker, Topeka, has been appointed to a three-year term on the Board of Zoning Appeals.

Patricia Voth Blankenship, Wichita, has been elected to membership in the American College of Real Estate Lawyers.

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.

Court Bonds: service, service, service...

“The Bar Plan is the best place to go for court bonds. They have experience with bond underwriting from application through termination. The process is easy and fast. I know that they can help me identify trouble before it happens, and that protects my client and my reputation before the court.”

Gerry Nester
Public Administrator
St. Louis, MO

THE BAR PLAN 

We help lawyers build a better practice

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

877-553-6376
www.courtbonds.thebarplan.com
Obituaries

Robert Louis Davis

Robert Louis Davis, of Wichita, died January 24; he was 86. He was born June 16, 1927, the son of Judge Carl H. Davis and Maria Francisco Davis. Davis grew up in the Quaker area of West Wichita, near Friends University, and was a lifelong active member of University Friends Meeting. He served briefly in the Navy during World War II.

Davis was a municipal judge of Goddard for 11 years, served several terms as chairman of the Wichita council on education, served eight years as a member of the Wichita School Board, served as chairman of the West Branch YMCA, and served on the Friends University Board of Trustees for 18 years, including nine years as chairman. In addition, he was an active participant in Freemasonry, serving terms as presiding officer of the Albert Pike Masonic Lodge, Wichita York Rite bodies, and the High Twelve Club. He was a recipient of the 33rd degree and elected to the Red Cross of Constantine. Davis also served as a trustee of the Wichita Scottish Rite for 16 years and was a 50-year member of the Midian Shrine. In addition, Davis was a founding donor to the Wichita-Sedgwick County Historical Museum; a longtime supporter and benefactor of the Wichita Children’s Theatre and Dance Centre; president of the Wichita University Club and Wichita Knife & Fork Club; and served on the national boards of the American Friends Service Committee and the Friends Committee on National Legislation.

Davis is survived by his wife, Marian; sister, Carolyn Smith; daughters, Martha F. Davis, Alison Jack, and Janet Donaghe; son, Carl B. Davis; and 10 grandchildren.

Hon. John Carl Gariglietti

Hon. John Carl Gariglietti, 70, of Pittsburg, died January 3 after a battle with cancer. He was born September 30, 1940, at Pittsburg, the son of John A. and Ruth B. (Boatright) Gariglietti. He attended Pittsburg schools and graduated from Pittsburg State University in 1966 with a degree in social work. Gariglietti earned a juris doctorate from Washburn University School of Law in 1969.

Early in his career, Gariglietti was an attorney in private practice from 1969-76. He served as city attorney for West Mineral in 1975 and as a judge in Pittsburg Municipal Court from 1975-77. In 1977, Gariglietti was appointed district court judge of the 11th Judicial District and continued until his appointment as chief judge in 2002. He retired in June 2013.

Gariglietti served as president of the Kansas District Judges Association, chair of the 11th Judicial District Community Corrections Advisory Board, a member of the Supreme Court Committee on Court Security and Disaster Training, and a member of the Supreme Court Council on Dispute Resolution. He was a member of the Crawford County and Kansas bar associations.

Gariglietti is survived by his wife, Mary; three children, Gianna Gariglietti, of Harrisonburg, Va., John B. Gariglietti, of Overland Park, and Betsy Glenn, of Stilwell; grandson, Clay Haney, of Harrisonburg, Va.; and two brothers, Steve W. Gariglietti, of Pittsburg, and Ron P. Gariglietti, of Joplin, Mo.

Paul E. Serrano Jr.

Paul E. Serrano Jr., 63, of Kansas City, Kan., died December 30 at his home. He was born March 5, 1950, and was a lifelong resident of Wyandotte County. Serrano graduated from Emporia State University in 1972 and the University of Kansas School of Law in 1975. That same year, he received the Reginald Heber Smith Fellowship to practice law at the Topeka Legal Aid Society.

From 1977 to 1986, he practiced law at the Wyandotte-Leavenworth County Legal Aid Society, from 1986 to 1997 he practiced at the Blake & Uhlig Law Firm in Kansas City, Kan., and in 2001 he opened his own law firm in Kansas City, Mo., where he practiced until his death. Serrano was a member of the Wyandotte County, Kansas, and Hispanic bar associations.

Serrano is survived by his wife, Lynne Deery Serrano; four children, Gabriel, of Beverly Hills, Calif., Dominic, of Kansas City, Mo., Lauren, of Chicago, and Aaron, of Olathe; and five grandchildren. He was predeceased by his parents, Paul and Josephine Serrano Sr.; sister, Ramona Lou; and brother, Anthony.

Harold Kipling Wells

Harold Kipling Wells, 86, of rural Elmdale died December 14 at his home. The son of Macy Kipling and Leona Hyle Wells, he was born March 12, 1927, in Emporia. Wells graduated from Washburn University School of Law and served in the U.S. Army as an airplane and engine mechanic (747) before being discharged with the rank of corporal in 1946.

Wells owned a private law firm in Kansas City for 25 years and was then an attorney for the Department of the Interior in Alaska for two years.

He served on the Elmdale Cemetery Board, was president of the Middle Creek Watershed Board for 17 years, and was Chase County commissioner. Wells was also a member of the Masonic Lodge, Zeredatha No. 60, A.F. & A.M., and the local American Legion Post until it disbanded. A lifelong Republican, he served as chair of the Kansas Day Committee.

Wells is survived by his wife, Barbara, of the home; son, Harold Kipling Wells II, of Elmdale; daughter, Janna Hancock, of Strong City; six grandchildren; and 12 great-grandchildren. He was preceded in death by his parents.
he KBA Awards Committee is seeking nominations for award recipients for the 2014 KBA Awards. These awards will be presented at the KBA Annual Meeting, September 19-20, in Topeka. Below is an explanation of each award, and a nomination form can be found on the next page. The Awards Committee, chaired by Sara Beezley, of Girard, appreciates your help in bringing worthy nominees from throughout the state of Kansas to the committee’s attention! Deadline for nominations is Friday, April 4.

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 to recognize: Law-related projects involving significant contributions of time; 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:
• 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 disableness.

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

---

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  ☐ Diversity Award
☐ Outstanding Service Award  ☐ Professionalism Award
☐ Outstanding Young Lawyer Award  ☐ Pro Bono Award/Certificates
☐ Distinguished Government Service Award  ☐ Courageous Attorney Award
☐ Distinguished Service Award

__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

Nominator’s Name  ____________________________________________

Address  ____________________________________________

Phone  ___________________________  E-mail  ___________________________

Return Nomination Form by Friday, April 4, 2014, to:

KBA Awards Committee
1200 SW Harrison St.
Topeka, KS 66612-1806
I. Introduction/Overview

Effective on March 1, 2014, the Kansas Supreme Court has adopted a number of significant changes to the Kansas Rules of Professional Conduct (KRPC).1 The Court’s action follows (and approves) the work of a commission appointed for the purpose of considering changes to the Model Rules of Professional Conduct enacted by the American Bar Association in 2013, pursuant to the recommendations of the ABA’s Ethics 20/20 Commission. Those changes are mainly directed at keeping the Rules of Conduct abreast of the times and addressing new issues as they arise.

The purpose of this article is to provide a history of the enactment of the new Rules to review and discuss those changes, and then to identify the portions of the ABA’s Ethics 20/20 Rules that were not recommended or adopted for Kansas, with some explanation.

II. History

The American Bar Association (ABA) adopted the Model Rules of Professional Conduct (MRPC) in 1983, as a replacement for the former Model Code, which dated back to 1969.2 After adoption by the ABA, the Model Rules were substantially adopted by the Kansas Supreme Court and made applicable to Kansas lawyers in 1988.3 As changes have been made in the Model Rules, the State of Kansas has considered those changes, and has adopted most of them.

Before the current changes, the most recent Kansas amendments came in 2007, upon the recommendation of the Kansas Ethics 2000 Commission,4 following the report of the ABA’s Ethics 2000 Commission in 2004.5 Then, in 2009, Carolyn B. Lamm, then-President of the ABA, appointed a Commission to review and update the MRPC.6 Called the “Ethics 20/20 Commission,” that body was charged with addressing issues which had arisen since the ABA’s adoption of the Ethics 2000 changes in 2004.7

The results of the ABA Ethics 20/20 Commission’s three-year work were two reports, containing recommendations submitted to the Board of Governors in August 2012 and February 2013, respectively.8

Following the ABA’s adoption of the Commission’s recommendations, the Kansas Supreme Court appointed its own Ethics 20/20 Commission9 on February 20, 2013, and directed it to undertake a review of ABA’s changes to the Model Rules.10 Included in the Commission’s charges were the directives to:

Consider possible changes to the Kansas Rules of Professional Conduct based on the results of the examination and study in the ABA Ethics 20/20 amendments; [and] develop recommendations for any suggested modifications to the Kansas Rules of Professional Conduct.11

The Kansas Commission reviewed ABA’s Ethics 20/20 changes, met, and conferred to discuss those changes. As a result, the Commission unanimously approved and proposed amendments to Kansas Supreme Court Rule 226, and submitted a report to the Court on June 7, 2013.12

The Kansas Commission’s report and recommendations were then published on the Supreme Court’s website for public comment, with a request that comments, suggestions and objections be submitted by November 11, 2013.13 No comments were submitted.

The Kansas Commission’s report was then approved by the Court on January 20, 2014, and the amended Rules are effective on March 1, 2014.14

The following discussion reviews the changes by topic and subject matter, rather than in Rule order.15

III. ESI

To keep up with changing times, a number of the amendments address electronic data, electronically stored information (ESI), and electronic communications, including advertising via blogs and websites. The rules also add a requirement that lawyers keep abreast of changes in technology.

In Rule 1.0 (Terminology), the term “writing” deletes reference to the single-definition term “e-mail,” and substitutes the broader term “electronic communication.”16

In the same Rule, the comment on screening adds the provision that the screened lawyer should not have contact with electronic files, in addition to paper files.17

Rule 1.1 (Competence) was not changed, but extensive Comments were added to clarify that competence includes “keep[ing] abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.”18

Newly numbered Rule 1.18 (Duties to Prospective Client) adds reference to contacts from prospective clients in response to Web advertising or other electronic media, and provides
that whether a respondent becomes a client depends upon the circumstances.

Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer’s advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer’s obligations, and a person provides information in response.\footnote{20}

Even when a lawyer has received information in a client interview that would disqualify him from a later representation adverse to the prospective client (which will now not be a client), the lawyer may represent someone adverse to that non-client, if:

(a) Both the new client and the prospective (non-)client have given informed consent, confirmed in writing; OR

(b) The lawyer who received the disqualifying information took reasonable measures to hear or receive no more disqualifying information from the non-client than was reasonably necessary;\footnote{21} AND

(i) The disqualified lawyer is timely screened from participation in the new matter; AND

(ii) Written notice is promptly given to the non-client.\footnote{22}

In addition, Rule 1.18 provides that a “client” who interviews law firms with the intent later to disqualify them is not a “prospective client.”

Such a person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a “prospective client” within the meaning of paragraph (a). Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a “prospective client.”\footnote{23}

This adds protection against prospective “clients” which use the “beauty contest” in order to disclose just enough confidential information to a law firm in order to prevent that firm from later taking on a representation adverse to that prospective client.

Rule 4.4 (Transactions with Persons Other Than Clients) adds ESI (including metadata) to the categories of documents which a lawyer might receive inadvertently, and retains the requirement that the recipient of inadvertently produced information notify the sender of his receipt of such information. Given the litigation which has sprung up over the issue,\footnote{24} the Comments also clarify the term “inadvertently”:

A document or electronically stored information is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted.\footnote{25}

Thus, privileged communications may be received from some source other than the inadvertent production by a party or her counsel – such as from the party’s employer, by accessing the employee’s work e-mail address – without imposing the duty to notify.\footnote{26} (Several other Rules, however, may be implicated.)\footnote{27}

Rules 7.2 (Advertising) and 7.3 (Solicitation) are amended to confirm that electronic forms of advertising, including electronic mail and websites, are included in the coverage of the Rules. However, Rule 7.3 also clarifies that electronic communications are permissible, as they are not “real time” solicitations:

In particular, communications can be mailed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communication and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in-person or telephone or real-time electronic persuasion that may overwhelm the person’s judgment.\footnote{28}

IV. Outsourcing

Legal outsourcing – paying lawyers and legal service providers outside the firm to perform work on firm client matters – is an expanding phenomenon. According to news reports, fees in the range of half a billion dollars annually are spent on lawyers in India alone.\footnote{29} With the increase in outsourcing of legal services, the need to maintain confidentiality and adequate supervision are addressed in several Ethics 20/20 Rules.

Rule 1.1 (Competence) recognizes that a lawyer may retain and use others outside the law firm, with the proviso that the employing lawyer must get informed consent from the client, ensure that his contractors comply with the MRPC, and ensure that the employing lawyer remains responsible for the client relationship, including the scope of the representation, the duty to communicate, limitations on fee-sharing, and the prohibition against the unauthorized practice of law. Further, “the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers’ services will contribute to the competent and ethical representation of the client.”\footnote{30}

Similarly, Rule 5.3 (Non-Lawyer Assistants) requires the employing law firm to ensure that its employees inside the firm, as well as hired non-lawyers outside the firm, comply with the same rules pertaining to scope, communication, confidentiality, independence of professional judgment, and preventing unauthorized practice.\footnote{31}

A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third
V. Confidentiality

A focus on confidentiality in the Ethics 20/20 Rules allows the limited disclosure of information to identify conflicts in anticipation of law firm mergers and lateral hires, and expands on the need to avoid the inadvertent disclosure of client confidential information.

Rule 1.6 (Confidentiality) is amended in a number of particulars:

Subparagraph (b)(2) expressly recognizes that a lawyer may share client confidential information while consulting with another lawyer about compliance with the MRPC.

Subparagraph (b)(5) recognizes that disclosure of client confidential information is impliedly authorized to detect and resolve conflicts arising from a lawyer's change of employment or a change in firm composition or ownership, including firm mergers. In these circumstances, a lawyer may reveal client confidential information to the other law firm, to the extent the lawyer reasonably believes necessary:

(5) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

Subparagraph (c) requires a lawyer to take reasonable steps to avoid inadvertent disclosure of more sensitive client-confidential information, as special circumstances may warrant special precautions. Because lawyers have an obligation to avoid conflicts of interest, it is only logical that they must explore the existence of conflicts before joining a different firm or before the merger of two firms.

Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client...

VI. Multi-Jurisdictional Practice

In view of the increase in lawyers crossing state lines, Rule 5.5 emphasizes the need for local counsel and pro hac vice admission, where required, and provides for such practice by lawyers not admitted to practice in the United States.

Rule 5.5 (Multijurisdictional Practice) provides that one is not "practicing law" in a state where he is not licensed, if the work is connected to an out-of-state matter or constitutes federal practice.

Otherwise, one must be admitted pro hac vice in the local court and/or engage local counsel. The same rules apply to lawyers not admitted to practice in the United States.

VII. Sale of a Law Practice

The new Kansas Rules also adopt Rule "1.17" in the ABA's MRPC, relating to the sale of a law practice. This Rule came about in 1990, and was considered by the Kansas Ethics 2000 Commission back in 2005-06. At that time, the Rule was not considered appropriate for Kansas, given the traditional view that there is no "goodwill" associated with a law practice, and so there is, therefore, nothing to "sell." However, that view has changed. See KBA Ethics Opinion 93-14 ("The sale of a lawyer's goodwill is not prohibited by the Model Rules or statutes applicable to Kansas if certain conditions are met"). Because law practices in Kansas are, in fact, bought and sold, this Rule helps to provide guidance.

Rule 1.17 now provides that a lawyer or a firm may sell or purchase a law practice, or an area of a law practice, under four express conditions:

a. The seller must give up the practice (or the area of the law practice, if that is what is being sold);
b. The entire practice (or area of practice) must be sold; the seller cannot retain part of it;
c. Written notice of the sale must be given to clients, including notice of their right to take their business elsewhere, though client consent will be presumed if the client does not object to the transfer within 90 days; and
d. Client fees will not be increased "by reason of the sale."

Of course, the acquiring lawyer or firm must still avoid conflicts of interest, and must still be competent in the practice area(s) acquired. And the selling lawyer must withdraw from litigation in which he has appeared for the now-former clients.

VIII. Advertising

The existing Rules already require truthfulness in advertising, by prohibiting "misleading" advertising. The amendment to Rule 7.1 now emphasizes that even "truth" in advertising can be "misleading" if it leads the reader to "unjustified expectations."

An advertisement that truthfully reports a lawyer’s achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client’s case. Similarly, an unsubstantiated comparison of the lawyer's services or
fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated.[45]

Thus, truthfully representing that the lawyer has won “every” jury trial, without pointing out that he has only tried one case, could be misleading, and is therefore prohibited.

Rule 7.2 also adds that a disclaimer against unjustified expectations “may” avoid a finding that a potentially misleading advertisement would create unjustified expectations.46

IX. ABA Rules Not Adopted

Several proposals in the ABA Ethics 20/20 Report were not recommended by the Kansas Commission, nor adopted by the Kansas Supreme Court, because specific Rules (recently updated) sufficiently – and better – cover those issues. They include:

- Model Rule on Practice Pending Admission;47
- Model Rule on Admission by Motion (Reciprocity);48
- Model Rule for Registration of In-House Counsel;49 and
- Model Rule on Pro Hac Vice Admission.50

ENDNOTES

1. Rule 226, Rules of the Kansas Supreme Court.
3. Rule 225, Rules of the Kansas Supreme Court.
7. Id.
9. Members of the Kansas Ethics 20/20 Commission are: J. Nick Badgerow, Chairman; Kevin Breer; Prof. James Concannon; Daniel H. Diepenbrock; Stanton A. Hazlett; Debra E. James; Katherine L. Kirk; Jack Scott McInteer; David Treviño; and Karen L. Torline.
11. Id.
15. References to the Rules in this article refer to the new Rules, effective on March 1, 2014.
16. Rule 1.0(o).
17. Rule 1.0, cmt. 9.
18. Rule 1.1, cmt 7. This comment also adds that the duty of competence includes complying “with all continuing legal education requirements to which the lawyer is subject.” Id.
19. Formerly, Rule 1.17, which has now been replaced by Rule 1.17, “Sale of Law Practice.”
20. Rule 1.18, cmt. 2.
21. See Rule 1.0(f) and (b), for definitions of “Informed Consent” and “Confirmed in Writing.”
22. Rule 1.18(d).
23. Id., cmt. 2.
24. ABA Formal Opinion 11-460 (August 4, 2011) (“Op. 11-460”) (“But a document is not ‘inadvertently sent’ when it is retrieved by a third person from a public or private place where it is stored or left.”). Available online at http://www.americanbar.org/content/dam/aba/publications/YourABA/11_460.authcheckdam.pdf.
25. Rule 4.4, cmt. 2.
27. Op. 11-460. For example, consider Rules 1.15(b), 8.4(c) and (d), and 3.4(c).
28. Rule 7.3, cmt. 3.
30. Rule 1.1, cmt. 6.
32. Id., at cmt. 3.
33. Rule 1.6(b)(5).
34. Id.
35. Rule 1.6(c).
36. Rule 1.6, cmt. 21.
37. Rule 5.5(c) and (d).
38. Id.
40. Rule 1.17. This is an extensive Rule, with extensive Comments, so the interested reader is commended to the Rule and Comments themselves for the details.
41. Rules 1.7 and 1.9.
42. Rule 1.1.
43. Rule 1.16.
44. Rule 7.1.
45. Rule 7.1, Comment [2].
46. Id.
47. Covered by Kansas Supreme Court Rule 710.
48. Covered by Kansas Supreme Court Rule 708.
49. Covered by Kansas Supreme Court Rule 712. It is suggested that in-house counsel in Kansas review and become familiar with this Rule, as there appears to be a lack of awareness about it.
50. Covered by Kansas Supreme Court Rule 116.
Beware! There are three Zombies lurching through the legal landscape of Kansas. I am speaking of three living/dead jury instructions, still in use even though Kansas appellate courts discredited the instructions years ago. These incorrect statements of law serve no purpose other than dragging a verdict down into the pit of doubt and perhaps even reversal. Vigilant counsel must be on the lookout for these Zombies.

The first Zombie is a pair of twins that arises from Kansas’ reasonable doubt instruction. The first twin deals with the terms *any* and *each*. Currently, the second paragraph of PIK Crim. 4th 51.010 reads:

The test you must use in determining whether the defendant is guilty or not guilty is this: If you have a reasonable doubt as to the truth of *any* of the claims required to be proved by the State, you must find the defendant not guilty. If you have no reasonable doubt as to the truth of *each* of the claims required to be proved by the State, you should find the defendant guilty.¹

In a prior incarnation of this instruction, PIK Crim. 3d 52.02 read:

The test you must use in determining whether the defendant is guilty or not guilty is this: If you have a reasonable doubt as to the truth of *any* of the claims required to be proved by the State, you must find the defendant not guilty. If you have no reasonable doubt as to the truth of *each* of the claims required to be proved by the State, you should find the defendant guilty.²

The *any-any* version of this reasonable doubt instruction is a dead instruction still walking. Ten years ago, the defendant in *State v. Beck⁵* argued that the use of the second *any* would allow the conviction of the crime even if there were insufficient facts to support each element of the crime. The *Beck* court rejected the argument by pointing out that the elements instruction given by the court contained the language, “To establish this charge, each of the following claims must be proved . . .”⁴ Thus, the use of *each* in the elements instruction negated “any potential confusion that may have been caused by the use of the word ‘any’” in the reasonable doubt instruction.⁵

In response, the instruction was revised in the 2004 Supplement to PIK Crim. 3rd (published in 2005) by changing the second *any* to *each*. The Supplement stated, “The Committee has . . . changed the word ‘any’ to ‘each’ in the last sentence of the instruction in order to be consistent with the instructions throughout PIK Crim. 3d which state, “To establish this charge, each of the following claims must be proved. . . .”’ In turn, the Court of Appeals in *State v. Womelsdorf⁶* recently acknowledged that the change in the instruction was an improvement and stated: “The current approved version of PIK Crim. 3d 52.02 [now PIK Crim. 4th 51.010] provides the most accurate test for reasonable doubt . . .” Yet, the old instruction using *any* twice—the Zombie—still lurches into our state courts and is the subject of many appeals. Practitioners should be aware—very aware.

The second of the twins also comes from the reasonable doubt instruction, this time from the first paragraph and deals with the words *unless* and *until*. Currently, the first paragraph of PIK Crim. 4th 51.010 reads:

The State has the burden to prove the defendant is guilty. The defendant is not required to prove she is not guilty. You must presume that she is not guilty *unless* you are convinced from the evidence that she is guilty.⁷

The old version used the word *until*, stating:

The State has the burden to prove the defendant is guilty. The defendant is not required to prove she is not guilty. You must presume that she is not guilty *until* you are convinced from the evidence that she is guilty.⁸

The change of *until* to *unless* came about because of the suggestion of the Supreme Court in *State v. Wilkerson⁴* that the instruction would have been improved in that case by substituting “unless” for “until.” The PIK Committee swiftly modified the pattern instruction by substituting “unless” for “until” in the 2004 supplement.¹⁰ Finally, the Kansas Supreme Court, in *State v. Gallegos¹¹* then blessed the current version of the instruction in 2008.

Yet, the Zombie—the instruction with *until*—still stumbles into Kansas courtrooms and into the record on appeal. Dead for 10 years, this dead creature still walks into instruction packets across the state. Again, courts and counsel should be aware—very aware.

The second Zombie arises from the eyewitness jury instruction which is to be used if the witness does not know the defendant. The instruction lists some factors the jury may consider when weighing eyewitness testimony. At one time, PIK Crim. 3d. 52.20 instructed the jury that it could consider the “degree of certainty demonstrated by the witness at the
time of any identification of the accused” when making that determination.

In State v. Mitchell, the Supreme Court held that it was “error to instruct the jury on the degree of certainty factor” and discouraged the future use of the factor in the instruction. The court did not reverse the defendant’s conviction because under the facts of the case the instruction error was harmless. On the same day, the Court made a similar ruling in State v. Anderson.

Obediently, the PIK Committee, in 2012, eliminated that factor from the list found now in PIK Crim. 4th 51.110. But the Zombie instruction containing the certainty factor still lurches into instruction packets and could be a cause for reversal depending upon the facts of the case. The admonition remains: courts and counsel should be aware—very aware.

The third Zombie comes from an old version of the deadlocked jury instruction, found in PIK Crim. 3d. 68.12. That instruction, commonly called an Allen-type instruction based on its similarity to the instruction in Allen v. United States told the deadlocked jury that “[a]nother trial would be a burden on both sides.” With a clear and succinct ruling, the Kansas Supreme Court said that the language is misleading, inaccurate, and confusing. Because the defendant did not object to the use of the instruction, the Court applied a clearly erroneous standard of review and did not reverse the conviction. But that language is dead and any instruction containing that wording is erroneous. It is a Zombie. Based on that guidance, the PIK Committee in 2009 eliminated the phrase from the instruction. The current version of the instruction is in PIK Crim. 4th 68.140.

One reported case reversed a conviction based on the use of the Zombie deadlocked jury instruction. In State v. Page the defendant had objected to the use of the Zombie language (i.e., that another trial would be a burden on both sides). The Court of Appeals reversed the conviction, stating, “Given the fact our Supreme Court has held the deadlocked jury instruction misleading and the real possibility the jury in this case was at least influenced by the erroneous language in the jury instruction, this defendant’s convictions must be reversed.” Here is my final warning: courts and counsel should be aware—very aware.

Serious action is needed to eradicate these dead creatures. There is but one thing to do—rip them out of your PIK book and run them through a paper shredder. Give them no opportunity to walk again, perhaps to mislead a defenseless jury. Cleanse the memory of your computers of such Zombies by deleting them three times, using the incantation, “The Supreme Court does not approve! The Supreme Court does not approve!”

The pattern jury instructions used in Kansas courts are revised annually. Older printed versions of the forms should be discarded. Digital copies must be updated. Updating a massive form book can be tedious work, but it is very important. Do not harbor Zombies in your law library. Be aware—very aware.

About the Author

Judge Stephen D. Hill currently serves on the Kansas Court of Appeals in Topeka. He attended Washburn University School of Law, receiving his J.D. in 1975. After graduation, he started his own firm, Hill & Wisler, in Mound City until he became Linn County attorney. Hill was appointed as district judge for the 6th Judicial District in 1981 before his appellate appointment in 2003. He served as chair of the PIK Committee, a subcommittee of the Kansas Judicial Council, from 2003-12.

Endnotes

1. Emphasis added.
2. Emphasis added.
4. Id. at 787-88, 88 P.3d at 1235-36.
5. Id. at 788, 88 P.3d at 1236.
7. Emphasis added.
8. PIK Crim. 3d 52.02 (emphasis added).
10. PIK Crim. 3d 52.02 (2004 Supp.).
13. Id. at 482, 275 P.3d at 913.
15. 164 U.S. 492, 17 S. Ct. 154, 41 L. Ed. 528 (1896).
18. Id. at 586-87, 203 P.3d at 1279.
Analyzing a Trade Secret Case in Kansas

Marvelous Manufacturer and the Capable Chemist

By Tony Rupp and Jeff Hurt
I. Introduction

Marvelous Manufacturer is a Kansas chemical company that sells proven products based on formulas that have been part of Marvelous’ business for years. Karen has been a capable chemist for Marvelous for three years. She has access to the formulas and has modified and improved some of them. She knows some of the formulas from memory. She has signed a “confidentiality” agreement forbidding disclosure of Marvelous’ formulas to third parties without permission. However, she has not signed a noncompetition agreement.

In a pitiful economy, poor Karen has not had a pay raise. Fearsome Competitor is looking for a competent chemist to upgrade its formulas to compete with Marvelous. Fearsome pays better than Marvelous, and Karen sees this as a tremendous opportunity to advance her career and pursue her livelihood. She applies for and accepts a position with Fearsome.

Management at Marvelous is miffed. Marvelous suspects Karen to have pilfered copies of the formulas. Even if she hasn’t, Marvelous is alarmed that the knowledge she has of those formulas is potentially damaging and gives Fearsome an unfair advantage in the marketplace.

Marvelous comes to Lucky Lawyer for guidance. Lucky is mindful of the Kansas Uniform Trade Secrets Act (KUTSA) and knows that he needs to determine whether there is a potential claim for misappropriation of a trade secret. Lucky recognizes the tug-of-war between Marvelous’ interest in maintaining the secrecy of information that may be the subject of extensive investment and that “loses its value when published to the world at large,” and Karen’s interest in pursuing her livelihood. Lucky determines that a crucial question is whether a “trade secret” has been “misappropriated” by Karen.

II. What is a “Trade Secret?”

Lucky knows “trade secret” is a term of art that is often incorrectly used to describe any information a party wants to keep confidential. While at a minimum, a “trade secret” must be treated confidentially by the party claiming statutory protection, such confidential treatment isn’t enough. There are other requirements. What is and is not a trade secret requires a fact-intensive analysis of the factors set forth in the KUTSA as construed by the courts. However, the plaintiff must come forward with “some showing that the information alleged to be a trade secret meets the definition.” Accordingly, if Marvelous is to pursue a claim it is critical for Lucky to assemble evidence that establishes that there are actual trade secrets that have been taken.

Under K.S.A. 60-3320(4), trade secret protection may apply to a formula, pattern, compilation, program, device, method, technique, or process that:

i. derives independent economic value, actual or potential, from not being generally known to, and not being reasonably ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

ii. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

In Progressive Products Inc. v. Swartz, the court said that the KUTSA operates in conjunction with patent law “to protect developers and legitimate users of new commercial ideas and technology. A key difference between a trade secret and a patent is that the latter is open to public inspection, while the former is maintained in secrecy.” The court went on to state, [T]rade secret law creates a property right that is defined by the extent to which the owner of the secret protects that interest from disclosure to others. In doing so, the law allows a trade secret owner to reap the fruits of its labor and protects the owner’s moral entitlement to these fruits. Trade secret law encourages the development and exploitation of lesser or different inventions that might be accorded protection under the patent laws, but which still play an important part in technological and scientific advancement. Without trade secret protection, organized scientific and technological research could become fragmented, and society as a whole could suffer. By restricting
the acquisition, use, and disclosure of another’s valuable, proprietary information by improper means, trade secret law minimizes the inevitable cost to the basic decency of society when one steals from another, in doing so, trade secret law recognizes the importance of good faith and honest, fair dealing in the commercial world.7

If Marvelous is going to pursue a trade secret claim, Lucky must identify with specificity what trade secrets have been misappropriated.8 A common misperception is that all “confidential” information is “trade secret” information. It is not. KUTSA does not protect information that is merely confidential. To be entitled to KUTSA protection, the information must go beyond merely being confidential, and must meet the statutory definition of “trade secret.”

In Wolfe Electric Inc. v. Duckworth,9 the court deemed jury instructions to be erroneous when those instructions allowed for the recovery of damages under KUTSA when the instructions grouped “trade secrets and confidential information” together. The court stated:

“We begin our analysis by agreeing with defendants that KUTSA only prohibits misappropriation of ‘trade secrets.’ It does not mention ‘confidential information.’ Accordingly, remedies concerning non-trade secrets, e.g., mere confidential information, cannot be obtained through a KUTSA cause of action.

There are a few general conclusions that can be fairly drawn from the KUTSA cases.

A. Specificity

It is not good enough for a plaintiff to “simply persist in the blunderbuss statement that ‘Everything you got from us was a trade secret.’”10 Lucky needs to determine specifically what Marvelous believes Karen took with her. Simply pleading the statutory language is not sufficient to avoid summary judgment in a trade secrets case.11 The plaintiff has the burden to define its trade secrets with the precision and particularity necessary to separate it from the general skill and knowledge possessed by others.”12 Like the plaintiff in Paradigm, Lucky can likely satisfy this requirement by identifying Marvelous’ chemical processes by name and listing the specific task completed by each process. He is not required to disclose any of the details of the processes themselves.13

B. Customers and Customer Lists

Customers themselves are not trade secrets.14 Customer lists are not trade secrets when they contain public information that could be easily compiled by third parties. However, when the customer list, while using public information as a source, is the result of a great deal of time, effort, and expense and is treated as confidential information, it may be entitled to trade secret protection.15 Whether a customer list is a trade secret is a fact-intensive inquiry which is highly dependent upon the contents of the list.16

C. Duty to Maintain Secrecy

“Kansas law does not require the holder of a trade secret to maintain its complete secrecy. Rather, Kansas law requires merely that the holder of a trade secret exercise reasonable efforts under the circumstances to maintain its secrecy.”17 Certainly, keeping confidential information under lock and key may be reasonable under the circumstances, but one not need establish the multiple layers of protection presumably used to protect the formula to Coca-Cola. Reasonable efforts may include: prohibiting disclosure of one’s confidential information by business partners through non-disclosure agreements,18 requiring employees to sign confidentiality agreements applicable to the subject information,19 limiting internal use and disclosure to certain employees,20 limiting the internal and external distribution or access to print or electronic copies of confidential information,21 and taking steps to prevent business invitees from observing confidential components and processes.22

Lucky should find the Progressive case instructive in this regard. Progressive’s principals had, over many years and at significant expense, developed a ceramic coating product for use with metal pneumatic tube systems that proved far superior to competing products. Deciding not to pursue patent protection because of the limited period such protection affords, Progressive’s principals instead decided to keep confidential its product’s constituents and order of mixing, through various means. The defendants were made privy to both through their former job duties. When they left Progressive to start a competing company they began to manufacture and sell a nearly identical coating product using Progressive’s mixing procedure to prepare it. Progressive sued, alleging, among other claims, that the defendants misappropriated three trade secrets: the formula and mixing process for the ceramic coating, computerized customer lists, and a computerized pricing program. After a bench trial, the district court granted injunctive relief and otherwise found in favor of the plaintiff without clearly articulating which of the three trade secrets it considered misappropriated. On appeal the defendants argued that Progressive had not treated the purported trade secrets confidentially. The Court of Appeals affirmed in part and reversed in part.25

The Supreme Court upheld the Court of Appeals in all respects. It first held that there was sufficient record evidence to support the finding that the coating formula was treated confidentially and was a protected trade secret. The plaintiff’s president testified he told employees the formula was confidential. Sales personnel were instructed not to give the coating’s material safety data sheet to customers or potential customers. Production personnel were instructed to conceal from visitors to the plant the key ingredients of the formula when mixing the coating, especially a proprietary thickener. Although there was some evidence that the measures taken were loose and not uniformly enforced, the evidence was the formula was treated sufficiently to warrant trade secret protection. The defendants admitted they did not reverse-engineer the formula and that they based their formula on what they had learned from Progressive. The defendants had substituted another ingredient for Progressive’s proprietary thickener, but otherwise the formula was identical. The Court held Progressive’s formula to be a trade secret, one that provided the defendants with the necessary information for producing their own coating to compete without having to make any significant investment in experimentation and research as had Progressive.24
The Court also found the computerized pricing program to be a trade secret. The computer program developed by Progressive allowed it to easily calculate the amount of compound to make up and the cost of that batch. The program was a simple spreadsheet for generating numeric results using a simple mathematical calculation to determine the amount of pipe to be covered and the number of coats needed. Nonetheless, the Court found the program to be a trade secret because it was developed by Progressive for its sole use to calculate production amounts based on its secret formula. The program was also password protected to limit its disclosure to only those employees who needed to know it to perform their jobs.25

The Court disagreed that the mixing process and computerized customer lists were trade secrets. The evidence showed that the mixing process was not treated confidentially; it was carried out in the open and there were no steps taken to shield the marked mixing containers from public view. Furthermore, employees were not specifically instructed that the mixing process was confidential. The computerized customer lists, which contained product prices, were not treated confidentially by Progressive because it gave them to its customers, who, in turn, were free to communicate with one another about how much they were paying Progressive for its product.26

Lucky needs to determine what reasonable efforts Marvelous took to preserve the confidential nature of the formulas it believes Karen took with her. Lucky should ask, among other things, who within the company had access to the formulas, the format(s) in which the formulas were maintained, whether access to the formulas was limited, and how. He should also determine how Marvelous kept the formulas from being disclosed to outsiders. Were employees told the formulas were confidential? Lucky should confirm that Marvelous informed Karen that the formulas were considered confidential and not to disclose them to outsiders.27 That Marvelous had Karen sign a confidentiality agreement, presumably applicable to the subject formulas, is a positive factor, but only marginally so if she was the only employee required to do so.28 Furthermore, the employer needs to let the employees know what is confidential before the alleged misappropriation. Where an employer had no noncompetition or confidentiality agreements with its employees, its “after-the-fact” attempt to inform them that nearly everything they learned as a result of their employment was a trade secret was deemed insufficient.29

D. Other

A person’s strengths and weaknesses are not company trade secrets but rather subjective general skills belonging to the employee.30 Unlike product price, profit margin in a competitive marketplace can be valuable information. Profit margin, overhead and labor are not information readily ascertainable by the industry.31

III. Has the Defendant “Misappropriated” the Information?

It is not enough that Marvelous maintains trade secrets and that Karen had access to those secrets. Marvelous must establish that Karen “misappropriated” the trade secrets. Per K.S.A. 60-3320(2), “misappropriation” means:

(i) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(ii) disclosure or use of a trade secret of another without express or implied consent by a person who

(A) used improper means to acquire knowledge of the trade secret; or

(B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was

(I) derived from or through a person who had utilized improper means to acquire it;

(II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(C) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

What constitutes misappropriation by “use” is a frequently litigated issue, but Kansas federal courts have declined to stray from the plain meaning of the word. That is, any use of another’s trade secret can constitute misappropriation. In Evolution Inc. v. Suntrust Bank,32 the court rejected the argument, based on a case construing the New York version of the UTSA, that the Bank’s use of Evolution’s source code to create a data-extraction program for internal use was not misappropriation because the Bank did not use the source code to compete with the plaintiff. Noting KUTSA’s similarity to New York law, Judge Murguia could not find any competition requirement in the KUTSA, stating: “The court, therefore, relies on a plain reading of the statutory definition of misappropriation, which does not state that the use of a trade secret must be for personal benefit or competition against the trade secret’s owner.”33 Similarly, in Paradigm Alliance Inc. v. Celeritas Technologies LLC,34 the court denied summary judgment in favor of defendant, finding that it had misappropriated Paradigm’s trade secret information through use by simply including the information in the defendant’s application to patent a product, one that would not function as intended without the plaintiff’s trade secrets.

To come within the prohibitions of K.S.A. 60-3320(2)(i) and (ii)(A) and (B), the defendant must have used “improper means” to acquire knowledge. Improper means include “theft, bribery, misrepresentation, breach, or inducement of a duty to maintain secrecy or espionage through electronic or other means.”35 Marvelous told Lucky that Karen stole copies of the formulas which, if true, would constitute “improper means” under the statute.

What if Karen did not “steal” the formulas but rather “reverse engineered” the formula after joining Fearsome? A common question is whether “reverse engineering” of a product is “improper means.” Reverse engineering, by itself, is not
Trade Secret Case

“improper means” for a trade secret violation because simply disassembling the pieces of an item to see what make it work is not “improper means” as defined in the KUTSA.36 Lucky should inquire whether Marvelous’ chemical formulas may be discovered by Karen or others through reverse engineering.

Trade secrets cases often make extensive use of electronic discovery to determine whether a departing employee has copied, emailed, downloaded, or otherwise acted suspiciously with regard to her access to trade secret information.

IV. The Interplay Between KUTSA and Other Remedies

Lucky will need to consider other potential remedies and defenses. KUTSA displaces conflicting tort, restitutionary and other law providing civil remedies for misappropriation of a trade secret.37 However, KUTSA does not affect contractual remedies, whether or not based upon misappropriation of trade secrets, other civil remedies that are not based upon misappropriation of a trade secret, or criminal remedies. Generally speaking, that means that Marvelous may also be able to pursue a claim for breach of contract based on the “confidentiality” agreement Karen signed, but may not pursue an alternative tort theory that arises out of the misappropriation of a trade secret.

Whether a trade secret claim based upon tort is preempted by KUTSA requires statutory interpretation, and is a question of law.38

In Fireworks Spectacular v. Premier Pyrotechnics Inc.,39 the court disposed of a state tort law claim in a footnote as follows:

It is also brought ‘pursuant to the Restatement of Torts § 757 and based upon their common law right to protection from the misappropriation of trade secrets and unfair competition.’ K.S.A. § 60-3326, however, states that the Uniform Trade Secrets Act ‘displaces conflicting tort, restitutionary and other law of this state providing civil remedies for misappropriation of a trade secret.’

Karen’s breach of the confidentiality agreement is a possible alternative theory for Marvelous. Many of the above cited cases pled a KUTSA violation and breach of a written confidentiality agreement.40 Yet, the authors have not located a reported case in which a KUTSA claim failed and the alternative breach of confidentiality agreement was even considered by the court. Unlike some jurisdictions,41 no Kansas appellate court has specifically recognized a cause of action based on the breach of an employee confidentiality agreement, whether or not KUTSA is part of the case. There are, however, several unpublished decisions addressing various contract related defenses to claims under such agreements.42

While KUTSA displaces conflicting tort remedies, there are also instances where other remedies may pre-empt KUTSA claims.

There have been several cases in which whether a trade secrets claim is pre-empted by the Copyright Act was an issue. In Evolution Inc. v. Suntrust Bank,43 the court granted partial summary judgment to the defendant on the basis that the plaintiff’s Trade Secrets Act claim was pre-empted by the Copyright Act. Federal copyright law will pre-empt state law Trade Secrets Act claims unless plaintiff’s claim requires an “extra element” beyond the rights provided by § 106 of the Copyright Act. In Gates Rubber v. Bando Chemical Industries, Ltd., the Tenth Circuit found no preemption because an “extra element” of breach of a duty of trust was involved.44

In Foresight Resources Corp. v. Pfortmiller,45 the plaintiff brought claims under the Copyright Act and trade secrets law. The court disposed of the trade secrets claim and noted that the claim was based on “precisely the same facts as those underlying plaintiff’s copyright infringement claims.”46

It is true that state trade secret law is not necessarily pre-empted by federal copyright law. See Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 40 L. Ed. 2d 315, 94 S. Ct. 1879 (1974). However, granting plaintiff an injunction in this case, based upon the Kansas trade secret law, would have the effect of denying defendant the benefit of [the Copyright Act].47

On the other hand, see the unpublished opinion in Chris-Leef General Agency Inc. v. Rising Star Insurance Inc.,48 holding that a claim under KUTSA is qualitatively different from a claim under the Copyright Act because it requires the “extra element” of improper means.

V. Inevitable Disclosure

Lucky may consider attempting to preclude Karen from serving in her new position with Fearsome under the “inevitable disclosure” doctrine. This doctrine was first adopted in PepsiCo Inc. v. Redmond.49 There, against a backdrop of competition in the beverage industry, the court precluded the defendant from accepting a high level position with one of PepsiCo’s competitors under the Illinois Trade Secrets Act.

The gist of the inevitable disclosure doctrine is to prevent an employee from taking new employment when an employee’s new employment will inevitably lead her to rely on her former employer’s trade secrets.50 The essential elements are:

1. The employers must be direct competitors providing the same or very similar products or services;
2. The employee’s new position is nearly identical to his old one, such that he could not reasonably be expected to fulfill his new job responsibilities without utilizing the trade secrets of his former employer;
3. The trade secrets are highly valuable to both employers.

Bruce Nystrom, PhD
Licensed Psychologist

River Park Psychology Consultants, LLC
www.riverparkpsych.com
727 N. Waco, Suite 320
Wichita, KS 67203

telephone: (316) 616-0260 • fax: (316) 616-0264
Many courts have refused to adopt the inevitable disclosure doctrine.51 In 2006, Judge Brown noted that Kansas courts have not addressed whether Kansas would adopt the inevitable disclosure doctrine.52 There have been no reported Kansas cases discussing this issue since then. A factor that the court may weigh in Karen’s favor is that there was no noncompetition agreement negotiated between Karen and Marvelous. If the court determines that Kansas would apply the inevitable disclosure doctrine, the court would need to determine its applicability here. The court would likely weigh whether the inevitable disclosure doctrine is justified to protect Marvelous’ valuable trade secrets and take reasonable steps to protect those secrets. Marvelous may weigh in Karen’s favor is that there was no noncompetition agreement that was never negotiated with Karen in the underlying employment.

VI. Injunctive Relief

If Lucky’s factual investigation supports a trade secret claim, he will consider whether to seek injunctive relief. K.S.A. 60-3321 provides for injunctive relief to prevent actual or threatened misappropriation of a trade secret. In exceptional circumstances, an injunction may condition future use upon payment of reasonable royalty for no longer than the period of time in which such use could have been prohibited.53 Kansas law provides that an ex-employee may be enjoined from disclosing confidential materials and trade secrets gained in the course of his or her employment.54 To obtain injunctive relief, Marvelous must establish: existence of a trade secret used by it in its business or trade; a confidential relationship between Marvelous and Karen; that it made disclosures in confidence to Karen concerning its trade secrets; and an unauthorized use of those disclosures by Karen.55

In the Progressive Products case, the court stated:

K.S.A. 60-3321(b) allows for relief in the form of a royalty injunction. Such an injunction may lie when the district court finds ‘exceptional circumstances’; those circumstances ‘include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.’

VII. Damages

Lucky may also consider whether to bring a claim for damages. K.S.A. 60-3322 provides for damages, and the damages may include either actual loss or a reasonable royalty. If willful and malicious misappropriation exists, exemplary damages (up to twice the award under section (a)) may be awarded in the discretion of the court.56

K.S.A. 60-3323 provides for attorneys fees when the claim of misappropriation is made in bad faith, a motion terminating injunction is made or resisted in bad faith, or willful and malicious misappropriation exists. In such circumstances, the court may award reasonable attorney’s fees to the prevailing party.

VIII. Conclusion

Trade secret law recognizes that companies that invest in valuable trade secrets and take reasonable steps to protect those secrets are entitled to protection from misappropriation. The questions involved in determining whether certain information constitutes a “trade secret” and whether there has been a “misappropriation” are complex and fact specific. It is critical for the plaintiff to identify with specificity the trade secrets taken, the reasonable efforts to keep the trade secrets confidential, and the improper means used to misappropriate the trade secrets.

About the Authors

Tony Rupp is a trial attorney in the Overland Park office of Foulston Siefkin LLP. He is a 1979 graduate of Creighton University and a 1983 graduate, magna cum laude, of Creighton University School of Law.

Jeff Hurt is a member of Foulston Siefkin LLP’s employment law team in its Overland Park office. He is a graduate of Wichita State University (Biology, 1973), the University of Missouri-Kansas City (Pharmacy, 1976), and Washburn University School of Law (1989).

Endnotes

1. K.S.A. 60-3320 et seq.
3. “An employee on quitting his employment has the right to engage in business in direct competition with that of his employer, unless he has entered into a contract not to do so.” Garst v. Scott, 114 Kan. 676, 679, 220 P. 277, 278 (1923).
6. Id. at 954.
7. Id. at 954-55.
12. Id. at 1222.
20. Id.
21. Id.
23. Id. at 951-52.
24. Id. at 956-58.
25. Id. at 958.
26. Id.
27. Id.
Trade Secret Case

31. Id. at 1227.
33. Id. at 962.
35. K.S.A. 60-3320(1).
37. K.S.A. 60-3326.
39. 86 F. Supp. 2d 1102, 1106, fn. 2.
40. See, e.g., cases cited, supra, at notes 30, 34 and 38.
41. See, PepsiCo Inc. v. Redmond, 54 F. 3d 1262, 1271 (7th Cir. 1995); and Hertz v. Lazenac Group, 576 F.3d 1103, 1115-16 (10th Cir. 2009).
43. 342 F. Supp. 2d at 962-63.
44. 9 F. 3d 823, 847-48 (10th Cir. 1993).
46. Id. at 1011.
47. Id.
48. Memorandum and Order, October 24, 2011, 11-CV-2409 (D. Kan.).
49. 54 F. 3d 1262 (7th Cir. 1995).
50. Id. at 1269.
53. K.S.A. 60-3321(b)
56. K.S.A. 60-3322(b).
Brown Bag Ethics Seminars
Kansas Law Center | 1200 SW Harrison St. Topeka, Kan.

EARLY BIRD REGISTRATION PRICES AVAILABLE!
Space is limited to 65 participants! Register online at www.ksbar.org/cle or call (785) 234-5696

Wednesday, April 2
‘Social Media for the Family Lawyer (and anyone else, for that matter). From Start to Finish: Ethics, Evidence, Investigation and Discovery’
Ron Nelson, Ronald W. Nelson, P.A.

Wednesday, April 9
‘Disciplinary Case Update’
Kimberly Knoll, Office of the Disciplinary Administrator

Noon to 1 p.m.
Registration & lunch begin at 11:30 a.m.

The KBA has applied for 1.0 hour CLE credit, including 1.0 hour of ethics & professionalism for each program in Kan. and Mo.

Wednesday, April 16
‘Professionalism Codes and Guidelines for Litigation Conduct’
Suzanne Valdez, University of Kansas School of Law

Lunch is included

MAY 9-10, 2014
Hilton Garden Inn, Manhattan, Kan.

Save the Date!
Solo and Small Firm Conference

Hotel Information:
The KBA has secured rooms blocks for $114 per night for single/double occupancy. Space is limited, so reserved your room by Tuesday, April 8.

Hilton Garden Inn
Reserve online at www.mahattanks.hgi.com and use group code “KBA” or call (785) 532-9116

Fairfield Inn
Call (785) 539-2400 and mention the “KBA Solo & Small Firm Conference”

Hosted by:
Solo and Small Firm Section
Law Practice Management Section
KBA LOMAP

Stay tuned for more information!
ATTORNEY DISCIPLINE

SIX-MONTH SUSPENSION, WHICH IS STAYED DURING A PROBATIONARY PERIOD OF FIVE YEARS, SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED
IN RE PANTALEON FLOREZ JR.
ORIGINAL PROCEEDING IN DISCIPLINE
NO. 110,241 – JANUARY 24, 2014

FACTS: This is an original proceeding in discipline filed by the disciplinary administrator’s office against the respondent, Florez, of Topeka, an attorney admitted to the practice of law in Kansas in 1981. Florez’ discipline proceeding involved his self-representation of a paternity action filed against him.


HEARING PANEL: A panel of the Kansas Board for Discipline of Attorneys held a hearing on February 27, 2013, where respondent appeared in person and through counsel. The hearing panel determined that respondent violated KRPC 8.4(d) (2013 Kan. Ct. R. Annot. 655) (engaging in conduct prejudicial to the administration of justice) and 8.4(g) (engaging in conduct adversely reflecting on lawyer’s fitness to practice law). Florez stipulated to the ethical violations. All parties jointly recommended that Florez be censured for his misconduct.

HELD: Court found clear and convincing evidence of the charged misconduct and adopted the hearing panel’s conclusions. Court ordered a six-month suspension, which is stayed during a probationary period of five years, subject to the condition that if Florez engages in further misconduct during his probationary period by failing to comply with a court order or if sanctions are assessed against him in the paternity action, a show cause order shall issue and the Court will take whatever disciplinary action appears just and proper without further formal proceedings.

ORDER OF REINSTATEMENT
IN RE PANTALEON FLOREZ JR.
NO. 110,200 – JANUARY 24, 2014

FACTS: This is an original proceeding in discipline filed by the office of the disciplinary administrator against the respondent, Goodwin, of Kansas City, Kan., an attorney admitted to the practice of law in Kansas in 1997. Goodwin’s disciplinary proceedings involve his representation in a juvenile matter and his failure to appear in the proceedings.

DISCIPLINARY ADMINISTRATOR: On April 25, 2013, the office of the disciplinary administrator filed a formal complaint against the respondent alleging violations of the Kansas Rules of Professional Conduct (KRPC). The respondent untimely filed an answer on May 29, 2013. The disciplinary administrator recommended that Goodwin be indefinitely suspended or disbarred.


HELD: Court stated there were no exceptions filed to the panel’s findings and they were deemed admitted. Court held that respondent should be suspended from the practice of law for 18 months and that he be subject to a Rule 219 reinstatement hearing before his suspension may be lifted.

ORDER OF REINSTATEMENT
IN RE JEFFREY M. GOODWIN
NO. 100,491 – JANUARY 7, 2014

FACTS: On February 15, 2012, the Supreme Court suspended the respondent, Jones, from the practice of law in Kansas for a period of six months. See In re Jones, 293 Kan. 871, 269 P.3d 833 (2012). On August 17, 2012, the respondent filed a petition with the Court for reinstatement to the practice of law in Kansas. The Court referred the petition to the disciplinary administrator for investigation and hearing.

HEARING PANEL: On November 13, 2013, a hearing panel of the Kansas Board for Discipline of Attorneys conducted a hearing to consider respondent’s petition for reinstatement. On December 6, 2013, the hearing panel filed its report setting out the circumstances leading to respondent’s suspension, a summary of the evidence presented, and its findings and recommendations. The panel unanimously rec-
ommended that respondent's petition for reinstatement to the practice of law in Kansas be granted, subject to practice limitations and supervision psychological treatment, practice supervision, weekly meetings, quarterly reports, keeping a calendar, no criminal representation, join a professional association, communication, taxes, continued cooperation with disciplinary administrator, no violation of Model Rules, and supervision for two years.

HELD: Court, after carefully considering the record, accepted the findings and recommendations of the hearing panel that respondent's license to practice law be reinstated, subject to practice limitations and supervision recommended by the hearing panel. Court ordered that respondent be reinstated to the practice of law in Kansas, subject to the practice limitations and supervision installed by the Court.

ORDER OF REINSTATEMENT
IN RE CHRISTOPHER Y. MEEK
NO. 108,207 – JANUARY 7, 2014

FACTS: On December 7, 2012, Court suspended the respondent Meek, from the practice of law in Kansas for a period of 40 months. See In re Meek, 295 Kan. 1160, 289 P.3d 95 (2012). Additionally, the court provided that after 12 months of suspension, the Court would stay the remaining 28 months of suspension and place respondent on probation. On December 9, 2013, the respondent filed a petition with this court for reinstatement to the practice of law in Kansas.

HELD: Court, after carefully considering the record, granted the respondent's petition for reinstatement, subject to restrictions in the following areas: Abstinence from drugs and alcohol, Aftercare, alcohol and drug evaluations, substance abuse monitoring, update status of federal probation, random drug screens, continued cooperation with disciplinary administrator, and no violation of Model Rules. Court ordered the respondent to be reinstated to the practice of law in Kansas subject to the outlined conditions.

18-MONTH SUSPENSION
IN RE ANN GOTTBERG SODERBERG
ORIGINAL PROCEEDING IN DISCIPLINE
NO. 110,292 – JANUARY 24, 2014

FACTS: This is an original proceeding in discipline filed by the office of the disciplinary administrator against the respondent, Soderberg, of Wichita, an attorney admitted to the practice of law in Kansas in 1992. Soderberg's violations involve her representation of clients in divorce proceedings.

DISCIPLINARY ADMINISTRATOR: On January 16, 2013, the office of the disciplinary administrator filed a formal complaint against the respondent alleging violations of the Kansas Rules of Professional Conduct (KRPC). The respondent untimely filed an answer the day before the hearing on this matter on June 17, 2013. The disciplinary administrator recommended that Soderberg be suspended from the practice of law for an indefinite period of time.

Appellate Practice Reminders . . .
From the Appellate Court Clerk's Office

Email Addresses Required on Appellate Pleadings

Effective July 1, 2012, Rule 1.05(b) (2013 Kan. Ct. R. Annot. 5) requires that every petition, brief, motion, application, or other paper filed with the clerk of the appellate courts include the email address of the person filing the pleading, along with name, address, telephone number, and fax number. K.S.A. 2013 Supp. 60-211 contains a comparable provision.

Designation of Lead Attorney

Another requirement of Rule 1.05(b), long-standing in nature, is that when multiple attorneys appear on behalf of the same party one must be designated lead attorney. On the various occasions when the appellate clerk needs to contact counsel, the clerk must be able to make one contact for each party. The lead attorney then has the responsibility to notify others.

Local Counsel on Pro Hac Vice Admissions

Under Rule 1.10(b) (2013 Kan. Ct. R. Annot. 9), a Kansas attorney who serves as local counsel on a pro hac vice admission of an out-of-state attorney has an obligation not only to be actively engaged in the case but also to sign all pleadings, documents, and briefs.

When to Expect a Ruling on a Motion for Extension of Time to File a Brief

The most common motion filed in the appellate courts is one for extension of time to file a brief. Unfortunately, many are filed too close to the brief due date. Once the appellate court receives the motion, it will be held for seven days from the date of service for a response plus three days' mail time if applicable, resulting in 10 calendar days before the court schedules the motion for decision. One must file the motion early to have a decision before the brief due date. An alternative is to request an extension of time not exceeding 20 days. The appellate court may consider the extension without waiting for a response. See Rule 1.05(d) and Rule 5.01 (2013 Kan. Ct. R. Annot. 5, 32-33).

If you have questions about these practices or appellate procedure generally, call the Clerk's Office and ask to speak with Carol G. Green, Clerk of the Appellate Courts, at (785) 296-3229.

HELD: Court found that Soderberg filed no exceptions to the hearing panel's final hearing report. Court held that Soderberg is suspended from the practice of law for 18 months. In any motion for reinstatement, Soderberg is required to address whether a plan of supervision is needed. At the reinstatement hearing, the respondent is required to present clear and convincing evidence that she has made full restitution, has taken steps to correct the deficient QDRO, and has received adequate mental health treatment to render her capable of engaging in the active practice of law.

SIX-MONTH SUSPENSION IN RE RAY SANDY SUTTON
ORIGINAL PROCEEDING IN DISCIPLINE
NO. 110,108 – JANUARY 24, 2014

FACTS: This is an original proceeding in discipline filed by the office of the disciplinary administrator against the respondent, Sutton, of Kansas City, Mo., an attorney admitted to the practice of law in Kansas in 1966. Sutton's disciplinary proceedings involved his unauthorized practice of law at a time his license was suspended.

DISCIPLINARY ADMINISTRATOR: On March 15, 2013, the office of the disciplinary administrator filed a formal complaint against the respondent alleging violations of the Kansas Rules of Professional Conduct (KRPC). A supplement to the formal complaint was filed on April 25, 2013. The respondent did not file an answer.

HEARING PANEL: A hearing was held on the complaint before a panel of the Kansas Board for Discipline of Attorneys on May 22, 2013. The hearing panel determined that respondent violated KRPC 5.5(a) (2013 Kan. Ct. R. Annot. 630) (unauthorized practice of law); 8.4(d) (2013 Kan. Ct. R. Annot. 655) (engaging in conduct prejudicial to the administration of justice); and Kansas Supreme Court Rule 211(b) (2013 Kan. Ct. R. Annot. 356) (failure to file answer in disciplinary proceeding). The hearing panel recommended that Sutton be suspended for 30 days.

HELD: Court stated there were no exceptions filed to the panel's findings, and they were deemed admitted. Court stated that in order to end the period of court-ordered suspension, the respondent would have to do whatever is necessary to elevate his decades-old inactive license to active practice status. But at oral argument, respondent announced that, owing to his age, he did not intend to ever again practice law in Kansas. Accordingly, Court did not condition the length of disciplinary suspension upon a reinstatement hearing. Rather, Court deemed it more appropriate to impose a fixed period of disciplinary suspension of six months from the filing date of this opinion. Thereafter, respondent will remain administratively suspended, until such time as he has complied with the requirements for reinstating his license on either an active or an inactive status. Court cautioned that any future unauthorized practice of law, no matter how well-meaning, would likely result in disbarment.

CIVIL

HEALTH CARE PROVIDER AND VICARIOUS LIABILITY
CADY V. SCHROLL ET AL.
JOHNSON DISTRICT COURT – AFFIRMED
COURT OF APPEALS – AFFIRMED
NO. 103,499 – JANUARY 24, 2014

FACTS: Cady filed suit against her obstetrician, Schroll, and Schroll's employer, Women's Care P.A., after Schroll provided Cady's prenatal care during her pregnancy in 2004. Cady alleges that Schroll touched her inappropriately and made sexually charged comments during her office visits. Unbeknown to Cady, Schroll had previously been disciplined by the Kansas State Board of Healing Arts (Board) for his inappropriate and unprofessional behavior with two other patients. In Cady's petition, she named Schroll, Women's Care, and seven other physicians as defendants. Schroll and the other physicians were employed by and shareholders of Women's Care, a professional corporation. She asserted four claims against the defendants: medical negligence, negligent infliction of emotional distress, negligent supervision, and intentional infliction of emotional distress. As legal proceedings progressed, Cady entered into a separate settlement agreement with Schroll, and the district court dismissed the case against him with prejudice. The district court also dismissed with prejudice all of Cady's claims against the other physicians named in the lawsuit. This appeal focuses solely on the liability, or lack thereof, of Women's Care. Women's Care's potential for liability was ruled upon by the district court after Women's Care filed a motion to dismiss and, subsequently, a motion for summary judgment. The district court, treating both motions as ones for summary judgment, held that Cady's claims against Women's Care were barred by the lack of vicarious liability in K.S.A. 40-3403(h). The Court of Appeals affirmed the district court.

ISSUES: (1) Health care provider and (2) vicarious liability

HELD: Court examined Kansas case law and reaffirmed the holding in those cases that K.S.A. 40-3403(h) absolves a health care provider not just from vicarious liability but from any responsibility, including independent liability, when the injured party's damages are derivative of and dependent upon the rendering of or the failure to render professional services by another health care provider. Court also held that K.S.A. 40-3403(h) bars a professional corporation's liability for negligent supervision of a health care provider employed by the corporation if the employee is qualified for coverage under the
Health Care Stabilization Fund created by the Health Care Provider Insurance Availability Act, K.S.A. 40-3401 et seq., the plaintiff’s injuries are derivative of and dependent upon the employee’s actions in rendering professional services to the plaintiff, and no employee of the professional corporation who is not qualified for coverage provided negligent care and treatment to the plaintiff.


INSURANCE, CORRECT INSURANCE COMPANY, MEDICAL EXPENSES, AND ATTORNEY FEES
BUSSMAN V. SAFECO INSURANCE
NEOSHO DISTRICT COURT – AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS
COURT OF APPEALS – AFFIRMED IN PART AND REVERSED IN PART
NO. 103,020 – JANUARY 24, 2014

FACTS: Connie Bussman was driving a vehicle owned by her employer, Community National Bank (CNB), when she was injured in an accident that was caused by an underinsured motorist. Bussman settled with the underinsured tortfeasor for policy limits and then claimed underinsured motorist (UIM) benefits under CNB’s commercial insurance package policy that included commercial automobile coverage, which Bussman believed had been issued by Safeco Insurance Company of America (Safeco), the same carrier that insured the underinsured tortfeasor. After Safeco denied Bussman’s claim, a jury found that the underinsured motorist was 100 percent at fault for the accident and awarded Bussman damages, including future medical expenses. The district court denied Safeco’s posttrial motion for judgment based upon its claim that it did not issue CNB’s insurance policy. The district court granted Safeco’s motion for credit against the verdict in part but declined to give Safeco credit for future medical expenses. The district court also denied Bussman’s motion for attorney fees for attorney fees under K.S.A. 40-256 and K.S.A. 40-908.

Bussman appealed and Safeco cross-appealed to the Court of Appeals. The Court of Appeals affirmed the district court’s judgment on each of Safeco’s claims of error. The Court of Appeals also affirmed the district court’s denial of Bussman’s request for attorney fees under K.S.A. 40-256 but found that Bussman was entitled to attorney fees under K.S.A. 40-908 in Bussman v. Safeco Ins. Co. of America, No. 103,020, 2010 WL 5185785 (Kan. App. 2010) (unpublished opinion).

ISSUES: (1) Insurance, (2) correct insurance company, (3) medical expenses, and (4) attorney fees

HELD: Court affirmed the Court of Appeals’ decision affirming the trial court’s denial of Safeco’s judgment as a matter of law on Safeco’s claim that Bussman named the wrong insurance company as the defendant in this lawsuit. Court stated that an insured should not have to be a cryptographer in order to discover the identity of the company issuing the insured’s policy of insurance and it construed all the ambiguities in the insurance policy in favor of the insured and against the insurance company. Court also reversed the Court of Appeals and district court’s decisions on Safeco’s motion for partial summary judgment on future medical expenses and vacated the $20,000 jury award of future medical expenses.
Court held that workers compensation benefits obviously apply to Bussman’s future medical expenses, which allows Safeco to exclude those benefits from the UIM coverage. However, the Court affirmed the Court of Appeals’ reversal of the trial court’s denial of Bussman’s attorney fee request under K.S.A. 40-908 and remanded to the district court for further consideration of the request to be awarded as costs.


SECURED TRANSACTIONS
STANLEY BANK V. PARISH
JOHNSON DISTRICT COURT – AFFIRMED
COURT OF APPEALS – AFFIRMED
NO. 104,316 – JANUARY 24, 2014

FACTS: The Parishes borrowed money from Stanley Bank in January 2006 to purchase a GMC Yukon. Bank filed notice of its security interest with Kansas Department of Revenue (KDOR) utilizing the motor vehicle electronic lien filing system. Parishes defaulted on loan in April 2007. Parish’s former employer (Bazin Excavating) obtained money judgment against Parish in June 2007 and attachment of Parish’s personal property, including the Yukon that was then seized. In September 2007, Bazin showed a KDOR clerk his money judgment against Parish and obtained paper title for purpose of selling the Yukon at auction. That paper title reflected Bazin Excavating owned the Yukon and it was not subject to any liens. Acting on his own behalf, Bazin purchased the Yukon at auction. Bank filed suit against Bazin Excavating and Bazin (collective “defendants”), seeking declaratory judgment as to the superiority of its perfected purchase money security interest over any interests held by defendants, an order striking the sale of the Yukon, and damages for unlawful conversion. Finding it significant that Bazin had prior knowledge of Bank’s lien and failed to provide that information to KDOR when he obtained “clean” title, district court granted summary judgment to Bank, and awarded damages. Defendants appealed. Court of Appeals affirmed the grant of summary judgment for declaratory judgment and unlawful conversion. 46 Kan. App. 2d 422 (2011). Defendants’ petition for review granted.

ISSUE: Perfected security interest in motor vehicle – electronic certificate of title

HELD: Case was a matter of first impression whether purchaser of vehicle who obtained paper certificate of title from KDOR showing no existing liens could take vehicle free of a bank’s properly perfected purchase money security interest in the vehicle which was recorded in KDOR’s digital records and noted on an electronic certificate of title issued in name of original purchasers. Court of Appeals panel correctly considered and applied perfection and priority rules under the UCC, K.S.A. 84-9-101 et seq., to conclude that the purchaser did not take free and clear of the bank’s security interest. Bank’s perfected security interest clearly had priority over any interest held by Bazin Excavating when Bank perfected its lien in January 2006 and Bazin Excavating did not become a lien creditor until June 2007; and Bazin as a buyer of consumer goods did not qualify for any exception under K.S.A. 2012 Supp. 84-9-320(b) to avoid a prior perfected purchase money security interest in that vehicle.


SEXUALLY VIOLENT PREDATOR
IN RE CARE AND TREATMENT OF SYKES
WYANDOTTE DISTRICT COURT – AFFIRMED
NO. 108,856 – JANUARY 10, 2014

FACTS: Between 1969 and 1987, Sykes accumulated an extensive criminal history. In January 1988, he was convicted of aggravated sexual battery and sent to prison. Aggravated sexual battery is a sexually violent offense and in advance of his 2007 release date, the state commenced this civil care and treatment case seeking to have Sykes committed for treatment as a sexually violent predator under the Kansas Sexually Violent Predator Act (KSVPA) for his continued sexual actions in and out of parole at the Larned State Hospital or the Osawatomie State Hospital. The district court, acting on medical diagnosis of paranoid schizophrenia, exhibitionism, and alcohol dependency, found that Sykes was not competent to stand trial pursuant to K.S.A. 22-3302, a provision applicable to persons charged with a crime. However, the court later determined that Sykes did not have to be mentally competent in order for those civil commitment proceedings to go forward. The court found that Sykes was a sexually violent predator, and this appeal followed. On appeal, Sykes claimed that the district court erred in not ordering a stay of the final hearing until he was found competent to stand trial.

ISSUE: Sexually violent predator

HELD: Court held that proceedings pursuant to KSVPA are civil in nature, not criminal. Court stated that Kansas has an interest in ensuring that persons who are found to be sexually violent predators are committed in facilities that are designed to manage their special needs—needs which differ from those of persons suffering from other disorders. Committing such persons for traditional care and treatment of their mental illnesses under K.S.A. 59-2945 et seq., because they are not competent to stand trial under a criminal law standard would frustrate the legitimate purposes of the Act in view of the many procedural safeguards built into the Act to protect such persons’ due process rights. Court concluded that a person alleged to be a sexually violent predator pursuant to K.S.A. 59-29a01 et seq., need not be mentally competent under the standard applicable to criminal defendants in order for commitment proceedings under the Act to go forward.

STATUTES: K.S.A. 22-3302, -3303; and K.S.A. 59-29a01 – 29a08, -2945, -2946(f), -2959, -2965

CRIMINAL

STATE V. AKINS
MCPHERSON DISTRICT COURT – REVERSED AND REMANDED
NO. 105,809 – JANUARY 10, 2014

FACTS: Akins was convicted of various charges of indecent liberties, indecent solicitation, and battery involving more than one child. He appealed, claiming three instances
of prosecutorial misconduct: (a) improper cross examination of a defense expert witness about Finding Words protocol as “gold standard”; (b) introducing concept of “grooming” without evidentiary support and misstating the law by arguing that grooming of the complainants for future sexual abuse could establish Akins’ sexual intent; and (c) vouching for credibility of the state’s witnesses while openly opining about Akins’ untruthfulness. Akins also claimed in part that the district court erred in excluding testimony about prior false allegations of sexual abuse because witnesses were related to Akins, and erred in giving jury oral rather than written unanimity and multiplicity instructions.

ISSUES: (1) Prosecutorial misconduct, (2) evidence of prior false allegations, and (3) unanimity and multiplicity jury instructions

HELD: The three claimed instances of prosecutorial misconduct were examined, finding reversible error. Each established misconduct, the misconduct in each was gross and flagrant, and the misconduct in each was motivated by ill will. State failed to prove beyond a reasonable doubt that the misconduct did not affect outcome of the trial in light of the entire record. Convictions reversed. Remanded for new trial.

For guidance on retrial, district court erred by excluding testimony based solely on witnesses’ relationship with Akins.

For guidance on retrial in this multi-court and multi-charge case, written instructions regarding unanimity and multiplicity are better practice than oral election.

STATUTES: K.S.A. 2010 Supp. 21-4643; K.S.A. 21-3525; K.S.A. 22-3421, -3601(b); and K.S.A. 60-261, -401(b), -407(a), -422(d)

STATE V. BROOKS
SHAWNEE DISTRICT COURT – AFFIRMED COURT OF APPEALS – REVERSED
NO. 102,452 – JANUARY 24, 2014

FACTS: Brooks was convicted of rape, blackmail, and breach of privacy, based on forcing victim to have intercourse under threat that Brooks would publicly reveal victim’s affair with married coworker. Court of Appeals reversed Brooks’ convictions for rape and breach of privacy. 46 Kan. App. 2d (2011). Panel found “force or fear” should be construed as establishing a single means of committing rape, construed “fear” to mean fear resulting from use or threat to use force, and found no evidence that victim was overcome by fear when she submitted to nonconsensual sex with Brooks. 46 Kan. App. 2d 601 (2011). State’s petition for review on whether there was sufficient evidence of rape was granted. Brooks’ crosspetition to address panel’s holding that “force or fear” in rape statute, K.S.A. 2005 Supp. 21-3502(a)(1)(A), established a single means of committing rape was granted.

ISSUES: (1) Alternative means – Kansas rape statute and (2) sufficiency of the evidence

HELD: In accordance with the holding in State v. Nunez, decided this same date, force or fear are not alternative means but options within a means. Inclusion of that language in jury instructions did not make this an alternative means case triggering unanimity concerns.

Court of Appeals erred in construing term fear in K.S.A. 2005 Supp. 21-3502(a)(1)(A) to mean fear resulting from use or threat of force against the victim, another person, or property. Whether a victim is overcome by fear for purposes of this statute is generally a question to be resolved by finder of fact. Viewing facts of this case in light most favorable to the state, sufficient evidence was presented to show that Brooks had nonconsensual intercourse with victim under circumstances when she was overcome by fear. Rape conviction is affirmed.

DISSENT (Moritz, J.): Agrees that “force or fear” does not create alternative means, but dissents from majority’s holding that State presented sufficient evidence to show victim was overcome by fear. Evidence adequately supports that victim’s fear led her to have nonconsensual intercourse with Brooks, but fails to support that she was overcome by fear. Victim succumbed to conspiracy or blackmail, but was not immobilized or paralyzed by fear.

DISSENT (Johnson, J.): Would reverse Brooks’ rape conviction. Circumstances in this case refute the consensual element of rape where victim made volitional choice to have sex with Brooks rather than having her extramarital affair disclosed. State proved Brooks committed a reprehensible act, but did not prove he committed statutory crime of rape.


STATE V. LITTLEJOHN
SEDGWICK DISTRICT COURT – AFFIRMED
NO. 105,872 – JANUARY 17, 2014

FACTS: A jury found Littlejohn guilty of felony murder, aggravated robbery, aggravated kidnapping, and aggravated assault. Littlejohn and an accomplice went to Jim Collins’ used-car dealership with a handgun, intending to take money from Collins by force. They ended up shooting Collins in the leg and forcing him into a vehicle. As they were heading to an ATM to allegedly retrieve cash, Collins jumped out of the vehicle. They tried to get Collins back into the vehicle, but couldn’t. The accomplice shot Collins and then they ran over him with the vehicle. The district court sentenced Littlejohn to a hard 20 life sentence plus a consecutive sentence of 277 months’ imprisonment. On appeal, Littlejohn raised several issues regarding the jury instructions. Additionally, he argued that (1) the district court erred in denying his motion to suppress the statements he made to detectives after being given the Miranda; (2) the complaint filed against him was defective because each crime charged contained alternative means for committing the crime alleged; (3) the state presented insufficient evidence to convict him of any crime; and (4) cumulative error denied him his right to a fair trial.

ISSUES: (1) Jury instructions, (2) motion to suppress, (3) defective complaint, (4) insufficient evidence, and (5) cumulative error

HELD: Court held that the district court did not err with regard to several jury instruction issues: (1) in not giving a unanimity instruction in connection with the felony-murder instruction; (2) by instructing the jury regarding aiding and abetting; and (3) by clarifying to the jury regarding the defense of compulsion and that it is not available to someone who places himself in that situation. However, Court found it was error for the district court not to instruct the jury on second-degree intentional and unintentional murder as lesser
Appellate Decisions

included offenses of felony murder. Yet, Court stated it was not convinced that the jury would have reached a different result with the instructions. Court found Littlejohn failed to include in the record on appeal the interview where he waived his *Miranda* rights and the district court had previously ruled that Littlejohn had voluntarily waived his rights and his statements were freely made to the detectives. Court rejected Littlejohn’s defective complaint argument and his claim that because each charge contained alternative means for committing the crime charged, the complaint prejudiced his ability to prepare a defense and impaired his ability to plead to convictions in a subsequent prosecution. Court rejected Littlejohn’s claims of insufficiency of the evidence and cumulative error.

STATUTES: K.S.A. 21-3209, -3401, -3402, -3436, -5109; and K.S.A. 22-3201, -3414

**STATE V. MAESTAS**

**STEVENS DISTRICT COURT – AFFIRMED**

**NO. 106,214 – JANUARY 24, 2014**

FACTS: Maestas admitted stabbing his mother to death while she was sleeping in dark bedroom. Based on evaluation report by state security hospital (Larned), district court concluded Maestas was competent to stand trial. Relying in part on Maestas’ failure to give notice required under K.S.A. 22-3219, district court granted state’s motion in limine to prohibit parties from discussing at trial Maestas’ mental health. After Maestas was convicted of first-degree premeditated murder, trial court ordered presentence determination under K.S.A. 21-4634 of mental retardation, and evaluation under K.S.A. 21-4634 for commitment to Larned instead of prison. Upon review of that combined report, district court found Maestas was not mentally retarded, imposed hard 25-year life sentence, and denied request for placement at Larned. On appeal Maestas claimed: (1) prosecutorial misconduct during closing argument by mischaracterizing witness testimony and falsely implying the victim feared Maestas; (2) jury should have been instructed on lesser included offense of reckless second-degree murder; (3) right to present his defense was abridged by limiting his ability to develop testimony at trial about auditory hallucinations prior to the killing; (4) district court erred in determining for sentencing purposes that Maestas was not “mentally retarded;” and (5) district court erred in refusing to commit Maestas to Larned rather than prison under K.S.A. 22-3430.

**ISSUES:** (1) Prosecutorial misconduct, (2) reckless second-degree murder instruction, (3) evidence of alleged mental defect, (4) failure to find mental retardation, and (5) commitment to state security hospital instead of prison

**HELD:** Examining each instance of alleged error, one instance of misconduct found where prosecutor improperly mischaracterized the testimony of Maestas’ sister. Under facts of the case, this improper comment was harmless error. No error in not instructing jury on reckless second-degree murder when there was no evidence that Maestas did not intend the attack to result in victim’s death, or that he thrust knife into a dark room without regard for resulting danger. Because Maestas concedes the purpose of the auditory hallucination evidence was to negate mental state elements of intent and premeditation, that evidence fell within K.S.A. 22-
3219(1). Maestas failed to provide notice as required by that statute. No error in barring this evidence on that basis.


A district court’s decision to refuse psychiatric commitment in lieu of prison pursuant to K.S.A. 22-3430 is reviewable on appeal for abuse of discretion. No abuse of discretion found in this case.

STATUTES: K.S.A. 2012 Supp. 21-6820(c); K.S.A. 21-3201(a), -3201(c), -3401(a), -3402(b), -4634(a), -4634(b), -4634(c), -4634(d), -4634(f), 22-3219, -3219(1), -3220, -3301, -3302, -3302(a)(3), -3429, -3430, -3430(a), -3430(c), -3601(b)(1); K.S.A. 60-261; and K.S.A. 76-12b01, -12b01(d), -12b01(d)

STATE V. NUNEZ
FINNEY DISTRICT COURT – AFFIRMED
COURT OF APPEALS – AFFIRMED
NO. 102,377 – JANUARY 24, 2014

FACTS: Nunez was convicted of rape of his ex-wife. On appeal he conceded that the state presented sufficient evidence of force, but claimed conviction should be reversed because “force or fear” phrase in rape statute created alternative means of committing rape and state failed to show victim was overcome by force. In unpublished opinion, Court of Appeals affirmed, finding sufficient evidence that the victim was overcome by both force and fear. Nunez’s petition for review was granted to address apparent confusion caused by State v. Timely, 255 Kan. 286 (1994), and State v. Wright, 290 Kan. 194 (2010).

ISSUE: Alternative means – Kansas rape statute

HELD: The phrase “force or fear” in K.S.A. 21-3502(a)(1) (A) merely describes a factual circumstance that may prove a distinct, material element of rape – namely having nonconsensual sexual intercourse with a victim who is “overcome.” In other words, the actus reus of subsection (1)(1)(A) is “to overcome,” and the phrase force or fear merely describes this material element. Accordingly, the phrase force or fear does not create alternative means of committing rape and, consequently, a defendant’s conviction for rape under K.S.A. 21-3502(a)(1)(A) will be affirmed on appeal when the jury was instructed that it must find the victim was overcome by force or fear and evidence of either force or fear was presented at trial. Language in Timely and Wright suggesting otherwise is specifically disapproved. In this case, state was presented sufficient evidence that the victim was overcome by force when Nunez had nonconsensual sex with her. Affirmed.


STATE V. REMMERT
BUTLER DISTRICT COURT – AFFIRMED
NO. 105,091 – JANUARY 17, 2014

FACTS: A jury convicted Remmert of aggravated criminal sodomy, an off-grid person felony, of his girlfriends’ 5-year-old son. The district court sentenced Remmert to a hard 25 life sentence. On appeal, Remmert argued that the district court erred in admitting prior crimes evidence under K.S.A. 2009 Supp. 60-455(d), that the state presented insufficient evidence to convict him of aggravated criminal sodomy, and that the district court abused its discretion when it denied his motion for a departure sentence.

ISSUES: (1) Prior crimes evidence, (2) sufficiency of the evidence, and (3) departure sentence

HELD: Court held that the trial court did not err in admitting evidence that he was charged in 1987 with aggravated incest of his stepdaughter and entered into a diversion agreement. Court found Remmert’s prior diversion agreement was admissible to show that he had a propensity to sexually abuse a child – an issue that was relevant to determining Remmert’s guilt in the case. Court held there was sufficient evidence of Remmert’s actions of criminal sodomy for the jury to find him guilty beyond a reasonable doubt. Court also held the trial court did not abuse its discretion in denying Remmert’s departure motion which was based on a single mitigating factor, namely his lack of significant criminal history.

STATUTES: K.S.A. 21-3506, -4643; and K.S.A. 60-455

COURT OF APPEALS

CIVIL

TENURE AND PRINCIPAL INVESTIGATOR
ROMKES V. THE UNIVERSITY OF KANSAS DOUGLAS DISTRICT COURT – AFFIRMED
NO. 108,858 – JANUARY 17, 2014

FACTS: Romkes, an assistant professor in mechanical engineering at the University of Kansas School of Engineering, challenged the University of Kansas’ decision to deny him tenure. The principal investigator concept relates to a requirement set forth in the Faculty Senate Rules and Regulations that a tenure applicant must demonstrate “a record of accomplishment reflecting a sustainable program of scholarly activ-
ulty of the mechanical engineering department in November 2009. According to the mechanical engineering department’s requirement now being challenged: “Candidates must demonstrate ability to attract external funding for their research, as demonstrated by funded external grants with the candidate as principal investigator.” Romkes argues for the first time on appeal that these departmental requirements were never properly approved at the University level and, therefore, the requirement should not have been applied to him. It appears that the review of the mechanical engineering department’s tenure requirements was delayed because of the volume of such policies from the various schools and departments within the University. Nevertheless, the requirement was discussed with Romkes during his third-year tenure-track review almost a year and a half earlier in June 2008. The University ultimately denied tenure based on Romkes’ inability to satisfy the requirement. He brought this action for judicial review in the district court and asked the court to overturn the University’s decision. The district court denied relief.

ISSUES: (1) Tenure and (2) principal investigator

HELD: Court held Romkes failed to preserve two issues raised on appeal, namely, that the University unfairly pulled the rug out from under him by interjecting the principal investigator criterion when it was too late for him to do anything about it and that the University actually adopted the principal investigator criterion prior to the chancellor’s decision so as to allow the University to apply it to Romkes. Court found that even if the issues had been preserved, Romkes would not have prevailed on them. Court also held it was reluctant to substitute its judgment for the University’s business judgment on whether to award academic tenure to a faculty member in a research-driven scientific discipline who has not demonstrated the ability over the long haul to attract research funds on his own. Court concluded there was substantial evidence in light of the record as a whole to support the University’s denial of tenure. Court rejected Romkes’ argument that the decision was arbitrary and capricious and that the district court abused its discretion in denying admission of evidence beyond what was contained in the administrative record.

STATUTE: K.S.A. 77-603, -617, -619, -621

STATE V. TIMS

JACKSON DISTRICT COURT – REVISED AND REMANDED WITH DIRECTIONS

NO. 109,472 – JANUARY 3, 2014

FACTS: Tims was found guilty of DUI in 2012. He had a DUI diversion in 2002 and another conviction in 2004. He had been charged with felony DUI in 2012, waived his preliminary hearing, but then filed a motion to strike. The court granted the motion to strike the diversion from his record and he was only convicted of misdemeanor DUI. The state appealed based on an illegal sentence and on a question reserved.

ISSUES: (1) DUI, (2) prior convictions, and (3) diversion agreement

HELD: Court held that by waiving the preliminary hearing, Tims consented to the district court’s finding that probable cause existed that he committed a felony. Court also held that the district court had no authority to reclassify the DUI charge as a misdemeanor. Thus, the court held it had jurisdiction to consider the state’s appeal of Tims’ sentence as illegal. Court stated that a defendant does not have a Sixth
Amendment right to appointed counsel but does have a statutory right to privately retained counsel during DUI diversion proceedings. The diversion conference and the formation of the diversion contract do not involve the adjudication of the defendant’s guilt or innocence or any other proceeding before the municipal court; therefore, the requirement that a judge must be sufficiently involved in a defendant’s waiver of rights does not apply to the contractual waiver of the defendant’s statutory right to counsel in the diversion agreement. Court stated that when the contract unambiguously states a party is knowingly and voluntarily giving up the right to be represented, the court honors the terms of the contract. Court held that Tims’ 2002 DUI diversion, though uncounseled, was valid and qualified as a conviction. Therefore, the district court should have counted the diversion as a past DUI conviction and found Tims’ 2012 DUI to be his third conviction, a felony.

STATUTES: K.S.A. 8-1567; K.S.A. 12-4405, -4412, -4414(c), -4416; K.S.A. 22-2906, -2907(3), -2909(a), -3104, -3428a(2), -3504, -3602(b)(3), -3716(b), -4503(a), (b); K.S.A. 38-2205; K.S.A. 59-29a06(b), -3063; K.S.A. 60-1507; and K.S.A. 65-129c(d)
Positions Available

Administrative Law Judge. The Director of Workers Compensation for the State of Kansas is accepting applications for an Administrative Law Judge position in Wichita. The selected judge will hear and decide litigated workers compensation claims. Some travel may be required. The successful applicant will be appointed to a four (4) year term with a salary of approximately $102,031.45 per year. In order to be certified for consideration by the Nominating Committee, applicants are required to be an attorney regularly admitted to practice law in Kansas for a period of at least five (5) years and must have at least one year of experience practicing law in the area of workers compensation. To apply, please send your resume with a cover letter addressed to: Larry G. Karns, Director, Division of Workers Compensation, 401 SW Topeka Blvd., Suite 2, Topeka, KS 66603-3105. To be considered, application must be received by May 1, 2014.

Associate Position. The Law Firm of Bryan, Lykins, Hejtmanek & Fincher PA is seeking an associate with at least 5 years experience or possible contract attorney. Please contact Roger Fincher at rdfincher@aol.com or by telephone at (785) 235-5678.

Do you feel undervalued by your end of year compensation? Now that we have your attention, would you like to forget the firm politics, stop wasting time in useless committee meetings and focus on practicing law? Do you have your own stable client base which is portable? Do you have an entrepreneurial spirit and are you ready to try something new? Tired of paying for large firm overhead and want to try a smaller firm format? Do you have an established clientele that is resistant to billing rate increases required to keep up with national firm norms or competition in other cities? Are you looking for a way to maintain a first-class law practice with a reputable law firm with easy access to I-435, I-69, and I-35? If so, please consider joining our small south Kansas City law firm. This long-standing firm may be the right place for you. We are looking for hard working lawyers who can bolster our multi-specialty practice in Kansas and Missouri. Open to plaintiff and defendant matters. Let me help you and your client through this technically difficult process. For more information call Curtis G. Barnhill at (785) 856-1628 or email cgb@barnhillatlaw.com.

No Time to Prepare a Critical Appeal Brief or Dispositive Motion? Let an attorney and writer with over 15 years of full-time experience at such tasks in the courts of Kansas, Missouri, the 8th Circuit, and the 10th Circuit prepare it for you, likely for considerably less than you would charge your client. Contact James L. “Jay” MowBray at (816) 805-1376 or by email at lawofficeofjaymowbray@gmail.com. I have authored dozens of successful dispositive motions. See lawofficeofjaymowbray.com for a list of successful appeals.

Medical Litigation Support. I am an attorney practicing in Kansas, with a Bachelor of Science degree in nursing and substantial experience in critical care, burns, trauma, and nursing home care. I have consulted with attorneys in the following types of cases: health care provider malpractice, personal injury, nursing home negligence, and criminal cases involving injury or death. I offer comprehensive litigation and pre-litigation support services that include document review, causation/mekanism of injury analysis, witness interviews, and preparation for deposition or trial, and accurate, timely medical research. $35 per hour for most services. Contact David Leffingwell, JD (Washburn, 1995), BSN (Wichita State University, 1982) at (785) 484-2103 or ddl.legalmed@live.com.

Notice of Availability of Competitive Grant Funds. The Legal Services Corporation announces the availability of competitive grant funds to provide civil legal services to eligible clients during calendar year 2015. A Request for Proposal and other information pertaining to the LSC grants competition will be available from www.grants.lsc.gov during the week of April 7, 2014. In accordance with LSC’s multiyear funding policy, grants are available for only specified service areas. To review the service areas for which competitive grants are available, go to www.grants.lsc.gov/about-grants/where-we-fund and click on the name of the state. A full list of all service areas in competition will also be posted on that page. Applicants must file a Notice of Intent to Compete through the online application system in order to participate in the competitive grant process. Information about LSC Grants funding, the application process, eligibility to apply for grants, and how to file a NIC is available at www.grants.lsc.gov/about-grants. Complete instructions will be available in the Request for Proposals Narrative Instruction. Please refer to www.grants.lsc.gov for filing dates and submission requirements. Please email inquiries pertaining to the LSC competitive grants process to Competition@lsc.gov.

Attorney Services

Contract Brief Writing. Experienced brief writer is willing to take in appellate proceedings for any civil matter. Attorney has briefed approximately 20 cases in the Kansas Court of Appeals and 10 briefs to the 10th Circuit, both with excellent results. If you simply don’t have the time to help your clients after the final judgment comes down, call or email to learn more. Jennifer Hill, (316) 263-5851 or email jhill@mtsqh.com.

Contract Brief Writing. Former federal law clerk and Court of Appeals staff attorney available to handle appeals and motions. Attorney has briefed numerous appeals in both the Kansas and federal appellate courts. Contact me if you need a quality brief. Michael Jilka, (785) 218-2999 or email mjilka@jilkalaw.com.

Family Law Services. Family mediation and guardian ad litem services. Based in northwest Kansas; will travel statewide. Call Alwin Legal Services at (785) 269-7603.

Former Probate Judge and Experienced Litigator. Available to assist you in probate and trust litigation in courts throughout Kansas. Please visit us at www.nicholsjilka.com or call Mike Nichols at (316) 303-9616 or Mike Jilka at (785) 218-2999.

Veterans Services. Do you want to better serve your veteran clients without going to the trouble of dealing with the VA? I am a VA-accredited attorney with extensive experience applying for various VA benefits, including Improved Pension. I regularly consult with attorneys (and their clients) about the various services an attorney can offer to clients to help qualify veterans and their families for various VA programs. As soon as a client is in position to qualify, I can further assist by handling the entire application to the VA for you. For more information about my various consultation and application ser-
vices, please contact the Law Office of Scott W. Sexton P.A. at (785) 409-5228.

We have the Space You Need at the Price You Want! We have offices available in all sizes from 200 sq. ft. to 8,000, or no office at all under our virtual program. We offer a cost-effective solution for small- to medium-sized companies and branch offices with very little upfront cost and flexible lease terms. You can typically move into your office in a day and have access to a professional environment and services without all the overhead. Please visit us at www офfice tecf center.us.

Office Space Available

Downtown Overland Park Office Space for Rent. Free parking, reception area, kitchen, and conference room available for tenant use. The offices are in walking distance of coffee shops, restaurants and retail stores. 2,970 sf of space available. Easy access to Metcalf, I-35, I-635. Contact Tim Gates at Agnes Gates Realty (913) 645-5900 or timothygates@yahoo.com.

Leawood, Kansas. Perfect for solo practitioner, 196 square foot corner office in office building at 112th and Nall. Walking distance to Town Center, Sprint campus, etc. Office has hardwood floors, large windows, and includes use of conference room, reception etc. External signage (visible from Nall) is available with long-term lease, or purchase. Lease for $1,100/month, or will sell my 20 percent interest in the 2,400 sf building unit (the other 80 percent of the building is used by a small accounting firm). Contact Daniel Langin at (913) 661-2430 or dlangin@langinlaw.com.

Office Sharing/Office for Lease—Country Club Plaza, Kansas City. Office sharing or office lease opportunity on the Country Club Plaza in a Class A high profile corner building with ample free public parking for clients. 200 to 11,000 square feet available. Window offices available, high-speed DSL, printer, copier, facsimile, scanning, telephone, kitchen facilities, reception area, and multiple conference rooms. Offices are state-of-the-art with award-winning interior finish and design. Dedicated area available for your assistant if needed. Reasonable rent. No long-term lease required. Some possibility of business referrals depending on your area of practice. We are an AV-rated litigation firm with full management, accounting, research, and other support services. We would consider cost sharing these services with a compatible transactional, tax, and/or real estate practice. Professional, collegial, friendly atmosphere with other attorneys. Confidential inquiries can be made to Michael Grier at mgrier@wardengrier.com.

Office Space Available. Great space for attorney, businessperson, or CPA. Up to 3,000 feet available, conference room, security system, easy access to downtown Topeka or interstate. Call Bob Evenson at (785) 231-7987.

Office Space for Lease. Located at 921 SW Topeka Blvd., which offers quick and easy access to downtown Topeka including the County, Municipal, and Federal Court Houses; State Capitol Building; Docking State Office Building; Curtis Building; and more. There is available space on the first or second floor of the building, which includes individual offices and/or office suites. The building also includes a beautiful glass atrium sitting room used as an art display. Provided services include private parking and receptionist services. Please call Swinnen & Associates LLC at (785) 272-4878 for more information and to schedule an appointment to view the space.


Professional Office Space for Lease or Sale. Newly vacated space at 79th and Quivira, Lenexa, KS. Great rates, and will consider valuable upfront lease concessions for high quality, long term lease. Office is located in a commercial center that is for sale. Excellent income-producing investment opportunity for an owner-occupant. Attractive owner financing available for qualified buyer. Call (816) 805-6415.

Give a Hand Up to Those in Need

• Help is needed to provide pro bono legal services to low-income Kansans; ALL areas of practice are needed.

• No potential clients will be given your name without approval and all will be screened for financial eligibility through Kansas Legal Services.

• KLS may be able to help with extraordinary litigation expenses when the interests of justice require it.

• For more information or to volunteer, contact the Kansas Bar Association at (785) 234-5696 or at info@ksbar.org.
A TRADITION OF SUCCESS

OUR EXPERIENCE PAYS

We have a long history of success inside and outside the courtroom. For over 40 years, we have maximized the value of cases referred to our firm and we will continue to do so into the future. If you have a client with a serious injury or death, we will welcome a referral or opportunity to form a co-counsel relationship.

816-474-0004
WWW.SJBLAW.COM

2600 Grand Boulevard, Suite 550
Kansas City, MO 64108