PAYMENT PROCESSING, EXCLUSIVELY FOR ATTORNEYS.

1.95% & 20¢ per transaction | No swipe required | No equipment needed

LawPay®
CREDIT CARD PROCESSING

The way law firms get paid.

LawPay is the only payment solution backed by 42 of the 50 state bars and offered through the ABA Advantage Program. In accordance with IOLTA guidelines and the ABA Rules of Professional Conduct, LawPay guarantees complete separation of earned and unearned fees, giving you the confidence and peace of mind that your transactions are handled the right way.

www.LawPay.com/ksbar | 866.376.0950

LawPay is a registered ISO/MSP of BMO Harris Bank, N.A., Chicago, IL
30 | The Drone Revolution
By Bob Lambrechts

5 | Notice of KBA Bylaw Amendment
12 | 2016 KBF Scholarship Recipients
19 | Meet the Young Lawyers Section Mock Trial Coordinators
26 | 2016 KBA Awards

28 | Be Prepared – Essential Backup Practices for your Paperless Office
   By Jim Calloway and Ernie Svenson

Regular Features

6 | KBA President
   By Natalie G. Haag

8 | YLS President
   By Justin Ferrell

10 | Substance & Style
   By Emily Grant

15 | The Diversity Corner
   By Amanda Stanley

17 | Law Practice Management Tips & Tricks
   By Larry N. Zimmerman

21 | Members in the News
21 | Obituaries
25 | Upcoming CLE Schedule
38 | Appellate Decisions
44 | Appellate Practice Reminders
51 | Classified Advertisements
2015-16
Journal Board of Editors

Richard D. Ralls, chair, rallslaw@turnkeymail.com
Terri Savely, BOG liaison, tsavely@ksbar.org
Hon. David E. Bruns, brunsd@kscourts.org
Boyd A. Byers, bbyers@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 J. Jones, ljones@gcu.edu
Hon. Janice Miller Karlin, judge_karlin@ks.uscourts.gov
Casey R. Law, claw@bwiscounsel.com
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, rpirner@ksbar.org
Karen Renwick, krenwick@wbsvlaw.com
Jennifer Salva, Journal Editor, jsalva@ksbar.org
Teresa M. Schreffler, tschreffler@gmail.com
Richard H. Seaton Sr., seatonlaw@sbcglobal.com
Lisa R. Jones, ljones@fgcu.edu
Casey R. Law, claw@bwiscounsel.com
Hon. Janice Miller Karlin, judge_karlin@ks.uscourts.gov
Hon. Christel E. Marquardt, spokorny@ksbar.org
Brian L. Williams, bwilliams@ksbar.org
Tish S. Monrical, tmonrical@ksbar.org
Gary Ayers, gayers@ksbar.org
Hon. Jeffrey E. Goering, jgoering@ksbar.org
J. Michael Kennalley, jmkennalley@ksbar.org
Hon. Sally D. Pokorny, spokorny@ksbar.org
Sarah E. Warner, swarner@ksbar.org
Hon. Michael F. Powers, mpowers@ksbar.org
Nancy Morales Gonzalez, ngonzalez@ksbar.org
District 1
Christi L. Bright, cbright@ksbar.org
Toby J. Crouse, tcrouse@ksbar.org
Mark A. Dupree, mdupree@ksbar.org
Mira Mdivani, mmdivani@ksbar.org
District 2
Hon. Sally D. Pokorny, spokorny@ksbar.org
Mary E. Smith, msmith@ksbar.org
District 3
Eric L. Rosenblad, eroenblad@ksbar.org
District 4
Brian L. Williams, bwilliams@ksbar.org
District 5
Terri Savely, tsavely@ksbar.org
David J. Rebein, drebein@ksbar.org
District 10
John B. Swearer, jswarner@ksbar.org
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
Bruce A. Ney, bney@ksbar.org
KDJ A Representative
Hon. Michael F. Powers, mpowers@ksbar.org
KBA Delegate to ABA
Linda S. Parks, lparks@ksbar.org
Rachael K. Pirner, rpirner@ksbar.org
ABA State Delegate
Hon. Christel E. Marquardt, cmarquardt@ksbar.org
Executive Director
Jordan E. Yochim, jeyochim@ksbar.org

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 Jennifer Salva, Journal Editor at jsalva@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 is $45 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. 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. 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 Jennifer Salva, Journal Editor at jsalva@ksbar.org.

For display advertising information contact Jennifer Salva or Meg Wickham at (785) 234-5696 or email jsalva@ksbar.org or mwickham@ksbar.org.

For classified advertising information contact Jennifer Salva at (785) 234-5696 or email jsalva@ksbar.org.

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

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.

Let your VOICE be Heard!

2015-16
KBA Officers & Board of Governors

President
Natalie Haag, nhaag@ksbar.org

President-Elect
Stephen N. Six, ssix@ksbar.org

Vice President
Gregory P. Goheen, ggoheen@ksbar.org

Secretary-Treasurer
Bruce W. Kent, bkent@ksbar.org

Immediate Past President
Gerald L. Green, gggreen@ksbar.org

Young Lawyers Section President
Justin L. Ferrell, jferrell@ksbar.org

District 1
Christi L. Bright, cbright@ksbar.org
Toby J. Crouse, tcrouse@ksbar.org

District 2
Hon. Sally D. Pokorny, spokorny@ksbar.org
Sarah E. Warner, swarner@ksbar.org

District 3
Eric L. Rosenblad, eroenblad@ksbar.org

District 4
Brian L. Williams, bwilliams@ksbar.org

District 5
Terri Savely, tsavely@ksbar.org

District 6
Gary Ayers, gayers@ksbar.org

District 7
Jeffery A. Mason, jmason@ksbar.org

District 10
John B. Swearer, jswarner@ksbar.org

District 11
Nancy Morales Gonzalez, ngonzalez@ksbar.org

District 12
William E. Quick, wquick@ksbar.org

At-Large Governor
Bruce A. Ney, bney@ksbar.org

KDJ A Representative
Hon. Michael F. Powers, mpowers@ksbar.org

KBA Delegate to ABA
Linda S. Parks, lparks@ksbar.org

ABA State Delegate
Hon. Christel E. Marquardt, cmarquardt@ksbar.org

Executive Director
Jordan E. Yochim, jeyochim@ksbar.org

Let your VOICE be Heard!

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.
Notice of KBA Bylaw Amendment

By unanimous vote of those board members present at the January 15 teleconference meeting, the Board of Governors passed the following amendment to the KBA bylaws:

RESOLVED, that Section 4.2(a) of the Bylaws of the Kansas Bar Association be amended by adding a new paragraph at the end of such Section to read as follows:

“Notwithstanding the foregoing provisions of this Section 4.2(a), the Governor representation for District 12 shall consist of one (1) position on the Board of Governors until the first to occur of the Board of Governors meeting to be held in September 2016 or on September 30, 2016, and thereafter the number of Governors representing District 12 will be determined without regard to the application of this sentence.”

This change was made at the recommendation of the KBA Bylaws Task Force. The task force, which is reviewing all of the bylaws, proposed that this amendment remain in force until an anomaly in the current bylaws concerning the representation of members in District 12 (out-of-state) can be addressed.

KBA VENDOR MARKETPLACE

The one stop marketplace for services for the legal professional.

www.ksbar.org/vendormarketplace

Categories include:

- Conferencing Services
- File Sharing and Storage
- Financial
- Insurance
- Legal Research Software
- Leisure
- Marketing
- Mediation
- Office Products
- Practice Management Software
- Website Services

For more information or to become a vendor contact Amanda Kohlman, akohlman@ksbar.org or 785-234-5696
The KBA Is Working For You!

There have been more changes at the KBA during the last year. We are trying to keep services relevant to our members. Check out the latest information.

Going Green

Are you willing to get your KBA Journal in an electronic format only? You can read it from your laptop or iPad. Who needs to carry around a hard copy magazine? Please consider signing up through the website.

Communications

The KBA staff initiated a digital advertising effort several months ago. It’s been met with great success as our prominent partners have purchased website and KBA Weekly online real estate.

Lawyer Referral Services

The KBA operates in-house a lawyer referral service. The staff works hard to screen out callers just interested in obtaining free legal advice and refers to lawyers those potential clients with an interest in pursuing a legal matter. During the last year, LRS fielded 11,806 incoming calls and 15,637 outgoing calls which resulted in 2,012 referrals accepted by attorney KBA members.

The LRS staff, led by Dennis Taylor, has also implemented an “Ask a Lawyer” program to address the gap between the callers wanting a quick question answered to those needing on going representation. During Ask-A-Lawyer sessions another 582 Kansans were provided assistance.

Law Office Management Assistance Program

LOMAP provides legal classes and hands on assistance to KBA members. As you know, managing the office, finances and records of a law practice can be as challenging if not more difficult than providing legal advice. LOMAP is designed to help members with those challenges. Other KBA articles have provided more details. Contact Danielle Hall for assistance or information.

Positive feedback has been received from members about LOMAP’s partnership with the ABA LP Division regarding the Law Practice Today syndication that goes out once a month. A second issue has been sent and, the KBA will continue to do this in 2016. Look for a new LOMAP quarterly newsletter to start in 2016.

CLE Unleashed

The CLE Committee lead by Chair Toby Crouse and Vice-Chair Angel Zimmerman is diligently working to bring you interesting and educational CLE programs. The KBA Board of Governors has expressed support for new and innovative CLE presentation methods and programming. We hope you will volunteer to help. Contact any committee member or KBA staff member Danielle Hall.

Annual Meeting—Wichita

Exciting things are underway for your visit to Wichita. Chairs Amy Fellows-Cline and Kelly Rundell are working hard with KBA staff and local committee members to create a fun event full of opportunities to enjoy old friends and make new ones. The Bar Show is back on the agenda at this location. Plan to attend all the activities. More details will be coming soon.

Legislative Committee

The Legislative Committee led by Jim Robinson is already hard at work reviewing legislation and educating key legislators about important issues. There are only a few lawyer legislators, so KBA member expertise is extremely important to make sure solid legislation is adopted. Please volunteer to help. Contact Jim or KBA staff member Joe Molina if you are willing to help.

Vendor Market Place

Danielle Hall and her staff have been working hard to create a one stop online shopping place for members. Members can access discounts for all kinds of law office management items.

Check it out at http://www.ksbar.org/VendorMarketplace.

Visiting my home town

After traveling the state and sharing photos from all the wonderful locations, it was time to slow down and spend a few minutes at home. Of course there was still plenty to do in the Topeka Bar Association from serious activities like the unveiling of Judge Watkins’ portrait to not so serious fun like the Annual Turkey Shoot and Thanksgiving dinner. Check out the photos, and I’m sure you will find some prominent legal figures enjoying the festivities.

About the KBA President

Natalie G. Haag currently serves as executive vice president/general counsel for Capitol Federal Savings Bank. She has been a member of the Kansas Bar since 1985, and received her bachelor’s degree from Kansas State University in 1982 and her law degree from Washburn University School of Law in 1985.

nhaag@ksbar.org
(continued from page 6)

Photos: By Natalie Haag
The Intersection of Technology and The Law

When your client has forms…but lots of questions.

Today’s vast expanse of information technology has made informational material more accessible than ever before. What previously took hours of research is now obtained with a simple click of a mouse. With the advent of social media, we can keep in constant contact with friends, loved ones and clients anywhere in the world. We can find information on every topic imaginable—including the law—with the help of an Internet connection. So that must mean that this technology is a great thing; it makes our lives easier! But if you think about it, while the accessibility of information through technology can be a good thing, it may have changed the way we approach certain tasks as lawyers.

Our clients are likewise accustomed to a large volume of information waiting at their fingertips, and will expect you to deliver a rapid response to their questions that rivals the speed of a Google search. Clients have become savvier at tracking down their own information and materials too; anyone can find boilerplate contracts and forms online for free. While that leads many people to believe they have the ability to sufficiently represent themselves, many times there are complications. Important knowledge, such as filing requirements, local rules, and effectively representing oneself, is not included on the sites that tout free or inexpensively priced legal forms. In those situations, we need to stress to our clients that they are not just getting a work product from us, but also expertise, experience, professional and ethical requirements that we as lawyers are governed by, and the guarantee that they will be represented in a competent manner. Many times just because a contract or form is filled out, and would be legally binding or sufficient to file with the court, it may actually be contrary to what the client is trying to accomplish.

To remedy the effects of clients’ access to the wealth of information the Internet provides, we as lawyers are faced with having to offer more than just legal work. We must provide peace of mind, rapid responses, and customer service. Gone are the days of sitting behind our desks and telling a client that they have nothing to fear, because our clients know more now about the legal process than ever before. Meet your client in the middle by explaining the gaps that their own legal research may contain. Let them know that while they have the ability to fill out the forms they have found—and likely have done so in a competent manner—they still need your assistance, your expertise, and your experience in representation.

Fortunately, technology and new media can benefit us as lawyers, too. If a particular transaction is one that you aren’t terribly familiar with, how do you still assist a potential client? With a simple search on a court’s site we can find filing requirements, or a simple Google search can assist us in locating pertinent statutes in our jurisdiction. If all else fails, and we simply cannot help our client, we can then refer them to another lawyer, using our social networks that are often forged with the help of technology.

Any time I am confronted by an issue that I am not 100 percent comfortable with, I remember the wise words of Judge Terry Bullock who was my ethics teacher in law school: “Get smart, or get out!”

Just because a client can find what she thinks she needs doesn’t mean it’s in her best interest to do it without guidance. Perhaps we can modify Judge Bullock’s remarks for our clients, and say “Get smart…or get legal help.”

About the YLS President

Justin Ferrell serves as in-house counsel/risk manager for the Kansas Counties Association Multi-Line Pool in Topeka. He currently serves on both the TBA Young Lawyers and KBA Young Lawyers in many capacities.
jferrell@ksbar.org

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
2016 Solo & Small Firm Conference

May 6 & 7, 2016
Hutchinson, KS

Don’t Miss the Conference
Everyone is Talking About ...  

“Wonderful CLE!”

“It’s so nice to have very interesting classes when completing CLEs.”

“Glad the KBA has started a Solo and Small Firm practice conference. Please keep it up!”

“This conference should be required.”

“Well done. Wish there had been a program like this 20 years ago.”
New Lawyer Surprises

Part of my job at Washburn Law includes serving as the co-director for Law Teaching and Learning, a national organization devoted to excellence in...wait for it...teaching and learning in law schools. We’re planning a conference next summer focusing on Real-World Readiness: how law schools are preparing students to enter the real world of law practice.

In anticipation of that conference, I surveyed some of my students who have recently graduated to ask them what was surprising to them, from a research and writing standpoint, when they got into practice. I don’t know that any of their responses were particularly shocking, but I thought it might be a nice reminder to those of us who have been out of law school for some time. If you’re hiring or supervising or mentoring or even just working with a recent law school grad, it is useful to remember what seems intuitive at this stage in your career but might not be for new attorneys.

1. The importance of writing. A lot. And quickly.

“The biggest surprise for me regarding [legal research and writing] and law practice is how often you must write and how that writing may be your best and one or only shot to win the motion or the case.”

“The biggest transition has been the volume of writing and speed at which I have to crank it out.”

On this point, it’s helpful to remember that law students spend their entire first semester of school producing essentially two memos. And for one of them the research is done for them—it’s a “closed universe” memo where professors provide the necessary authority. The second semester yields a trial motion memo and a single appellate brief. While many have clerking experiences throughout law school, they vary tremendously in the amount of writing involved. It should not be surprising, then, when freshly minted lawyers feel overwhelmed with the expectation of producing several motions and briefs each week.

2. The need for efficient research.

“When I was in law school, I would casually read through cases and click from item to item for lengthy periods of time. In practice, I don’t feel like I have that luxury.”

“Being able to do quick, efficient, and targeted legal research is imperative to law practice. There is not enough time in the day to be reading or looking at cases that do not have points you can use in your memo. Learning to be efficient and targeted in research saves hours.”

We do more and more to emphasize the need to be effective and efficient with research even in the first semester of law school. For one project, my students track their time and use of Lexis or Westlaw and must produce a bill for the hypothetical client. The total charge is almost always a shock to the students and at least gets them thinking about the costs of inefficient research. Still, this point often doesn’t hit home until they’re in an environment where real dollars and real clients are at stake.

Representatives from all major legal research services are generally available to help train new associates on more efficient use of their products. Such training can be an extremely useful part of the onboarding process.

As one former student put it: “Efficiency is key—be thorough, but be quick.”

3. Citation.

“Citation is the other part of writing that I wish I would have taken more seriously. Nice correct citations make memos and briefs look official and give your position more authority. To be honest, a memo that is well cited can be intimidating.”

See, I told you those Bluebooks would come in handy one day! Clearly though, there’s no escaping the need to be accurate and meticulous in your citations. Embrace the challenge early on and once you develop a feel for correct citation format (and the shortcut pages in the Bluebook!), the task of providing clean (even intimidating) support for your briefs will be far less daunting.

4. Local court rules.

“When I was in law school, I would casually read through cases and click from item to item for lengthy periods of time. In practice, I don’t feel like I have that luxury.”

“This point is something we could do a better job of flagging in law school. But yes, the sooner new lawyers learn the lay of the land in a particular practice area, the better.

So if you’re a new attorney feeling similar surprises and
pressures, you’re not alone. If you’re an experienced attorney working with a recent law school grad, know that these are areas in which new attorneys feel surprised and maybe a bit overwhelmed. Perhaps that’s just par for the course in terms of transitioning into practice. But perhaps mentors and supervisors can be mindful of these issues and help ease the shock of real-world practice by acknowledging the differences from law school and providing resources to help new attorneys acclimate.

About the Author

Emily Grant teaches legal analysis, research, and writing at Washburn University School of Law, and she also serves as the co-director for the Institute for Law Teaching and Learning. She can barely remember back to her first job out of law school.

2016 Bankruptcy and Insolvency CLE

http://www.ksbar.org/event/2016BankruptcyCLE

Hosted by the KBA Bankruptcy & Insolvency Section. Members of this section receive a $30 discount off their registration.

Save the Date

Friday, April 8, 2016
Maner Conference Center, Topeka

Pending CLE credit in Kansas and Missouri

KALAP Foundation

Upholding the Integrity of the Bar

A Campaign to Benefit Lawyers in Need

515 S. Kansas Avenue
Suite 202
Topeka, KS 66603
(785) 368-8275
1-888-342-9080
kalap@kscourts.org
www.kalap.com
2016 KBF Scholarship Recipients See Giving Back In Their Future

A common thread exists among law students selected for 2016 KBF scholarships. Giving back is a long-term goal they share. As Christopher Darden, lawyer, author and one of the prosecutors assigned to the OJ Simpson case explains, “I chose to go to law school because I thought that someday, somehow I’d make a difference.” It is apparent that the 2016 scholarship recipients hope not only to make a professional difference but to also contribute to their communities and possibly establish scholarships for future law students.

Congratulations to these outstanding students.

Case Moses & Zimmerman P.A. Law Student Scholarship

This scholarship is intended to go to a future Kansas lawyer including both Kansas law schools, Creighton University School of Law or Oklahoma City University School of Law. This award is specifically given to a second-year student who intends to practice law in the state of Kansas.

Lisa L. Martin/Washburn University School of Law

Martin is a resident of Prairie Village and grew up in the Kansas City area. While she resided in other parts of the country during her time between undergrad and law school, it is her strong regard for Kansas that prompted her to begin her legal career in the state.

“I would like to thank the benefactors of the Case, Moses & Zimmerman scholarship award. I would also like to extend a hearty thank-you to the Kansas Bar Foundation and the faculty and staff of Washburn University School of Law. I am humbled to be selected for this award and promise to continue representing the Kansas legal profession with the utmost level of competence and sincerity.”

The Justice Alex M. Fromme Memorial Scholarship Award

This award is be provided to a law student attending the University of Kansas School of Law or Washburn University School who is committed to practicing law in Kansas.

Ashley Akers/University of Kansas School of Law

A Wyoming native, Akers moved to Kansas nearly three years ago to attend the University of Kansas School of Law. She quickly made a home of Kansas. Akers is involved in many university organizations and is active in community service roles in the Lawrence community. After law school she will clerk for a federal appellate court and then plans to return to Kansas to begin practicing as a civil litigator.

“I am so humbled and grateful to the Kansas Bar Foundation for providing this scholarship. Kansas is a wonderful place to live and this scholarship exemplifies the generosity and support the Kansas Bar Foundation devotes to law students. I appreciate the financial help more than words can express and I will pay it forward to the community.”

Maxine S. Thompson Memorial Scholarship

This scholarship promotes the practice of law in the state of Kansas by awarding a law student, originally from Kansas and attending the University of Kansas School of Law or Washburn University School of Law an annual scholarship. The award recipient must have completed no less than 60 hours toward a law degree and must plan to practice in a rural Kansas area, preferably western Kansas.

Travis Ternes/Washburn University School of Law

Ternes is a native of Oxford, Kansas. He graduated from Kansas State University in 2011 and will graduate from Washburn University School of Law in May 2016. He has been an active member of many student groups during his tenure at Washburn and is on the editorial board of Washburn Law Journal. Ternes intends to make a career in rural Kansas at some point.

“I want to extend a sincere thank-you to the Kansas Bar Foundation for selecting me for the Maxine S. Thompson Memorial Scholarship. I would also like to thank the professional mentors I have had. The amount of support shown for my future makes me perpetually grateful. I hope someday I can make this a pay it forward contribution and show support to someone in a similar position to myself.”

Hinkle Law Firm Student Scholarship

This scholarship is given to a law student at the University of Kansas School of Law or Washburn University School of Law. Applicants should demonstrate a bona fide intention to practice law in Kansas. Because community service is extremely important to the Hinkle Law firm, applicants must also demonstrate a history of community involvement to be considered.

Claire Hillman/Washburn University School of Law

A Topeka High School and Washburn University graduate, Hillman intends to establish a legal career in her home state of Kansas. Prior to pursuing her legal education at the Washburn University School of Law, Hillman worked as a Social Work Specialist for the Department of Children and Families. In her position with DCF, Hillman investigated allegations of child abuse and neglect and specialized in child forensic interviews. Hillman plans to utilize her social work skills and background to help victims navigate the legal system. She currently works as a Judicial Law Clerk for the Third Judicial District of Kansas, and looks forward to interning with the Johnson County District Attorney’s Office next year. Hillman has volunteered for several organizations, including AmeriCorps, The Villages, Big Brothers Big Sisters of Topeka, Brewster Place Retirement Home, and Habitat for Humanity.

“I am honored and humbled to receive the Hinkle Law Firm Student Scholarship, and I would like to sincerely thank the Kansas Bar Foundation for their generous support of law
students. I greatly value my community, and I am fully committed to continue giving back and advocating for others.”

**Lathrop & Gage Scholarship Award**

This scholarship is given to a law student at the University of Kansas School of Law or Washburn University School of Law. Applicants should demonstrate a bona fide intention to practice law in Kansas. Applicants must demonstrate a history of community involvement to be considered.

**Erica McCabe/ University of Kansas School of Law**

Growing up in the Flint Hills, McCabe developed a deep-rooted love for her home state. Before attending law school, she earned undergraduate degrees in political science and global studies and a Master of Education in special education. McCabe also served as a Teach for America Corp Member in Kansas City where she taught middle and high school Special Education. After law school, McCabe plans to become an active member of the Kansas Bar.

“I am beyond grateful to be this year’s recipient of the Lathrop & Gage Scholarship Award. I am humbled by the Kansas Bar Foundation’s dedication to supporting legal education in Kansas, and I look forward to discovering all the ways I can use my law degree to continue serving my community.”

**Frank C. and Jeanne M. Norton Scholarship Award**

This scholarship is available exclusively to Washburn University School of Law students in their second or third year of study who are not receiving any other scholarship support.

**Valerie Desroches/Washburn University School of Law**

Desroches and her daughter moved from Ohio to Kansas for Valerie to attend law school. They are now self-proclaimed Kansans. Desroches plans on residing and practicing in Kansas. Desroches was an extern for Kansas Appleseed and is currently the fellow for the Business and Transactional Law Center as well the president of the Black Law Student Association at Washburn University School of Law.

“Intend on practicing business and transactional law after graduation and would love to become involved with a non-profit organization to implement aversion programs for at-risk youths. Giving back to others is important to me because I would not be where I am today without the assistance of others. I enjoy volunteering with organizations such as Compassion International, Topeka Rescue Mission, Harvesters, and Big Brothers Big Sisters of Topeka. Washburn University School of Law has granted me the opportunity to make my dreams a reality.”

“I am overwhelmed with gratitude to the Kansas Bar Foundation for selecting me to receive the Frank Norton Scholarship. Aside from the financial support, this award helps me to continue pursuing my passion in the profession of law. I would like to thank the Kansas Bar Foundation for this honor.”

**Kansas Bar Foundation Diversity Scholarship**

New in 2016, this scholarship for third year law students promotes the practice of law in the state of Kansas and provides a seat on the KBA Diversity Committee. The first year of this scholarship is funded by the Kansas Bar Foundation and future funding has been granted by the Capitol Federal Foundation. The recipient is selected by the KBA Diversity Committee.

**Rachelle Veikune/University of Kansas School of Law**

Veikune moved from Hawaii to Kansas two years ago to attend the University of Kansas School of Law. She made a home of Lawrence and hopes to begin her legal career as a research attorney in a Kansas court.

“I am humbled and I feel blessed to receive this scholarship. I am grateful to the Kansas Bar Association Diversity Committee and the Kansas Bar Foundation for creating this opportunity. This scholarship exemplifies the generosity of the Kansas Bar Foundation as well as its commitment to diversity. I am appreciative of the financial award and thrilled about the opportunities that accompany this scholarship.”

**KBF Giving Options**

If you would like to donate to an established KBF scholarship fund, make an unrestricted gift, or discuss other options for giving, please contact Jordan Yochim, executive director, at (785) 234-5696 or at jeyochim@ksbar.org. Donations may also be made online at http://www.ksbar.org/donations/.

---

**OFFICERS**

- Laura L. Ice, President
  - lawice@extronfinancial.com
  - Wichita
- Todd N. Thompson, President-elect
  - todd.thompson@trqlaw.com
  - Topeka
- Hon. Evelyn Z. Wilson, Secretary-Treasurer
  - ewilson@shawneeouts.net
  - Topeka
- Edward J. Nazar, Immediate Past President
  - enazar@hinlaw.com
  - Wichita

**BOARD OF TRUSTEES**

- Susan A. Berson, Overland Park
- John C. Brown, Lawrence
- Terrence J. Campbell, Wichita
- Amy Fellow, Chino
- Bradley D. Dillon, Hutchinson
- Gregory P. Goheen, Kansas City, Kan.
- James L. Hargrove, El Dorado
- Richard F. Hays, Wichita
- Scott M. Hill, Wichita
- Randee Koger, McPherson
- Aaron L. Kite, Dodge City
- Amy E. Morgan, Topeka
- David H. Moses, Wichita
- C. David Newbery, Topeka
- Eric L. Rosenblad, Pittsburg
- Susan G. Saidian, Wichita
- Melissa D. Skelton, Redmond, Wash.
- Sarah E. Warner, Lawrence
- Young Lawyers Representative
- Jeffrey L. Carmichael, Wichita
- Kansas Association for Justice Representative
- Patrice Petten-Klein, Topeka
- Kansas Women Attorneys Association Representative
- Nathan D. Leadstrom, Topeka
- Kansas Association of Defense Counsel Representative
- Sara S. Beedle, Girard
- Kansas Bar Association Representative
- Charles E. Branson, Lawrence
- Kansas Bar Association Representative
- Dennis D. Depew, Topeka
- Kansas Bar Association Representative

**EXECUTIVE DIRECTOR**

- Jordan E. Yochim, Topeka
  - jeyochim@ksbar.org

**DIRECTOR, PUBLIC SERVICES**

- Anne Woods, Topeka
  - awoods@ksbar.org

---
Need clients?
Need increased VISIBILITY?

Join
The Kansas Bar Association’s

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

KANSAS BAR ASSOCIATION
www.ksbar.org

Your trusted legal source.
Typically when we think of diversity, we think of race, sex, and religion; however, there is a far more basic category typically ignored: introversion versus extroversion. While at the Kansas Women Attorney Association annual conference, I attended an ethics CLE given by Gaye Tibbets, from Hite, Fanning, & Honeyman, LLP titled “Knowing Me, Knowing You: Common Personality Traits of Lawyers and How They Can Affect Your Practice, Your Relationships, Your License.” During the CLE, Tibbets discussed how lawyers tend to be significantly more introverted, logical, fact driven and organized than the general population. Prior to attending the CLE, I had never really considered the importance of personality traits, specifically introversion, for purposes of diversity. The CLE got me thinking … what really defines an introvert? What are considered introverts’ strengths and weaknesses, and more importantly, why should the legal community care? Tibbets recommended the book, Quiet: The Power of Introverts in a World That Can’t Stop Talking by Susan Cain to help answer these questions. In the extremely thought-provoking book, Cain discusses how beginning in the early 1900s, fueled by industrialism and the need for salesmen, our society evolved from a culture of character, whose ideal self was serious, disciplined, and honorable, to a world which values the culture of personality.

Typically, when we think of extroverts we think of bold, outgoing, sociable individuals, in other words, leaders. When we think of introverts, we think of quiet, anti-social, easily ignored individuals, in other words, followers. Cain’s research flips that notion on its head. In reality, some of the world’s greatest leaders, thinkers, investors, artists and writers have been introverts. The ranks of influential introverts include: Isaac Newton, Eleanor Roosevelt, Charles Schwab, Bill Gates, Warren Buffett, T.S. Eliot, Al Gore, Rosa Parks and Gandhi.

So what do introverts do differently that makes them so successful? After analyzing many of the best performing companies of the late 20th century with introverted, but yet, exceptional CEOs, influential management theorist, Jim Collins, found the biggest difference was that the introverted leaders were more interested in listening and gathering information than in asserting their opinion or dominating a conversation. Because of that, they were more likely to hear and implement suggestions by motivated employees.

If so many great leaders are introverts, why do we value the extrovert so highly? Why do we continue to want our leaders to give quick and assertive answers and “perceive talkers as smarter than quiet types—even though grade-point averages and SAT and intelligence test scores reveal this perception to be inaccurate”?

Cain argues, “Our lives are shaped as profoundly by personality as by gender or race. And the single most important aspect of personality—the ‘north and south of temperament,’ as one scientist puts it—is where we fall on the introvert-extrovert spectrum. Our place on this continuum influences our choice of friends and mates, and how we make conversation, resolve differences, and show love…yet today we make room for a remarkably narrow range of personality styles. We’re told that to be great is to be bold, to be happy is to be sociable. We see ourselves as a nation of extroverts—which means that we’ve lost sight of who we really are.

. . . Introversion—along with its cousins sensitivity, seriousness, and shyness—is now a second-class personality trait, somewhere between a disappointment and a pathology. Introverts living under the Extrovert Ideal are like women in a man’s world, discounted because of a trait that goes to the core of who they are.”

Valuing extroversion is not a “new” idea. In fact, Cain discusses how extroversion is actually in our DNA. Extroverts are less prevalent in Asia and Africa and more prevalent in Europe and America. Cain explains that it makes sense because America and Europe were settled by immigrants. Setting out to a new country would naturally attract more extroverts. However, in the modern world, while we still need risk-takers, we also need thinkers with the ability to take a step back and see the big picture. As a society, we tend to overestimate how outgoing our leaders actually need to be. Cain discusses how figures like Eleanor Roosevelt, Al Gore, Warren Buffett, Gandhi and Rosa Parks achieved what they did, not in spite of, but because of their introversion.

Regardless of whether you are personally an introvert or an extrovert, Cain’s book is a must-read to help appreciate the need for both introverts and extroverts in a diverse workforce. Cain persuasively argues that if we assume quiet and loud people have roughly the same number of good and bad ideas, we should be extremely concerned if the loud and more forceful people always carry the day. In the words of Max de Pree, “We need to give each other the space to grow, to be ourselves, to exercise our diversity. We need to give each other space so that we may both give and receive such beautiful things as ideas, openness, dignity, joy, healing, and inclusion.” In a diverse work environment, introversion should not be a second class personality trait but rather a valued and equal partner with extroversion.

About the Author

Amanda Stanley is a member of the KBA Diversity Committee. Stanley received her juris doctorate from the University of Kansas School of Law in 2014 and her Bachelor of Science in Biology from Newman University in 2008. Stanley currently serves as a Research Attorney for the Kansas Court of Appeals.

amanda.stanleyjd@gmail.com
16th Annual CLE Slam-Dunk

Score some CLE points with this All-Star lineup!

Friday, Feb. 19 & Saturday, Feb. 20, 2015
Register online at http://www.ksbar.org/event/2016_Slam_Dunk_CLE

The All-Star lineup

Hon. Glenn Braun
Emily Donaldson
Jan Fisher
Theron Fry
Christopher R. Hoyt
Prof. Jeffrey Jackson
L.J. Leatherman

Anne McDonald
Joseph N. Molina, III
Ronald Nelson
Wesley Smith
Hon. Teresa Watson
Hon. Meryl Wilson
Ashlyn Yarnell

Bluemont Hotel
1212 Bluemont Ave.
Manhattan, Kansas

Co-sponsored by
KANSAS STATE UNIVERSITY FOUNDATION
Ethics of Crowdfunding

Recent law school graduates seeking to raise capital for start-up costs of a law firm or to pay down law school debt asked about the ethics of crowdfunding those goals. The New York State Bar Association responded in Opinion 1062 in June, 2015 with some tepidly favorable advice (http://bit.ly/1ZnmiwG).

Opinion 1062 begins, “‘Crowdfunding’ is defined generally as funding a project or venture by raising small amounts of money from a large number of people.” The concept of crowdfunding has taken off in recent years with the launch of enabling sites like Kickstarter, IndieGoGo, and GoFundMe to provide the infrastructure for collaboration. The idea is much older, however, and was even used in 1884 by the American Committee for the Statue of Liberty to obtain funding for Lady Liberty’s pedestal. Some 125,000 people pledged $1 or less to raise the necessary $100,000 in just six months.

Five Crowdfunding Models

In reviewing the current state of crowdfunding, Opinion 1062 identifies the following five basic approaches to raising funds:

- **Donation** – Generally used for philanthropic causes offering no material return to the investor. Non-profit and online “tip jars” for direct charity generally fill out this category though more politically controversial uses have included attempts to raise funds for legal fees of Kentucky clerk Kim Davis and Indiana’s Memories Pizza in the same-sex marriage debate, as well as for a number of police officers involved in controversial shootings.

- **Reward** – Donors are provided a sample of a product or service prior to official release. For example, very early participants in the virtual-reality headset, Oculus Rift, recently learned their support would be rewarded with one of the $600 pre-release units. This approach often helps evaluate marketability before any product or service becomes more than an idea.

- **Lending** – This model most closely resembles a traditional loan. Rather than financing through a single lender, small-scale investors provide the capital for the loan.

- **Equity** – Investors in an equity model receive an ownership interest in the venture.

- **Royalty** – “...The royalty model, often used for specific product development and rollout, rewards the investor with a percentage of the sales proceeds from that particular product.” Opinion 1062.

The New York opinion cites to the crowdfunding review site, Crowds Unite, for further explanation, market sizes, and primary providers of those five basic crowdfunding models at crowdsunite.com/what-is-crowdfunding/.

Ethics Overview

As you might imagine, the New York Bar states very clearly that the equity and royalty models “…would clearly violate the Rules of Professional Conduct.” The concern with each arises from Rules 5.4(a) and 5.4(d) and the presumed sharing of fees or ownership with non-lawyers. (The opinion does not provide any basis for objection to either model when all investors are lawyers, however.)

The New York Bar is also dismissive of the lending model as irrelevant to the questioners’ goal of reducing debt. That dismissal is unfortunate as several crowdfunding lending models certainly result in additional debt for start-up but may do so under better terms than a traditional lender might offer. For example, a collective of rural investors could offer a crowd-funded loan at a lower rate with a delayed payment schedule in return for an agreement by the firm to locate in a small town for the life of the loan. That sort of scenario is not addressed in the opinion’s one-sentence dismissal of the lending option.

The donation model is compliant with ethical rules so long as donors are made aware that they will receive nothing in return from the profit-making (hopefully) law firm. The New York Bar tactfully notes that this begging model is likely to be unattractive to all parties. The sort of people likely to donate would be friends and relatives already willing to assist without involving a crowdfunding site and its fees.

Under Opinion 1062, the only crowdfunding model left would be the reward model. The lawyers making the inquiry noted several examples of rewards, “…including (i) informational pamphlets, (ii) reports on the progress of the firm and (iii) the lawyers’ performance of pro bono work for a third-party non-profit legal organization. (Again, the New York Bar observes tactfully, and realistically, that such rewards may not be attractive enough to raise the capital sought.) The pamphlets would trigger further review under Rule 7.1 and should not be individual legal advice. The pro bono proposal also triggers further review under Rule 1.1 regarding competence to provide such services as well as Rules 1.7 and 1.9 governing conflicts of interest.

If Not Us, Our Clients

Ultimately, the New York Bar’s opinion concludes that one narrow form of crowdfunding may be appropriate and acceptable under the Model Rules – though ultimately inadequate to provide the capital necessary to pay off law school debt or provide start-up capital for a law firm. This is an unfortunate conclusion and serves to underscore the perception that the Model Rules and their formal interpreters are hesitant, overly-cautious, and ultimately under-involved in technological and economic change.

While we might still need to exercise caution in exploring such tools, our clients are fully engaged and crowdfunding is popping up in business representation and branching out
into other areas like criminal and family law. Funded Justice (fundedjustice.com) for example, is organized as an online “…crowdfunding community for anyone with a legal issue that needs money to hire an attorney.” In other words, maybe the real answer is not whether lawyers can crowdfund their firms but rather, can lawyers help a client crowdfund his or her own representation?

About the Author

Larry N. Zimmerman is a partner at Zimmerman & Zimmerman P.A. in Topeka and former 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 Committee.

kslpm@larryzimmerman.com
Meet the Young Lawyers Section Mock Trial Coordinators

This year’s KBA Mock Trial Competition is being organized by co-chairs Lisa Brown, Topeka, and Mitch Biebighauser, Overland Park. They are succeeding Shawn Yancy, Topeka, who was the competition chair for the past two years.

Brown is an associate in the Topeka firm of Goodell, Stratton, Edmonds & Palmer. A native of Andover, she graduated magna cum laude from Wichita State University in 2009 with a B.A. in English language and literature and a minor in psychology. She then attended Washburn University School of Law where she received her J.D. in 2012. While at Washburn, Brown served terms as president of the Women’s Legal Form and as student liaison to the Law School Curriculum Committee. She also was a member of the Phi Alpha Delta legal fraternity. Brown is a member of the Sam A. Crow American Inn of Court, the Topeka Bar Association, the Kansas Bar Association, the Women Attorneys Association of Topeka, and the Kansas Women Attorneys Association.

Her co-chair, Mitch Biebighauser, has been a practicing criminal defense attorney with Bath and Edmonds P.A. in Overland Park since he graduated from the University of Missouri-Kansas City, School of Law in June 2014. Before his admission to the bar, he co-founded the Board of Barristers at UMKC Law School to develop and promote trial advocacy education and competed in more than 10 national law school competitions. He also served on the Urban Lawyer Law Review Board as a research editor.

Regional competition will take place in Olathe and Wichita at the Johnson County and Sedgwick County Courthouses, respectively, on February 27, 2016. State Competition will take place in Topeka at the Shawnee County Courthouse on March 25 and 26, 2016.

At this time judges and volunteers are needed for all rounds of the Regional and State competitions. Volunteers can judge one or more rounds as they are available. Please complete the contact form at http://www.ksbar.org/mocktrial or email kansasmocktrial@gmail.com if you are interested in judging or volunteering.

Times for Regional Rounds on February 27 are: 8 a.m.; 10 a.m.; 1:30 p.m.; and 3:30 p.m.

Times for State Rounds on March 25 and 26 are: Friday: 5 p.m.; 7 p.m.; and Saturday: 8 a.m.; 10 a.m.; and 1:30 p.m.
Oil, Gas & Mineral CLE

March 4, 2016
Hays, Kansas

Topics Include
- Joint Operating Agreements & the Impact of Overhead
- Oxy USA, Inc. v. Red Wing Oil
- Shutting in Production and Other Low Price Issues Facing Operators
- Fawcett Revisited
- Nuts & Bolts of KCC
- Environmental Survey of Issues and Cases
- Ethics for Oil & Gas Attorneys

Pending approval in Kansas and Missouri

http://www.ksbar.org/event/2016_Spring_OGM_CLE or call (785) 234-5696

---

Court Bonds

Fast turnaround.
Apply online or by phone.
www.onlincourtbonds.com

THE BAR PLAN
We help lawyers build a better practice.
877-553-6376 | www.onlincourtbonds.com
Members in the News

Changing Positions

Miriam Bailey has joined Graves Garrett LLC as counsel, Kansas City, Mo.

Michael L. Baumberger has joined Klenda Austerman LLC, Wichita as a member.

Trent Byquist has joined Foulston Siefkin LLP as an associate, Wichita.

Kelsey N. Frobish has joined Foulston Siefkin LLP as an associate, Wichita.

Grant Klise has joined the law firm of Triplett, Woolf & Garretson, Wichita.

Ashlyn B. Lindskog has joined the law firm of Martin, Pringle, Oliver, Wallace and Bauer LLC as an associate, Wichita.

Seth A. Lowry has joined the law firm of Fisher, Patterson, Sayler & Smith as an associate, Topeka.

Mark Opara has been promoted to shareholder at Seigfreid Bingham PC, Kansas City, Mo.

Ben Reed has been promoted to shareholder at Seigfreid Bingham PC, Kansas City, Mo.

Calvin Rider will serve as school attorney for USD 394, Wichita.

Anna Ritchie has been elected into partnership with Martin, Pringle, Oliver, Wallace & Bauer, Wichita.

Chris Rohr is serving as Rawlins County attorney, Colby.

Kevin M. Smith has been appointed as judge to the 18th District Court, Wichita.

Chris Stewart has been promoted to shareholder at Seigfreid Bingham PC, Kansas City, Mo.

Brian J. Tohmas has been promoted to Vice President- Risk Management by the Board of Directors for Preferred Physicians Medical Risk Retention Group, Overland Park.

Amanda S. Vogelsberg has become partner at Henson, Hutton, Mudrick & Gragson, LLP, Topeka.

William Walberg has joined Hite, Fanning and Honeyman LLP, Wichita, as an associate.

Marilyn Wilder has been appointed as 9th judicial district judge for Harvey & McPherson counties, Newton.

Nicole Romine has joined Cheyenne County as county attorney.

Changing Locations

Cameron Law Office P.A. has merged with Lynnette Herrman, Attorney at Law, forming Cameron & Herrman, 1020 N. Main, Ste. A, Wichita.

Sanberg Phoenix & Von Gontard has moved their Overland Park office to a new larger space located at 4600 Madison Ave, Kansas City, Mo.

Joseph, Hollander & Craft LLC is relocating to 5200 Bob Billings Parkway, Lawrence.

Obituaries

Jack R. Euler

Jack R. Euler, of Wathena, died on the 31st day of December, 2015, at St. Luke’s Hospital.

Mr. Euler, a lawyer, was a lifetime resident of Wathena, son of Everett Euler Sr. and Gladys Wiegant Euler, both of whom preceded him in death.

Mr. Euler began practicing law in Troy, Kan. in March of 1956, immediately following his discharge from the U.S. Army, when he succeeded to the law practice of A. O. Delaney Jr., upon Delaney’s appointment as district judge.

He was a 1953 graduate of the Washburn University School of Law in Topeka and maintained his law office in Troy continuously from 1956 until the time of his death, practicing with his brother, J. D. Euler, from 1965 until J.D.’s appointment as a District Judge in 1988. William R. McQuillan joined the Euler law firm in 1983. Jack R. Euler and Mr. McQuillan continued practicing law under the firm name of Euler and McQuillan until Mr. McQuillan left the firm in 1999. In 1992, Mr. Euler’s son, Joel R. Euler, joined the firm and Mr. Euler’s niece, Robyn Euler Johnson, was also a member of the firm from 1990 until 1996. Charles D. Baskins joined the firm in 1999. At the time of his death, Mr. Euler was a member of Euler Law Offices, LLP, consisting of himself, Joel R. Euler and Charles D. Baskins.

Mr. Euler was a member and past president of the Doniphan County Bar Association and the Northeast Kansas Bar Association. He was also a member of the Kansas Bar Association and the American Bar Association. Mr. Euler’s extensive activities on behalf the Kansas Bar Association (herein after KBA) were reported in an article appearing in the May 1998 edition of the Journal of the KBA as follows: The Distinguished Service Award is presented to an individual whose accomplishments are undeniably exemplary and whose service is widely acclaimed. Euler, president of the KBA in 1985, certainly exceeds the standard. Euler is with the Troy firm of Euler & McQuillan. He served as a member of the Kansas House of Representatives for 10 years. He served on the Kansas Judicial Council for eight years and on the Governor’s Commission on Criminal Administration for two years. He was elected to the KBA Executive Council in 1980. His KBA involvement has been lengthy, with service during important times of change in the association. He has served as a member of the Law Center, Budget, Long Range Planning, Political Action Study, Operations and Finance, and CLE committees. He chaired the Legislation Committee, Nominating Committee, Awards Committee and the Governing Structure of the KBA. He was also involved in the Kansas Bar Foundation Board of Trustees. He was president of the Northeast Kansas Bar Association in 1994. He received Outstanding Service Awards from the KBA in 1971 and 1983.

Mr. Euler served in various state and local public offices, including as a member of the Council of the City of Wathena, member of the Board of Education of Wathena School District prior to its consolidation with the Elwood School District, County Attorney of Doniphan County from 1956 until 1963, and he served as a state representative in the Kansas
Robert S. "Bob" Hill

Robert S. "Bob" Hill, 95, Ottawa, Kansas, passed away Saturday, Dec. 26, 2015, at Ransom Memorial Hospital.

Robert Sharp "Bob" Hill was born Thursday, March 4, 1920, at Ransom Memorial Hospital, Ottawa, Kansas, the son of Glen H. and Perie (Smith) Hill. He was united in marriage to Betty Jean Clark Nov. 27, 1944, and they shared more than 63 years of marriage.

Bob graduated from Ottawa High School in 1938, Ottawa University in 1942 with a Bachelor of Science in economics, and received a Juris Doctorate degree from the University of Kansas in 1948.

Bob joined the U.S. Navy in 1942, graduating from Officer Candidate/Midshipman School at Notre Dame in South Bend, Indiana, as one of the "90 Day Wonders." He was assigned to the amphibious forces and achieved the rank of lieutenant commander. Bob served in both the invasion of Anzio D-Day and Normandy D-Day. He was the commanding officer of LCI No. 212, taking troops ashore at Utah Beach, Normandy. Besides serving in the North African and Italian fronts, he served in the Pacific.

Upon completion of law school in 1948, Bob returned to Ottawa, Kansas, where he served his community the remainder of his life. He joined the Kansas State Bank which was founded by his father in 1917. During his career, spanning more than 67 years, he served as principal owner, president, chairman of the board, and was elected chairman emeritus in 2011.

During his banking career, he was an active member of the Kansas Bankers Association where he served on numerous committees and was elected to its executive council and board as well as to the position of treasurer. He was recognized for his service for 50 years and again at 60 years of service.

Bob was an influential community leader. He was an active member of the Chamber of Commerce, a principal founder and past president of the Ottawa Industrial Park and cochaired the bond issue that provided for the construction of Ottawa’s flood control system. Also, Bob’s efforts to locate Walmart on South Main Street resulted in the economic growth and development of that area.

Bob served as a trustee of Ottawa University from 1956 to 1987 and served as a life trustee until his death. He held various executive board positions and participated greatly in many fundraising campaigns and the establishment of several scholarship funds.

Bob was a member of the Kansas Bar Association throughout most of his life and was admitted to practice before the U.S. District Court. For more than 50 years, he was a member of the Ottawa Masonic Lodge as well as a 32nd Degree Scottish Rite Mason. He was a lifelong member of the Westminster Presbyterian Church. He was recognized for his contributions to Ottawa by his induction into the Ottawa High School "Wall of Honor" in 2013.

Bob was an avid and lifelong golfer. He was a member of Ottawa University’s golf team and lettered all four years. He was a member of the Ottawa Country Club and served as a past president. He was a championship golfer and you would find him on the course on Thursday afternoons, weekends and whenever time would permit. He also enjoyed hunting and fishing. Above all else, family came first.

Bob was preceded in death by his wife Betty; his parents; sister, Imogene Hill Burnside; and daughter, Glenda Hill Krug. He is survived by daughters, Kathryn J. Hill of St. Joseph, Missouri and Martha A. Underwood and husband Doug of Lake Ozark, Missouri; son-in-law, Phillip Krug of Salina, Kansas; grandchildren, Kristin Underwood Allan of Ottawa, Kansas, Jane Underwood Dubbs and husband Thomas of Lake Ozark, Missouri, Alex Krug and wife Alana of New York City, New York, and Katie Jarvis and husband Ashley of Salina, Kansas; great-grandchildren, Jackson Allan, Adrienne Dubbs, Robert Dubbs, Jack Jarvis, Charley Sue Jarvis, and Estelle Krug; and several nieces and nephews.

Samuel "Sam" Sturm

Samuel Holtsberry "Sam" Sturm, 93, former Kansas Ninth Judicial District Court judge, passed away surrounded by family on Tuesday, December 29, 2015, at Wesley Woodlawn Hospital. He was 93 years old and had been married to the love of his life, Betty Lou Dufriend Sturm, for 71 years.

Sam was born Oct. 6, 1923, in Bartlesville, Oklahoma, to Samuel and Virginia Sturm. He was the youngest of the 10 Sturm boys. He graduated from Stillwater High School in 1940, and went on to college at Oklahoma State University, where he was a member of the golf team. He left OSU in 1942 to join the U.S. Navy and serve in World War II. He was an Aviation Machinist Mate Third Class and served as a member of a crash and rescue crew. He was stationed at the Hutchinson Naval Air Station and the Newton Air Station Auxiliary Field. It was during his time in the service in 1943 that he met his wife, Lou. The two were married in October 1944.

Upon his discharge from the Navy in 1945, he finished his college education at Wichita State University and went on to law school at Washburn University, graduating with a Juris Doctorate in 1952.

Upon graduation, Sam returned to Lou’s hometown of
Newton. He was elected as probate, county and juvenile court judge in 1952 and held that position until 1961. He was then elected district court judge for the Ninth Judicial District, covering Harvey and McPherson Counties, and served until he retired in 1987. After his retirement, he served as a special assignment judge for the state Supreme Court, hearing cases all over Kansas.

Sam was an accomplished jurist. During his career on the bench, he served as the president of the Kansas Judges Association, was on the Attorney General’s Judges Committee, served on the President’s Committee on Traffic Safety for the United States, and was on the steering committee for the Law and Psychiatry Institute at the University of Kansas. Although Sam handled a variety of cases, he was especially well versed in legal issues involving families and children. He served as the chair of the Kansas Bar Association’s family law section. He also attended the White House Conference on Children and Youth in Washington, D.C., at the invitation of President Eisenhower and published many articles on domestic and juvenile law issues. His views on domestic and juvenile law issues were the focus of a national feature article in *Power Magazine*.

Sam was also a prolific public speaker. He spoke at legal seminars around the state, largely on topics involving children and the law. He was also a guest speaker for the National Convention of Baptists and the National Association of Evangelicals, where he shared the stage at the 20th annual convention with Dr. Billy Graham and Dr. Bob Pierce. In total, he gave more than 100 commencement addresses across Kansas. Sam cared deeply about his community. He served on the Board of Directors of Bethel College and in a variety of other volunteer roles in Newton and the surrounding community. But Sam would tell you that nothing on his résumé mattered as much as his family. And it’s true—Sam’s professional accomplishments are only outshined by his love for God and his family. Sam was preceded in death by his parents, siblings, and a son, Samuel “Sammy” Sturm.

Survivors are his wife, Lou, of the home, and two children: Jeff Sturm of Newton and Lou Ann Sturm Ritchie (Jack) of Wichita; eight grandchildren, Alex Sturm of Wichita, Lindsey Sturm of Wichita, Camille Sturm of Newton, Courtney Sturm of New York City, Sam Ritchie (Anna) of Wichita, Dr. Cole Ritchie (Dr. Jamie) of Lawrence, and Daniel Ritchie of Lawrence; and three greatgrandchildren.

**Thomas Lester Thurston**

Thomas Lester Thurston, 67, of Prairie Village, Kan., passed away December 5, 2015.

Tom was born March 28, 1948, in Parsons, Kan., to Charles and Annette Thurston. He was a graduate of Rockhurst University and Washburn Law. He was an Attorney at Dwyer, Dykes and Thurston LC for many years, retiring in 2009. He is survived by his wife, Cathie Ann Thurston; two children, Joseph Thurston and Charles Thurston; sister, Una (Joe) Bailey; brother, Bud (Karen) Thurston and many nieces, nephews and extended family.
ETHICS FOR
GOOD XVII

Where Does the Money Go?
Our designated charities for 2016 are:
• CASA (Johnson/Wyandotte Counties)
• Safehome and Hope House (domestic violence programs)
• Metropolitan Organization to Counter Sexual Assault (MOCSA)
• Kansas Bar Foundation
• Midwest Foster Care and Adoption Association
• In addition, we will fund Ethics for Good Scholarships to each of the KU, Washburn and UMKC Law Schools and the Johnson County Community College paralegal program.

How Do We Sign Up for this Amazing, Funny and Informative Program?
For a mere $90, you get both the ethics and the good, the entire Ethics for Good – now in its 17th year!

To register for this program, complete the form below or register online at:
www.ksbar.org/event/EthicsforGoodXVII-OP
www.ksbar.org/event/EthicsforGoodXVII-KC

Who Are these Intrepid Presenters?
Stan Davis, Legal humorist, consultant and gaudy
Jim Griffin, Scharnhorst Ast Kennard Griffin, P.C.
Mark Hinderks, Stinson Leonard Street L.L.P.
Todd LaSala, Stinson Leonard Street L.L.P.
Hon. Steve Leben, Kansas Court of Appeals
Jacy Hurst Moneymaker, Swope Health Services
Todd Ruskamp, Shook, Hardy & Bacon L.L.P.
Hon. Melissa Standlee, Kansas Court of Appeals

Friday, May 20, 2016, 2:30 – 4:10 p.m.*
Polsky Theatre, JCCC Carlsen Center
12345 College Blvd. (College & Quivira)
Overland Park, Kan.
*Reception afterward sponsored by the JCCC Foundation

Wednesday, June 22, 2016, 2:30 – 4:10 p.m.
The Nelson-Atkins Museum of Art, Atkins Auditorium
4525 Oak St.
Kansas City, Mo.
Parking: $8 museum non-member parking fee; carpooling encouraged

Questions?
Contact Deana Mead, KBA Associate Executive Director, at dmead@ksbar.org or at (785) 234-5696.

Please mark the date you will be attending:  □ May 20  □ June 22

Name ____________________________
Address ____________________________
City ____________________________ ST ______ Zip __________
E-mail ____________________________ Sup. Ct. # __________

Bill to:  □ MasterCard  □ Visa  □ AmEx  □ Discover

Account Number ____________________________ CVC _____
Exp. Date ______ Signature ____________________________

ETHICS FOR
GOOD XVII
$90

□ Check Enclosed
Payable to:
Kansas Bar Foundation
1200 SW Harrison St.
Topeka, KS  66612-1806
Upcoming CLE Schedule

For more details or to register for a CLE visit www.ksbar.org/cle

### Live

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>16th Annual Slam Dunk CLE</strong></td>
<td>Friday &amp; Saturday, Feb 19</td>
<td>Bluemont Hotel 1212 Bluemont Ave., Manhattan, KS 66502</td>
</tr>
<tr>
<td><strong>2016 Appellate &amp; Administrative Law CLE</strong></td>
<td>Friday, Feb 19, 2016</td>
<td>Kansas Law Center 1200 SW Harrison St., Topeka, KS 66612</td>
</tr>
<tr>
<td><strong>2016 Spring Oil, Gas &amp; Mineral CLE</strong></td>
<td>Friday, March 4, 2016</td>
<td>Fort Hays State University Robbins Center-Eagle Communication Hall 1 Tiger Place, Hays, KS 67601</td>
</tr>
<tr>
<td><strong>2016 Bankruptcy &amp; Insolvency Institute</strong></td>
<td>Friday, April 8, 2016</td>
<td>Maner Conference Center 1717 SW Topeka Blvd., Topeka, KS 66612</td>
</tr>
<tr>
<td><strong>2016 Litigation CLE</strong></td>
<td>Friday, April 15, 2016</td>
<td>Kansas Law Center 1200 SW Harrison St., Topeka, KS 66612</td>
</tr>
<tr>
<td><strong>2016 Family Law Institute</strong></td>
<td>Friday, April 22, 2016</td>
<td>The Oread Hotel 1200 Oread Ave., Lawrence, KS 66044</td>
</tr>
<tr>
<td><strong>2016 Midwest Intellectual Property Institute</strong></td>
<td>Friday, May 6, 2016</td>
<td>Sprint Corporation 6050 Sprint Parkway, Overland Park, KS 66251</td>
</tr>
<tr>
<td><strong>2016 Solo and Small Firm Conference</strong></td>
<td>Friday, May 6, 2016</td>
<td>Atrium Conference Center 1400 N Lorraine St., Hutchinson, KS 67501</td>
</tr>
<tr>
<td><strong>2016 Criminal Law CLE</strong></td>
<td>Friday, May 20, 2016</td>
<td>Kansas Law Center 1200 SW Harrison St., Topeka, KS 66612</td>
</tr>
</tbody>
</table>

### On Demand – Last day to view on demands will be March 31

<table>
<thead>
<tr>
<th>Event</th>
<th>Presented by</th>
<th>CLE Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Addressing Bad Behavior in Depositions</strong></td>
<td>Prof. Suzanne Valdez, University of KS</td>
<td>1 hour of CLE including 1 hour of Ethics and Professionalism</td>
</tr>
<tr>
<td><strong>Brown vs. Board</strong></td>
<td>Hon. G. Joseph Pierron Jr., Kansas Court of Appeals</td>
<td>1 hour of CLE</td>
</tr>
<tr>
<td><strong>Civil Rights Issues in the Supreme Court During OT 2013</strong></td>
<td>Prof. Stephen McAllister, University of Kansas School of Law &amp; Toby Crouse, Foulston Siefkin LLP</td>
<td>1 hour of CLE</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Event</th>
<th>Presented by</th>
<th>CLE Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Free Speech and Free Trade: Civil Rights Meets The Practice of Law</strong></td>
<td>Alan Rupe, Lewis Brisbois Bisgaard &amp; Smith LLP</td>
<td>1 hour of CLE</td>
</tr>
<tr>
<td><strong>Social Media for the Family Lawyer (and anyone else, for the matter)</strong></td>
<td>Ronald Nelson, Ronald W. Nelson P.A. and Ashlyn Yarnell, Ronald W. Nelson P.A.</td>
<td>1 hour of CLE including 1 hour of Ethics and Professionalism</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Event</th>
<th>Presented by</th>
<th>CLE Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The Civil Rights Act of 1964...Reflections and Relevance</strong></td>
<td>Doug Booney, Legal Director, ACLU Foundation of Kansas</td>
<td>1 hour of CLE</td>
</tr>
</tbody>
</table>
The KBA Awards Committee is seeking nominations for award recipients for the 2016 KBA Awards. These awards will be presented in June at the KBA Annual Meeting in Wichita. Below is an explanation of each award and a nomination form 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, March 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 mete out harsher 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 an individual who has shown a continued commitment to diversity; or 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 disablement.

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 ________________________________

☐ 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

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

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Nominator’s Name ________________________________
Address _________________________________________
Phone ___________________________ Email ________________________________

Return Nomination Form by Friday, March 4, 2016, to:
KBA Awards Committee
1200 SW Harrison St.
Topeka, KS 66612-1806
Be Prepared – Essential Backup Practices For Your Paperless Office

By Jim Calloway and Ernie Svenson, ABA TECHSHOW Faculty 2015

Everybody appreciates the importance of good backup procedures. But everyone does not implement great backup procedures. Part of the reason is that hard drives today are much more reliable than those of the few generations ago. But the main reason is that because we are all so busy, it is easy for a backup procedure involving a lawyer or law firm staff to be overlooked or delayed.

A convincing argument can be made that good backup receipt procedures are not only a requirement of running a business today, but also an ethical requirement for lawyers.

The need for a firm to appropriate backup to protect client data is implied in RPC 1.1, 1.3, and 1.4. We are both strong believers in the need for a paperless office and digital workflows. Many lawyers making the transition to paperless today still keep a duplicate paper client file, but there are significant downsides in using a paper file as a backup. These range from the tendency of lawyers to revert to using the paper file and failing to update the digital file to a lawyer relying on paper file at the last minute only to discover that the law firm’s reliance on paperless processes means that the paper file has not been updated and is missing important documents or notes.

Our profession is in a transition from reliance on paper client files and other physical information storage systems to a complete reliance on digital client files and paperless workflow. An important part of making that transition is absolute rockhard certainty that you will always have access to your digital information when you need it. This means that no law firm should have its future and its client matters protected by only one form of backup. It also means that lawyers and staff should be trained on how to cope with a data loss, temporary inaccessibility of data, loss of power or loss of Internet access. Lawyers must be trained on how to react in the event of such an emergency. (Otherwise you run the risk that a panicked lawyer may fail to recognize that his or her phone or tablet powered by a different Internet service provider can serve as a redundant form of Internet access, for example.)

Backing Up Local Data to the Cloud

When it comes to backups, there is a rigid mantra that all savvy computer consultants know by heart: the only truly reliable backup is an offsite backup. In other words, while it’s nice to have a backup that you make from your computer to an external hard drive, that’s not truly secure. Why? Well, because whatever physical catastrophe can happen to your local computer will probably affect the local backup as well.

Here are some examples:

- Fire in your office
- Tornado that hits your office building
- Flood that fills your office with standing water
- Theft of your computer equipment

People tend not to think about the theft example, but it happens. Filmmaker Francis Ford Coppola had his computer stolen which had 15 years worth of his movie scripts. He had a local backup on an external hard drive. But when the thieves took his computer, they also stole his external hard drive.

So, again, you want a backup that sends your data offsite so that local catastrophes don’t affect the backup.

In the old days, having an “offsite backup” meant doing a nightly backup and then physically transporting the backup tapes to another location. This took time, was cumbersome, and only allowed for nightly backups to taken offsite. If a disaster happened during the day, all of the new data was going to be lost. Plus if the individual who is transporting the hard drive home loses the drive or has their car stolen, you may find yourself in the position of having to notify all of your clients that there’s been a potential data exposure of their confidential information. Today, the solution is to use a cloud-based backup service that continuously backs up data as it is being created: immediately and reliably. These services are very affordable, and are the easiest way to reliably backup local data in a way that provides incredible peace of mind.

Among the services that provide these services are:

- Carbonite
- Backblaze
- Crashplan
- SpiderOak

These services work with any kind of computer—Mac or PC. If you find a service that doesn’t work with both types of computer then consider that a bad sign. The whole point of cloud backup services is to make life easy and if you have to start thinking about what kind of computer you can buy to make them work, then life isn’t going to be as easy.
Some of the online backup services also offer syncing across to other computers. Crashplan offers such services, and so you might want to consider if you not only need backup, but also real time syncing to other computers.

The prices for basic online backup (without syncing) vary slightly, or greatly depending on add-on features you select, but in general expect to pay in the range of $5 to $12 per month for “personal level” features. Most of these services offer a free trial period so you can investigate how they work and decide which one is best for your purposes.

These services offer business class backup, as well as personal backup. Maybe you can get away with using the lower-cost personal services, but in general you want to use the business class service if you can afford it.

One feature that the business class services typically provide is centralized administration, which will allow you to be in control of backups happening on the various computers that everyone in your firm is using. You don’t want to have to rely on going around to each computer and physically checking to see if backups are occurring, or to tweak settings if that becomes necessary. And with the business class services you can even backup your local servers if you have that need.

**How Many Belts Go With Your Suspenders?**

In conclusion, this is really the ultimate question, even if it is worded colloquially. You have a set of data on your computer and your computer network. You understand that you need at least one additional copy of the data, the proverbial data backup. It is our experience that this functions much better when done on automated, online process rather than relying for an individual in a busy law firm to do it manually. But then what? Does just making an image of your computer and save it periodically makes sense? Should you get a portable hard drive and manually make an additional copy of the backup from time to time? Should you get two of those portable hard drives so that one can always be stored off-site? At some level, this is still a matter for each individual lawyer or law firm to decide. But, it is also fair to say at this point that having no backup is not a rational and responsible decision for your clients for your law practice.

This article is but a taste of what awaits you at the ABA TECHSHOW 2016, March 16-19 at the Hilton Chicago. As a member of Kansas Bar Association, we want you to know that you can get a discount on the ABA TECHSHOW 2016. This discount only applies to registrants that qualify for the standard registration. You can register online and include this unique discount code: EP1603 to receive a discount. Reprinted with Permission. 2015© by the American Bar Association. All rights reserved. This information or any or portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
The Drone Revolution

By Bob Lambrechts
I. Background

Due to the steadily increasing use of drones, both recreational and commercial, the Federal Aviation Administration (FAA) has determined that drones must be regulated to ensure safety of flight, people, and property on the ground. The frequency of incidents involving the unauthorized or unsafe use of these small, remote-controlled aircraft has risen dramatically. For example, on December 22, 2015, a drone crashed at a World Cup slalom event and nearly hit Austrian skier Marcel Hirscher in Madonna Di Campiglio, Italy.1 Pilot reports of interactions with suspected unmanned aircraft have increased from 238 sightings in all of 2014 to 650 from January 1 through August 9, 2015.2 Since the publication of those statistics, drone purchases have skyrocketed. The FAA estimates that more than one million drones, also known as unmanned aerial systems (UAS), were sold during the 2015 holiday season alone.3 In addition, the U.S. is regarded as one of the largest potential markets for commercial UAS.4 The proliferation of drone use has resulted in increased regulation, and, more recently, an FAA registration requirement for drone users. As of December 21, 2015, owners of drones that weigh in excess of 0.55 pounds are required to register their devices under rules to control the sharp increase of unmanned aircraft in U.S. skies.5 The registration requirement is driven in part by concerns that drones threaten public safety.

While drone registration is new, the FAA has been regulating their use since 2012 with the passage of the FAA Modernization and Reform Act (FMRA), which prohibits the use of a UAS for a commercial objective without an exemption from the FAA. And those commercial uses for UAS run the gamut. For example, a UAS can quickly produce high-resolution three-dimensional maps of vast geographic areas.6 Another industry significantly impacted by the UAS is filmmaking.7 UAS are revolutionizing how movies are made by capturing images previously unattainable or attainable only by spending thousands of dollars a day on helicopters. Notably, UAS were used on the sets of Game of Thrones and the newest Star Wars film.8 Drones are even getting into the delivery business. On July 17, 2015 a drone delivered medical supplies from an airfield to a medical clinic in Wise County, Va.9 That was the first drone delivery approved by the FAA and was performed by an Australian drone-delivery startup named Flirtey.10 And, importantly for Kansas, the Association of Unmanned Vehicle Systems International (AUVSI) reports that the agricultural use of UAS could ultimately comprise 80 percent of the commercial market.11

This article will discuss the current and rapidly evolving law of UAS from the perspective of federal, state and local law, as well as touch upon the many current and anticipated uses of drone technology.

II. The Growing Role of the UAS Globally and Within the State of Kansas

In 2014, nonmilitary UAS made up a $2.5 billion industry, growing 15 percent to 20 percent annually.12 The AUVSI estimates that between 2015 and 2025, the UAS industry will create 100,000 jobs and contribute $82 billion to the U.S. economy.13 Research suggests that the state of Kansas will be in the top ten states to receive economic benefits associated with UAS, and that the economic impact in Kansas alone will exceed $2.9 billion dollars and create an anticipated 3,700 jobs over the next decade.14

With the growing capabilities of UAS, the markets they support will likely continue to develop including the agricultural industry, where UAS are making a significant impact. UAS can closely monitor crops regularly and cheaply to improve crop management and yield, and use on private land means that agricultural UAS pose little threat of interference with the rights of others. Near-infrared sensors can be programmed to monitor crop health by detecting green, healthy plant mass through the crop’s absorption of light that falls within a certain wavelength range. By measuring the ratio of light reflected by the plant in these spectral ranges, plant health can be determined, letting farmers react and improve conditions locally with inputs of fertilizer or insecticide.15 This Normalized Difference Vegetation

www.ksbar.org | February 2016 31
Index (NDVI) calculation is valuable to agricultural scientists due to the unique spectral signature healthy plants radiate. Using NDVI maps derived through the use of multispectral cameras and associated spectral filtering software, it is possible to generate strong conclusions regarding the status of an active crop via the crop’s spectral reflectivity. When soil testing and field scouting is coupled with highly accurate spectral signature data, crop prescriptions can be quickly generated. Furthermore, infestations and disease outbreaks can be mitigated before they affect other healthy plant material through periodically scheduled spectral scans. The same concept extends to livestock. Infrared sensors can pick up small differences in animals’ temperature to determine if any herd members are sick.

In February 2015, the FAA bestowed upon Kansas State University-Salina the status of the first civil entity in the U.S. to have statewide access for UAS flight operations. The university has received three Certificates of Authorization (COA) from the FAA, allowing its unmanned systems program to perform research anywhere in the state on public or private property, as long as they have the landowner’s permission. The UAS will be used for researching drought stress and insect infestation.

In addition to agricultural applications, pipelines, power lines, wind towers and processing plants will all benefit from regular aerial monitoring. The drones’ abilities to sense in three dimensions, take thermal readings, and detect cracks in structures will greatly improve infrastructure inspection. Small UAS are capable of hovering and surrounding infrastructure, such as a bridge or plant, and can provide a new level of detail during such inspections.

UAS are also useful in many other applications. Following a natural or manmade disaster, UAS provide a means to quickly navigate debris while gathering information or conducting search and rescue missions. A search and rescue mission is a battle against time, particularly in harsh conditions, and UAS have become a powerful tool because of their ease of deployment. With thermal sensors, UAS can quickly discover the location of lost persons, and are particularly useful at night or in challenging terrain. The technology is ideal for use by rescue teams because UAS are not loud enough to overpower the human voice in an emergency situation, when people might be shouting for assistance. In addition, the ability of UAS to rapidly deploy and capture an area of interest in concert with site-specific measurements provides an advantage in remediation efforts.

III. The Role of the Federal Aviation Administration

A. Federal Framework

To ensure the maintenance of a safe air transportation system and of navigable airspace free from inconsistent restrictions, the FAA has regulatory authority over matters pertaining to aviation safety. Congress has vested the FAA with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source. The FAA Modernization and Reform Act of 2012 (FMRA) contains language addressing Model Aircraft, which provides a safe harbor for pilots while flying UAS strictly for hobby or recreation as long as all of the conditions set forth in the statute are satisfied.

Consistent with its statutory authority, the FAA requires federal registration to operate a UAS. Registering UAS will help protect public safety in the air and on the ground, aid the FAA in the enforcement of safety-related requirements for the operation of UAS, and build a culture of accountability and responsibility among users operating in U.S. airspace.

B. The FAA Small Unmanned Aircraft System Registry

Registration is the latest step signifying the drone industry’s transition from a hobbyist community to a mass-market commercial industry. New federal regulations require drone owners to register on a government website to receive unique user numbers with which they are required to label any drones they own. Regulators are signaling to drone users that the devices are more than toys, and that misuse could lead to penalties. Regulators say that registration will assist the government in holding reckless drone operators accountable and deter unsafe flights. The registration process will also put regulators in contact with drone users, enabling better education about drone rules.

The FAA’s small UAS registry became active on December 21, 2015, and ready for UAS owners to use on the FAA website. A small unmanned aircraft is defined as an unmanned aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft. The FMRA limits model aircraft to no more than 55 pounds. All aircraft weighing more than 0.55 pounds (250 grams) and less than 55 pounds must be registered. Under the interim final rule requiring registration, owners who previously operated an unmanned aircraft exclusively as a model aircraft prior to December 21, 2015, must register no later than February 19, 2016. Owners of any other UAS purchased for use as a model aircraft after December 21, 2015 must register before the first flight outdoors. Owners may use either the existing paper-based process or a new streamlined, web-based system. Also, owners using the web-based system must be at least 13 years old to register.

As part of the registration process, each owner must provide a name, home address and email address. The current fee to register an aircraft is $5. The fee is required by the regulation and is based on an estimate of the costs of the system and services associated with aircraft registration. When registration is complete, the web application will generate a certificate of aircraft registration/proof of ownership including a unique identification number for the UAS owner, which must be marked on the aircraft. Owners using the model aircraft for recreation will only have to register once, and may use the same identification number for all of their UAS. The registration is valid for three years.

To mitigate risks in the national airspace, the FAA will continue to use outreach and education to encourage compliance with regulatory requirements that pertain to the registration of unmanned aircraft. The FAA may also use administrative action or legal enforcement action to gain compliance. Failure to register an aircraft can result in civil penalties of up to $27,500.
Importantly, no state or local UAS registration law may relieve a UAS owner or operator from complying with the federal UAS registration requirements. Because federal registration is the exclusive means for registering UAS for purposes of operating such an aircraft in navigable airspace, no state or local government may impose an additional registration requirement on the operation of UAS in navigable airspace without first obtaining FAA approval.

C. The Pirker Decision and Commercial Operation of a UAS

When the UAS arrived, the FAA faced novel regulatory challenges. For decades prior to the drone, the FAA's definition of “aircraft” did not include “model aircraft,” the majority of which are now of the UAS type. That all changed when the FAA issued an agency order against a foreign national UAS pilot named Raphael Pirker. In October 2011, at the request of the University of Virginia, Pirker flew a UAS over the campus to obtain video footage and was compensated for the flight. That flight resulted in the FAA issuing a proposed order of assessment of a civil penalty of $10,000. In its order of assessment, the FAA listed all of its alleged facts concerning the flight, including an allegation that Pirker was compensated for it. At that time there was no Federal Aviation Regulation (FAR) that expressly prohibited commercial operation of UAS. Instead, the FAA based its proposed order of Assessment solely upon an allegation that Pirker flew recklessly in violation of FAR 91.13.

The relevant portion of FAR 91.13 reads: “No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.” Pirker filed a motion to dismiss. In March 2014, the administrative law judge (ALJ) granted Pirker’s motion to dismiss, vacating the FAA’s order of assessment and terminating the proceedings with prejudice. The ALJ held that UAS are not aircraft under the federal definitions, and therefore the FAA had no jurisdiction over Pirker’s flight. The FAA appealed the decision immediately to the full National Transportation Safety Board (NTSB). In November 2014, the NTSB issued a decision reversing the ALJ’s order, granting the FAA’s appeal, and remanding the case.

The NTSB held that UAS are “aircraft” as the word is defined under federal law and are therefore subject to the regulation prohibiting reckless operation of an aircraft. It remanded the matter to the ALJ to decide whether Pirker’s flight was, in fact, conducted recklessly. Pirker ultimately settled the case for $1,100, with no admission of wrongdoing on his part. The NTSB held that because UAS are aircraft, FAR 91.13 applies. It did not address the definition of “commercial use” since that was not addressed by the ALJ, and it did not hold that any other FAR applies to UAS. Critically, the NTSB’s decision did not qualify which size UAS are “aircraft.” Thus, anything from a toy UAS to a 55-pound industrial-sized UAS are “aircraft” subject to FAR 91.13.

Today, UAS operators have more regulatory guidance than Pirker. The statutory parameters of a model aircraft operation are outlined in the FMRA. Individuals who fly within the scope of those parameters are only required to register their UAS with the FAA as discussed above. Any flight outside the parameters requires FAA authorization pursuant to the FAA’s interpretation of the special rule for model aircraft. In its interpretation, the FAA declares, among other things, that compensation of any sort is banned unless proper authorization from the FAA is obtained. The special rule for model aircraft also provides that flying a UAS in a manner that is “in furtherance of a business,” is not a hobby or a recreational flight. Operators must provide prior notice to air traffic control or airport operations before flying within five miles of any airport, heliport, etc., but requests for such flights may be denied. Also, operating UAS using “first person view” (“FPV”) is prohibited. This means operators cannot use goggles or any modern “watch it on a monitor” system to fly. Instead, the operator’s own eyes must be able to see the UAS at all times while flying.

While the FAA concluded in its interpretation that flying in furtherance of a business is generally illegal, there are three methods of gaining FAA approval for flying civil (non-governmental) UAS commercially: (1) obtain a special airworthiness certificate, (2) obtain a UAS type and airworthiness certificate in the restricted category, or (3) petition for exemption with a civil Certificate of Waiver or Authorization (COA) for civil aircraft to perform commercial operations in low-risk, controlled environments. The third option, to petition for a Section 333 exemption, allows operators to fly UAS commercially, but with restrictions.

D. The Section 333 Exemption

In a new interim policy statement, the FAA relaxed the areas in which operations may be conducted under an exemption. Under the new policy, the FAA will grant a “blanket” COA that may be exercised “anywhere in the country except restricted airspace and other areas, such as major cities, where the FAA prohibits UAS operations.” The blanket COA may be granted to any UAS operator (1) who has been granted a Section 333 exemption, as long as (2) the UAS weighs less than 55 pounds, (3) it is flown at or below 200 feet, (4) it is operated during daytime visual flight rules conditions, (5) it is operated within visual line of sight of the UAS operator, and (6) it is operated at certain distances away from airports or heliports.

The Section 333 exemption provides that the UAS must be operated at least five nautical miles (NM) from an airport with an operational control tower; three NM from an airport with a published instrument flight procedure, but not an operational tower; two NM from an airport without a published instrument flight procedure or an operational tower; or two NM from a heliport with a published instrument flight procedure. If a UAS operator wishes to fly outside the blanket parameters, he or she must first obtain a separate COA that is specific to the airspace intended to be used for that operation.

As of January 9, 2016, the FAA had granted a total of 2,883 Section 333 exemptions. Roughly one-third of the exemptions were granted for applicants in three states: Texas, California and Florida. When looking at the industry sectors seeking the exemptions, roughly 50 percent have been sought by the photography and film industries. Applicants seeking exemptions were also heavily into real estate at approximately
29 percent, with utilities, energy and infrastructure taking third place at 23 percent. Agriculture and construction follow with 20 percent and 17 percent respectively.55

IV. The Role of Local Law Enforcement

The proliferation of small, relatively inexpensive UAS have presented the FAA with a challenge in identifying people who are not following the rules of the air or who endanger the nation’s airspace. So the FAA is asking local law enforcement communities for help. State and local police are often in the best position to immediately investigate unauthorized UAS operations and, as appropriate, to stop them. On January 8, 2015, the FAA issued a guidance document that explains how first responders and others can provide invaluable assistance to the FAA by: (1) identifying potential witnesses and conducting initial interviews, (2) contacting the suspected operators of the UAS or model aircraft, (3) viewing and recording the location of the event, (4) collecting evidence, (5) identifying whether the UAS operation was in a sensitive location, event or activity, and (6) notifying one of the FAA’s Regional Operation Centers about the operation as soon as possible.56

The FAA recognizes that almost all of those actions are within a local law enforcement agency’s capabilities, but is careful to note that certain law enforcement actions, such as arrest and detention or non-consensual searches, almost always fall outside of the allowable methods to pursue administrative enforcement actions by the FAA. The FAA suggests that local law enforcement agencies seek consent to examine UAS and equipment and conduct “stop and talk” sessions with suspected violators. The FAA also provides tips on how to spot illegitimate commercial UAS users, and asks local law enforcement agencies to look for unregistered aircraft.57

V. Who Owns the Airspace?

A. Supreme Court Guidance

Well-settled case law will likely influence the evolution of new laws and regulations governing UAS. For example, in the landmark case United States v. Causby,58 the Supreme Court considered the extent of a landowner’s rights to airspace. Causby owned a chicken farm within 2,300 feet of an airfield used by the United States Army and Navy. Military aircraft passed over Causby’s property at elevations as low as 83 feet during takeoffs and landings.59 Causby alleged that the noise frightened and killed his chickens, thereby ruining his farm’s production.60 Causby sued the U.S. government under the Fifth Amendment, alleging that the frequent and regular low altitude flights over his farm constituted a taking of his property without just compensation.61

Because the government cannot “take” private property from a person unless that person actually owns a property interest, a key component of Causby was determining the extent of a landowner’s rights to the airspace above his land. Although the Supreme Court did not set out a test for determining the extent of a landowner’s airspace rights, the court recognized that a property owner owns at least as much of the space above the ground as he can occupy or use in connection with the land. For such airspace surrounding the property, a physical invasion may constitute a taking when the government’s use (i.e., airplane flight) is so low and so frequent as to be a direct and immediate interference with the use and enjoyment of the land. The court held that the government’s (1) frequent and (2) low altitude flights of large military aircraft met that standard, having the effect of interfering with Causby’s use of his land and enveloping airspace.62 What resulted from that set of circumstances, though, was a victory for aviators. The Court affirmed that the air above the minimum safe altitude of flight is a public highway and part of the public domain.63

The Causby court divided the sky into two separate domains: an upper altitude subject to the public’s right of flight and a lower altitude which could be potentially owned by the landowner. The lesson is that a UAS likely would not be trespassing in an uncongested area at an altitude of 500 feet or higher. Conversely, a UAS will trespass at or very near the surface and additionally at higher altitudes where the landowner can show that the UAS actually interferes with the landowner’s use of real property based upon such factors as the altitude, frequency, and impact of the UAS flights.

Unfortunately, the case law after Causby has struggled to determine the exact extent of the public and private domains. UAS, however, do not fit neatly into this case law. UAS can be much smaller, quieter, and have a smaller impact on the use of the land than the aircraft considered in Causby. As a result, it cannot be stated with certainty exactly which altitudes a UAS may fly without trespassing on a landowner’s property. Consequently, the closer a UAS is to the ground, the more likely it is to trespass on a landowner’s property. Some guidelines for evaluating the extent of the rights of the landowner and the public to airspace include: (1) the impact on the landowner’s then existing use of the land and enveloping airspace; and (2) the minimum safe flight altitude (which for airplanes is 500 feet in uncongested areas or 1,000 feet in a congested area, such as a city).64 FAA regulations may clarify the second benchmark for UAS in the future, but the first benchmark likely will remain a case-by-case determination for the courts to decide.

B. Can I Legally Shoot Down the UAS If I Think It Is Trespassing?

An Idaho ammunition manufacturer named Snake River Shooting Products and Consulting, Inc. is selling ammunition specifically for removing remote-controlled aerial drones from the sky and to prepare for the invasion of the privacy apocalypse that camera drones will bring.65 The new product, called Drone Munition, is a three-inch, 12-gauge shotgun load for targeting UAS. The website for the ammunition also conveys that drones are aircraft and are protected by the federal government.66 The website declares that the users of Drone Munitions should employ common sense and be informed of and obey all laws with respect to drones and firearms.67 Overall, some very good advice, but what is the law of the drone?

Within the typical backyard airspace environment, any action taken against a UAS is subject to state laws – and it is unlikely that target practice in one’s backyard is allowed. Kansas law does not allow for the use of force to remove a trespasser unless the property owner reasonably believes that such use of force is necessary to prevent or terminate the trespasser’s
unlawful entry into or attack upon such person’s dwelling, place of work or occupied vehicle. Under the restatement (Second) of Torts Section 260, “one is privileged to commit an act which would otherwise be a trespass to a chattel or a conversion if the act is, or is reasonably believed to be, necessary to protect the actor’s land or chattels or his possession of them, and the harm inflicted is not unreasonable as compared with the harm threatened.” Arguably in certain instances, a landowner would not be liable to the owner of a drone for damage necessarily or accidentally resulting from removing it from his property.

Nonetheless, before employing that 12-gauge shotgun loaded with Drone Munition which might result in charges of wanton endangerment, criminal mischief or destruction of an aircraft (a federal crime), Kansans ought to consider a more restrained approach to a UAS loitering above their homes. A property owner should find out who owns and/or operates the UAS and call the police and request that they draw upon the FAA’s Law Enforcement Guidance for Suspected Unauthorized UAS Operations. In addition, the property owner may consider sending a cease and desist letter or possibly filing suit.

If filing suit is the chosen path, the homeowner could bring a number of causes of action, depending on the situation: trespass, private nuisance, public nuisance, stalking and harassment, or breach of privacy. There may be instances when landowners are entitled to protect their property from intrusion by a drone. And if the UAS is operated by any government entity, the property owner may be able to sue for violation of constitutional protections against illegal search and seizure. Such suits could result in a restraining order or injunction against such flights over the property. But there is a real question whether the property owner can prove any injury or damage as a result of the UAS flight. More states and localities are stepping up to further regulate the use of UAS; However, conflicting laws regulating the UAS are creating challenges for operators.

C. State and Local Laws Controlling Drones

Substantial air safety issues are raised when state or local governments attempt to regulate the operation or flight of aircraft. If multiple municipalities enact ordinances regulating UAS, the result is fractionalized control of the navigable airspace. In turn, this patchwork of differing restrictions may severely limit the flexibility of the FAA in controlling the airspace and flight patterns and in ensuring safety and an efficient air traffic flow. A navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system.

As of January 3, 2016, 45 states have considered 168 bills related to UAS. On March 7, 2013 Kansas HB 2394 was introduced to prohibit the use of drones by any law enforcement agency to obtain evidence. House Bill 2394 died in committee on May 30, 2014. Senate Bill 409 was introduced on February 18, 2014 to protect the privacy of individuals and businesses from drones equipped with cameras and recording devices. That Senate bill also died on May 30, 2014 even after a Senate committee report recommended passage of the bill. Unlike Kansas, 20 states have passed legislation. Four other states, also not including Kansas, have adopted resolutions related to UAS. State and local governments have passed laws that seek to regulate UAS flight. However, as discussed above, if challenged in court, any such laws may be challenged as preempted by federal law, and would therefore be invalid.

VII. Conclusion

There is little doubt that UAS are here to stay and will be more heavily utilized for recreational and commercial purposes with each passing day. Widespread use of UAS will be a reality in the near future. The framework for such usage will be directed by FAA rules and regulations. A legal framework will also need to be adapted to this new technology, and individual rights will need to be balanced with technological advancements.

About the Author

Bob Lambrechts is a partner with Lathrop & Gage LLP in Overland Park where he practices patent and environmental law. He formerly served with the U.S. Environmental Protection Agency in the Clean Air Division and as a special assistant to the Region 7 Administrator. In addition to a law degree from St. Louis University, Mr. Lambrechts has a Bachelor’s and Master’s Degree in Mechanical and Aerospace Engineering from the University of Missouri at Columbia and prior to practicing law he served as a robotics engineer with the Allied-Signal Corporation in Kansas City. As avocations, Mr. Lambrechts has served as an Engineering Duty Officer in the U.S. Navy Reserve for over 25 years and as an adjunct faculty member for the Schools of Law and Engineering at the University of Missouri at Kansas City since 1993.

blambrechts@lathropgage.com

FOOTNOTES

The Drone Revolution

5. The Department of Transportation/FAA published an interim final rule at 80 Fed. Reg. 78593 et seq. (Dec. 16, 2015) (to be codified at 14 C.F.R § 48.1 et seq.). The rule had an effective date of December 21, 2015, and the Department considered all comments received before the closing date of January 15, 2016 and will make amendments as appropriate. See also 80 Fed. Reg. 78646 (Dec. 16, 2015) (to be codified at 14 C.F.R. § 48.15).


8. Mac, supra note 4.


10. Id.


16. Id.

17. Kansas State University, K-State Salina receives statewide access for flight operations of small UAS, Feb. 24, 2015), https://www.k-state.edu/media/newsreleases/feb15/statewideuas22415.html. Kansas State University at Salina’s unmanned aircraft systems program is one of only a few civil entities granted a certificate of authorization from the Federal Aviation Administration. The flight operations will use a mix of fixed-wing and rotary wing UAS, all components of K-State Salina’s fleet of more than 20 aircraft. UAS students will be able to participate in multiple facets of the research missions, from integrating equipment on the unmanned aircraft to acting as part of the ground support crew analyzing data from the flights.


19. FAA Modernization and Reform Act of 2012, Pub L. No. 112-95 Sec. 336. The conditions include: (1) the aircraft is flown strictly for hobby or recreational use; (2) the aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization; (3) the aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization; (4) the aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and (5) when flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation (model aircraft operators flying from a permanent location within 5 miles of an airport should establish a mutually-agreed upon operating procedure with the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport).

20. Id. at 333(c) ("If the Secretary determines under this section that certain unmanned aircraft systems may operate safely in the national airspace system, the Secretary shall establish requirements for the safe operation of such aircraft systems in the national airspace system"); see also Id. at 332(b)(1) (requiring the Secretary to issue "a final rule on small unmanned aircraft systems that will allow for civil operation of such systems in the national airspace system, to the extent the systems do not meet the requirements for expedited operational authorization under section 333 of [Public Law 112-95].")


22. 14 C.F.R. § 1.1.

23. Id. § 48.15.

24. Id. § 48.5.

25. Id.

26. Id. § 48.30.

27. Id. § 48.120.

28. Id. § 48.100.

29. Id. § 48.30.

30. Id.

31. Id. § 48.100(d).

32. See also 49 U.S.C. § 46306 (criminal penalties for failure to register can include fines of up to $250,000); 18 U.S.C. § 3571 (criminal penalties for failure to register can include imprisonment for up to 3 years).


35. Id. at 7.

36. Id. at 11.

37. Id.

38. Id. at 1.

39. Id. at 5-6.


41. The FAA Modernization and Reform Act of 2012 at 336(a)(2)-(3) provides that hobby or recreational aircraft shall be limited to no more than 55 pounds.


43. Id.


46. Section 333 of the FAA Modernization and Reform Act of 2012 grants the secretary of transportation the authority to determine whether an airworthiness certificate is required for a UAS to operate safely in the national airspace system.

47. FAA modernization and Reform Act of 2012, supra n. 19.


49. Id.

50. Id.

51. Id.


54. Id.

55. Id.

The Drone Revolution

57. Id.
59. Id. at 258.
60. Id. at 259.
61. Id. at 258.
62. Id at 260-261.
63. Id. at 266.
64. Id. at 266.
65. 14 C.F.R. § 91.119(a).
67. Id.
68. Id.
70. Restatement (Second) of Torts § 260.
73. FAA, supra n. 56.
74. K.S.A § 21-5808.
75. Sandifer Motors, Inc. v. City of Roeland Park, 6 Kan. App. 2d 308, Syl. 24, 628 P.2d 239 (1981) (“A private nuisance is a tort related to an unlawful interference with a person’s use or enjoyment of his land. The concept of a private nuisance does not exist apart from the interest of a landowner.”).
76. PIK 4th 103.06 (“A nuisance is a condition created or maintained that unreasonably interferes with the personal rights or property rights of another and that causes harm, inconvenience, or damage.”); see also Sandifer Motors, Inc. v. City of Roeland Park, 6 Kan. App. 2d 308, Syl. 4, 628 P.2d 239 (1981) (“What may or may not constitute a nuisance in particular cases depends upon many things, such as the type of neighborhood, the nature of the thing wrong complained of, its proximity to those alleging injury or damage, its frequency, continuity or duration, and the damage or annoyance resulting. Each case of necessity must depend upon the particular facts and circumstances.”).
77. K.S.A. 60-31a02.
78. In Kansas, breach of privacy is a felony. K.S.A. 21-6101 See also Restatement (Second) of Torts § 159(2) (“Flight by aircraft in the air space above the land of another is a trespass if, but only if, (a) it enters into the immediate reaches of the air space next to the land, and (b) it interferes substantially with the other’s use and enjoyment of his land.”).
84. NCSL, supra note 79.
85. Id.
86. See cases cited supra note 81.
Debra Jean Fickler, of Tonganoxie, an attorney admitted to the practice of law in Kansas in 1992.

The office of the Disciplinary Administrator filed a formal complaint against the respondent, Debra Jean Fickler, of Tonganoxie, an attorney admitted to the practice of law in Kansas in 1992. Fickler’s ethical issues revolve around her law license and her license had been administratively suspended for driving under the influence of alcohol.

On October 18, 2013, Court suspended the petitioner, Susan L. Bowman, from the practice of law in Kansas for a period of 12 months. See In re Bowman, 298 Kan. 231, 310 P. 3d 1054 (2013). The Court further ordered that the petitioner undergo a hearing, pursuant to Supreme Court Rule 219 (2015 Kan. Ct. R. Annot. 403), prior to consideration of a petition for reinstatement. On January 21, 2015, petitioner filed a motion for reinstatement.

The hearing panel determined that the respondent’s pattern of misconduct and the respondent’s failure to cooperate in disciplinary investigation; and Kansas Supreme Court Rule 211(b) (2015 Kan. Ct. R. Annot. 350) (failure to file answer in disciplinary proceeding). The hearing panel unanimously recommended that the respondent be indefinitely suspended.

Court stated the respondent did not file exceptions to the hearing panel’s final hearing reports and the evidence before the hearing panel established by clear and convincing evidence the charged misconduct. Court held that given that all concerned parties have joined in the recommendation for a retroactively applied indefinite suspension, the Court accepted that recommended sanction.

All opinion digests are available on the KBA members-only site at www.ksbar.org. We also send out a weekly newsletter informing KBA members of the latest decisions. If you do not have access to the KBA members-only site, or if your email address or other contact information has changed, please contact member and market services at info@ksbar.org or at (785) 234-5696. You may go to the courts’ website at www.kscourts.org for the full opinions.
recommended that the respondent be disbarred.

HEARING PANEL: A hearing was held on the complaint before a panel of the Kansas Board for Discipline of Attorneys on March 24, 2015, where the respondent did not appear. The hearing panel determined that respondent violated KRPC 8.4(b) (2015 Kan. Ct. R. Annot. 672) (commission of a criminal act reflecting adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer); 8.4(d) (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). The hearing panel unanimously recommended that the respondent’s license to practice law be indefinitely suspended.

HELD: Court stated that respondent self-reported his May 2012 DUI conviction to the Disciplinary Administrator. Court acknowledged that respondent filed an answer to the resultant complaint in which he acknowledged his transgressions and explained their bases. Court also acknowledged he later notified the office of the Disciplinary Administrator that he had received notice of the hearing before this Court, that he would not attend the hearing, and that he would accept the panel’s recommendation of indefinite suspension. In short, respondent has made some effort to participate in the process. Court contrasted the respondent with In re O’Leary, ___ Kan. ___ P.3d ___ (2015), filed the same day. Court held that the respondent should be indefinitely suspended.

ORDER OF DISBARMENT
IN THE MATTER OF CHRISTOPHER W. O’BRIEN
NO. 8,804 – NOVEMBER 24, 2015

FACTS: In a letter signed November 10, 2015, respondent Christopher W. O’Brien, an attorney admitted to practice law in Kansas, voluntarily surrendered his license to practice law in Kansas, pursuant to Supreme Court Rule 217. At the time the respondent surrendered his license, a complaint had been docketed by the office of the Disciplinary Administrator for investigation. The complaint alleged that the respondent violated Kansas Rules of Professional Conduct 1.15 (2015 Kan. Ct. R. Annot. 556) (safekeeping property) and 8.4(b) and (c) (2015 Kan. Ct. R. Annot. 672) (misconduct). The allegations involved conversion of client funds.

HELD: Court examined the files of the office of the Disciplinary Administrator and found that the surrender of the respondent’s license should be accepted and that the respondent should be disbarred.

ORIGINAL PROCEEDING IN DISCIPLINE
IN THE MATTER OF JOHN ANDREW O’LEYARY
NO. 114,076 – DECEMBER 18, 2015

DISBARMENT

FACTS: This is an original proceeding in discipline filed by the office of the Disciplinary Administrator against the respondent, John Andrew O’Leary, of Luray, an attorney admitted to the practice of law in Kansas in 1991. Respondent’s ethical problems are a result of drug convictions and alcohol addiction.

DISCIPLINARY ADMINISTRATOR: On January 16, 2015, 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 did not file an answer. The Disciplinary Administrator recommended the respondent be disbarred.

HEARING PANEL: A hearing was held on the complaint before a panel of the Kansas Board for Discipline of Attorneys on April 7, 2015, where the respondent did not appear. The hearing panel determined that respondent violated KRPC 5.5(a) (2014 Kan. Ct. R. Annot. 650) (unauthorized practice of law); 8.4(g) (2014 Kan. Ct. R. Annot. 680) (engaging in conduct adversely reflecting on lawyer’s fitness to practice law); and Kansas Supreme Court Rule 211(b) (2014 Kan. Ct. R. Annot. 363) (failure to file answer in disciplinary proceeding). Hearing Panel recommended that because the respondent has not previously been disciplined, indefinite suspension was warranted.

HELD: Court focused its decision on the lack of participation in the disciplinary process. Court stated that a respondent’s failure to appear before this court after having been given notice may warrant a sanction greater than that recommended by the Disciplinary Administrator or panel, even up to disbarment. Court held the lack-of-appearance aggravator seems particularly apt in this case because it reflects a disturbing pattern—respondent’s contempt for orders of this Court and for the disciplinary process. A majority of the Court agreed with the office of Disciplinary Administrator and held that disbarment was the appropriate sanction. A minority of the Court would follow the hearing panel’s recommendation of indefinite suspension.

CIVIL

LEGAL MALPRACTICE; DEFAULT JUDGMENT
GARCIA V. BALL
WYANDOTTE DISTRICT COURT – JUDGMENT OF THE COURT OF APPEALS REVERSING THE DISTRICT COURT IS REVERSED. JUDGMENT OF THE DISTRICT COURT IS AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS

FACTS: Garcia retained criminal defense attorney, Ball to represent him in a probation revocation proceeding. The district court accepted Garcia’s stipulation to violating probation, revoked his probation, and remanded Garcia to the custody of the Kansas Department of Corrections to serve his originally imposed prison term. But the journal entry of sentencing erroneously directed that Garcia was subject to post release supervision following his probation revocation, which error ultimately led to Garcia serving more time in prison than his original sentence. Garcia sued Ball, alleging legal malpractice. When Ball failed to answer the petition, Garcia notified Ball of the amount of claimed damages and obtained a default judgment. The district court subsequently set aside the default judgment but ultimately dismissed the lawsuit because Garcia had not established his innocence under the exoneration rule. The Court of Appeals reversed, finding that the district court had erred in setting aside the default judgment for excusable neglect under K.S.A. 60-260(b)(1). Ball petitioned this court for review, arguing that the district court properly set aside the default judgment pursuant to K.S.A. 60-260(b)(6). Gar-
cia filed a cross-petition, asking this court to decide whether his legal malpractice claim was barred by either the exonerating rule or the statute of limitations.

ISSUES: Legal Malpractice; Default Judgment

HELD: Court reversed the Court of Appeals, finding that the district court did not abuse its discretion in setting aside the default judgment pursuant to K.S.A. 60-260(b)(6). Court also reversed the district court’s dismissal of the lawsuit, based on recent cases holding that the exonerating rule applicable to a criminal defendant’s claim that his or her attorney’s legal malpractice resulted in the defendant serving an illegal sentence requires the defendant to obtain post-sentencing relief from the illegal sentence, but the rule does not require that the defendant prove that he or she was innocent of the crime for which the illegal sentence was imposed. Court also stated that for a legal malpractice claim based upon an illegal sentence, the cause of action accrues, and the statute of limitations begins to run, when the criminal defendant obtains court-ordered post-sentencing relief from the illegal sentence. Court remanded to the district court to resume the proceedings.


SELECTION OF ADMINISTRATIVE JUDGE; STANDING; SEPARATION OF POWERS

SOLOMON V. STATE OF KANSAS,

SHAWNEE DISTRICT COURT – AFFIRMED
NO. 114,573 – DECEMBER 23, 2015

FACTS: Judge Larry Solomon filed in Shawnee County District Court a petition seeking a declaratory judgment under K.S.A. 60-1704 challenging the legislature’s passing of the amendments in K.S.A. 2014 Supp. 20-329 permitting the district court judges in a particular judicial district to elect a district judge as chief judge. Solomon sought relief in the form of a judgment declaring an unconstitutional encroachment on the constitutional authority of the Kansas Supreme Court to administer the judiciary of the state. Solomon contends that, by enacting K.S.A. 2014 Supp. 20-329, the legislature improperly exerted control over an administrative function of the Supreme Court that is constitutionally reserved to the judicial branch. The state argued that Judge Solomon lacked standing and that the legislation was constitutional. The district court agreed with Solomon and granted him summary judgment.

ISSUES: Selection of Administrative Judge; Standing; Separation of Powers

HELD: Court agreed with Judge Solomon and the district court. Court found Judge Solomon had standing because the statute undoubtedly affected his "rights, status or other legal relations" as the current chief judge of the 30th Judicial District. On the merits, Court held the language of the Kansas constitution and application of case law factors for analyzing issues in cases involving separation of powers lead to an ultimate opinion that is consistent with the opinions of courts in other jurisdictions: the means of assigning positions responsible to the Supreme Court and charged with effectuating Supreme Court policy must be in the hands of the Supreme Court, not the legislature. By enacting K.S.A. 2014 Supp. 20-329, the legislature asserted significant control over a constitutionally established essential power of the Supreme Court.


CONCURRENCE: Justice Stegall concurred with and joined the portion of the decision concerning Judge Solomon’s standing to bring this declaratory judgment action. However, Justice Stegall stated that while he concurred that K.S.A. 2014 Supp. 20-329 violated the structural separation of powers, he wrote separately to state that the majority has recapitulated a jurisprudence more properly described as promoting a “harmony of powers” than a separation thereof.

CRIMINAL

STATE V. COLLINS

SEDGWICK DISTRICT COURT - AFFIRMED;
COURT OF APPEALS - AFFIRMED

FACTS: Collins entered guilty plea to felony domestic battery. Sentence imposed included 24 months of probation. On appeal Collins argued the 24 month probation term did not conform to applicable statutory scheme, and must be reduced to 12 months. Court of Appeals affirmed in unpublished opinion. Review granted.

ISSUE: Terms of Probation under K.S.A. 2011 Supp. 21-6608

HELD: Because legislature has not prescribed maximum probation term for felony domestic battery convictions, the length of such term is within sentencing court’s discretion. No abuse of district court’s discretion was found in this case. Court expresses no opinion regarding other nongrid felonies that lack sentencing-grid severity levels.

STATUTES: K.S.A. 2014 Supp. 21-6412(a)(1), -6412(a)(6), -6412(b)(1), -6416; K.S.A. 2011 Supp. 21-5414, -5414(a), -5414(b), -5414(b)(3), -6601 et seq., -6607(b), -6608, -6608(a), -6608(c), -6608(c)(6); and K.S.A. 60-2101(b)

STATE V. DERN

POTTAWATOMIE DISTRICT COURT - AFFIRMED IN PART, REVERSED IN PART
COURT OF APPEALS - AFFIRMED IN PART, REVERSED IN PART ON ISSUE REVIEWED
NO. 106,406 - NOVEMBER 25, 2015

FACTS: Dern was convicted of two counts each of aggravated indecent liberties and aggravated criminal sodomy. Victims were twin daughters F.D. and C.D. In unpublished opinion, Court of Appeals affirmed all convictions, finding no error in: (1) district court’s finding that Dern’s confession to law enforcement officers was voluntary, and denial of motion to suppress; (2) Dern’s confession to prior uncharged sexual misconduct regarding the victims was admissible under K.S.A. 60-455 to prove “criminal disposition;” (3) jury instruction for aggravated criminal sodomy improperly included alternative means of committing sodomy, but error was invited by Dern’s failure to object; (4) there was adequate corroborating
evidence of Dern's crimes against C.D. to satisfy common-law corpus delicti doctrine; (5) jury instruction for aggravated indecent liberties did not state alternative means; and (6) jury was properly instructed on reasonable doubt. Dern's petition for review on all issues was granted.


HELD: Under totality of circumstances, district court correctly held that Dern's confession to law enforcement officers was voluntary and admissible. Substantial competent evidence supported district court's findings that undercut Dern's arguments regarding his mental condition and fairness of interrogation techniques.

Court's adherence to State v. Prine, 297 Kan. 460 (2013) (Prine II), continues. Balancing test argued by parties was applied, finding no abuse of discretion in district court's ruling that probative value of evidence of Dern's prior sexual misconduct was not outweighed by undue prejudice.

Both aggravated criminal sodomy convictions were reversed. Jury was improperly instructed on alternative means of committing aggravated criminal sodomy without supporting evidence for each means, and panel erroneously applied invited error doctrine to save those convictions. Dern's proposed instruction did not include sodomy definition with alternative means language. Panel improperly extended State v. Schreiner, 46 Kan. App. 2d 778 (2011), to apply invited error doctrine based only on Dern's not objecting to the faulty instruction in this case. Open question remain whether Schreiner and progeny appropriately applied doctrine when instruction was in fact requested. Consideration of whether alternative means error can ever be harmless was precluded by State's failure to argue the point.

Background and development of formal corpus delicti rule was discussed. Adherence to formal rule in this case would require reversal of Dern's aggravated indecent liberties conviction concerning C.D. because no independent evidence corroborated Dern's confession. Criticisms of formal rule were outlined, including U.S. Supreme Court's adoption of trustworthiness standard whereby a reliable confession is sufficient evidence to establish corpus delicti of the alleged offense. Trustworthiness standard in Kansas was recognized, citing long-standing recognition in Kansas cases of that method of showing corpus delicti. Nonexclusive list of factors for determining trustworthiness were stated. Evidentiary standard for finding a confession or admission sufficiently trustworthy to satisfy State's obligation to present prima facie showing of corpus delicti is akin to standard of review applicable to sufficiency of the evidence claims. That standard was satisfied in Dern's case.


Claim regarding reasonable doubt instruction was defeated by State v. Herbel, 296 Kan. 1101 (2013).

CONCURRENCE and DISSENT (Biles, J.): This Court has not previously adopted or applied “trustworthiness” standard embraced by majority. Does not champion formal rule, and agrees with many criticisms of the rule, but Dern's conviction can and should be affirmed using multiple crimes exception to formal corpus delicti rule as applied in State v. Long, 189 Kan. 273 (1962), which does not raise inescapable due process concern arising from application of trustworthiness rule in this case. Also, believes error in the aggravated criminal sodomy instruction was harmless in this case, but a future case will have to provide opportunity to revisit alternative means jurisprudence for harmless error analysis.

CONCURRENCE and DISSENT (Johnson, J.): Joins Biles' concurrence and dissent addressing corpus delicti rule, but adds that C.D.'s prior statements and her sister's contemporaneous statements provide additional basis from which to draw justifiable inference that crime against C.D. did in fact occur. Also, agrees with majority and Biles that State's failure to argue harmless error precludes reconsideration of case law on this matter, and is open to further discussion on whether alternative means error can ever be harmless error.


STATE V. FULLER
SEDGWICK DISTRICT COURT – AFFIRMED IN PART, REVERSED IN PART, REMANDED WITH DIRECTIONS COURT OF APPEALS - AFFIRMED IN PART AND REVERSED IN PART
NO. 108,714 - DECEMBER 23, 2015

FACTS: Fuller admitted to sexual contact with neighbor, but claimed it was consensual. Jury convicted him of rape, aggravated sexual battery, and aggravated burglary. Defense counsel (Pittman) filed motion for judgment of acquittal, and Fuller filed pro se motion construed as motion for new trial. District court denied both motions after hearing Fuller's oral arguments of ineffective assistance of counsel. Court of Appeals affirmed in Fuller's direct appeal without considering allegations against Pittman because record on appeal was not sufficiently developed. Fuller then filed K.S.A. 60-1507 motion on allegations concerning Pittman's performance. Following evidentiary hearing on three claims of ineffective assistance, district court denied relief without discussing any alleged conflict of interest. Fuller appealed claiming: (1) Pittman was ineffective on direct examination of Fuller; (2) Pittman was ineffective for failing to call witness who would have testified the victim was a “flirt and tease,” and (3) Fuller was denied conflict-free representation at hearing on motion for new trial. Court of Appeals affirmed in unpublished opinion, finding in part that the notice of appeal was insufficient for appellate review of the claim that Pittman failed to call a witness. Fuller petitioned for review on the same three claims.

ISSUES: (1) Ineffective Assistance of Counsel - Direct Examination, (2) Ineffective Assistance of Counsel - Failing to Call Witness, (3) Ineffective Assistance of Counsel - Failure to Argue Fuller's Pro Se Motion for New Trial

HELD: Three categories of ineffective assistance of counsel claims are reiterated: constitutionally deficient performance; assistance of counsel denied at a critical stage of the proceeding; and attorney conflict of interest. Under facts of this case
and when considered in context, Pittman's cross-examination style questions of Fuller during his direct trial testimony were the product of a considered trial strategy and not a constitutionally deficient performance, and did not transform defense counsel into a second prosecutor or wholly deprive Fuller of representation at a critical stage of the proceedings.

Notice of Appeal in this case was sufficient to confer jurisdiction on appellate courts to consider the witness issue, but no showing of ineffective assistance of counsel by Pittman’s electing not to proffer a witness who could have provided only irrelevant and inadmissible testimony.

Record does not support district court’s and Court of Appeals panel’s conclusion that Pittman never gave up his role as Fuller’s advocate at the hearing on Fuller’s motion for a new trial. Instead it is abundantly clear a conflict between Fuller and Pittman arose at that hearing - a critical stage of the proceeding - when Pittman elected to defend himself against Fuller’s allegations. Fuller met any burden that might be imposed to satisfy the Mickens exception, the third subcategory of attorney conflict-of-interest cases. Case is remanded to district court with instructions to hold new hearing based on arguments before district court during Fuller’s motion for new trial hearing that have not yet been disposed of adversely to Fuller’s allegations. Fuller met any burden that might be imposed to satisfy the Mickens exception, the third subcategory of attorney conflict-of-interest cases. Case is remanded to district court with instructions to hold new hearing based on arguments before district court during Fuller’s motion for new trial hearing that have not yet been disposed of adversely to him in these K.S.A. 60-1507 proceedings.

STATE V. GAUGER
LEAVENWORTH DISTRICT COURT – AFFIRMED
NO. 112,913 – JANUARY 8, 2016

FACTS: Gauger charged his purchase of goods from auto parts store to former employer's store account without authorization. Prior to opening statements, district court's instruction to jury included statement regarding cost and burden of mistrial if there was jury misconduct. During trial, district court allowed State to introduce printed copies of auto store's electronically stored receipts and invoice. On appeal Gauger claimed: (1) admission of those exhibits violated best evidence rule, and (2) district court's preliminary instruction denied Gauger a fair trial.

ISSUES: (1) Best evidence rule – electronically stored documents, (2) preliminary jury instruction

HELD: Best evidence rule is stated and applied to electronically stored information. Analysis of issue of first impression in State v. Robinson, 303 Kan. ___ (2015), regarding admission of printed version of email communication, equally applies in this case. Under that rule, a printed version of an electronically stored document may be admitted as the original, provided there is no genuine dispute regarding authenticity. Here, copies of auto store's electronically stored receipts and a monthly invoice were properly admitted as originals.

Clear error test applies to appellate review of instructional errors in district court's preliminary instructions. Instruction at issue in this case, as in State v. Tahab, 302 Kan. 783 (2015), was given as warning to jurors against committing misconduct, and was legally and factually appropriate.

STATUTES: K.S.A. 2014 Supp. 22-3414(3); and K.S.A. 60-467

STATE V. HURLEY
SALINE DISTRICT COURT – REVERSED AND REMANDED; COURT OF APPEALS – REVERSED

FACTS: At revocation hearing, Hurley stipulated to allegations that he violated terms of probation in three cases. District court reinstated probation on same terms and conditions, and ordered 90 day jail sanction (30 days in each case). When Hurley responded with query about going to prison instead, district court denied Hurley’s request to serve 90 day sanction on weekends, and requests for a different intensive supervision officer (ISO). During prosecutor's attempt to clarify start date of jail sanction and probation extension, ISO interrupted to tell court that Hurley had just made a disparaging comment to him. District court entered a finding of contempt, reopened the matter of whether probation should be reinstated with 90 day jail sanction, and remanded Hurley to prison. On appeal Hurley claimed district court (1) lacked jurisdiction to reopen the probation revocation hearing after pronouncing its disposition, and (2) violated his due process rights by summarily revoking newly imposed probation without hearing based upon newly alleged probation violation of contempt. Court of Appeals affirmed in unpublished opinion. Review granted.

ISSUE: Revocation of probation

HELD: District court revoked Hurley’s probation based upon a ground for which Hurley was not provided sufficient notice and opportunity to be heard. Reversed and remanded to district court for new probation revocation hearing that comports with statutory and constitutional requirements.

STATUTES: K.S.A. 2011 Supp. 22-3716, -3716(b); and K.S.A. 20-1203

STATE V. JONES
WYANDOTTE DISTRICT COURT – AFFIRMED
NO. 111,540 - DECEMBER 18, 2015

FACTS: Jones’ conviction as an adult of first-degree murder was affirmed on direct appeal. Unsuccessful collateral challenges followed. In present appeal from denial of successive K.S.A. 60-1507 motion and motion to correct illegal sentence, Jones argued that at time of trial he was a juvenile who suffered from a mental defect that rendered him incompetent to comprehend fully the nature and possible consequences of charges against him, thus the district court was required to suspend proceedings once Jones’s competence to stand trial came into question.

ISSUE: Motion to correct illegal sentence

HELD: An alleged violation of K.S.A. 22-3302 by failing to suspend criminal proceedings to conduct a competency hearing after finding reason to question a criminal defendant’s competency raises a procedural not a jurisdictional issue. Based on State v. Ford, 302 Kan. ___ (2015), State v. Donaldson, 302 Kan. ___ (2015), and court’s prior decision in Jones’ own appeals, Jones cannot obtain the relief he seeks through a motion to correct illegal sentence.

STATUTE: K.S.A. 22-3302, -3302(1), -3504, 60-1507
STATE V. MARSHALL
SEDGWICK DISTRICT COURT - AFFIRMED
NO. 110,976 - DECEMBER 18, 2015

FACTS: Marshall was convicted of capital murder for slaying of two victims. District court imposed lifetime imprisonment without possibility of parole. On appeal Marshall claimed: (1) district court erred in failing to order a competency evaluation; (2) district court failed to sufficiently inquire into Marshall's requests for new counsel; (3) district court misspoke during reading of instructions to the jury; and (4) cumulative effect of district court's errors denied Marshall a fair trial.

ISSUES: (1) Competency evaluation, (2) inquiry into request for new counsel, (3) reading of jury instruction, (4) cumulative error

HELD: Court's review of record on appeal does not raise a bona fide doubt regarding Marshall's competency to stand trial. No abuse of district court's discretion in failing to order sua sponte a competency evaluation of Marshall.

Under facts in case, district court did not abuse its discretion by failing to inquire further into reasons for Marshall's displeasure with defense counsel.

There was no merit to Marshall's claim of judicial error during reading of jury instructions. State clarified that judge correctly told jury that Marshall pled "not guilty" to capital murder, but court reporter inadvertently omitted the word “not” from transcript. Court reporter filed amended transcript reflecting the change and an amended certificate of filing, which noted the error in the original transcript.

Cumulative error argument was defeated by finding no error in issues raised on appeal.

STATUTES: K.S.A. 2014 Supp. 22-3302(1), 60-1501; and K.S.A. 22-3301(1)

STATE V. PAGE
BOURBON DISTRICT COURT - CONVICTIONS AF-FIRMED, SENTENCE VACATED IN PART
NO. 106,368 - DECEMBER 31, 2015

FACTS: On charges arising from incident in which Page and minor neighbor sexually assaulted Page's son, jury convicted Page of abuse of a child, aggravated indecent liberties with a child, aiding and abetting aggravated indecent liberties with a child, and promoting obscenity to a minor. Hard 25 life sentence imposed with lifetime post release supervision. On appeal Page argued: (1) under K.S.A. 60-455 in effect when crimes were committed, district court erred in admitting propensity evidence of prior sexual abuse that Page had inflicted on a relative; (2) insufficient evidence supported the aggravated indecent liberties convictions because minor neighbor's testimony was not credible; (3) district court erred by admitting nurse's preliminary hearing testimony after finding she was unavailable as trial witness based on doctor's note and prosecutor's testimony of conversations regarding nurse's hospitalization; (4) district court erred in admitting 200+ pornographic images that minor neighbor received from Page; (5) cumulative error denied Page a fair trial; and (6) district court erred in imposing lifetime post release supervision.

ISSUES: (1) Admissibility of prior sexual abuse testimony, (2) sufficiency of the evidence, (3) admission of nurse's pre-trial testimony, (4) admission of pornographic photographs, (5) cumulative error, (5) sentencing

HELD: District court did not err in admitting the relative's testimony. While version of K.S.A. 60-455 at time of crime did not list propensity as a basis for admission of this testimony, at time of trial K.S.A. 2010 Supp. 60-455 controlled, and relative's testimony was admissible propensity evidence under that version. Review of whether testimony was relevant, and district court's failure to list propensity evidence in limiting instruction, was waived by Page's failure to raise or argue these issues.

Under facts in case, State presented sufficient evidence at trial as to each element of aggravated indecent liberties with a child.

Issue of first impression. K.S.A. 60-402 establishes general requirement for application of Kansas evidentiary rules in all proceedings unless exempted elsewhere. Unlike the federal rule, K.S.A. 60-408 does not carve out an exception for trial court's determinations of preliminary fact questions governing admissibility such as whether a witness in unavailable. Evidentiary rules apply. Doctor's note and prosecutor's testimony regarding conversations about nurse's hospitalization were hearsay with no showing or argument of any exception to hearsay rule. District court abused its discretion in relying on inadmissible hearsay evidence to find nurse was unavailable, but error was harmless under facts of case.

At trial, Page's counsel objected to photographic evidence on basis of relevance, but on appeal argued undue prejudice. The issue was not properly preserved for appellate court's consideration.

Cumulative error doctrine is inapplicable where only one harmless error found.

Lifetime post release supervision was vacated pursuant to State v. Williams, 298 Kan. 1975 (2014).

STATUTES: K.S.A. 2010 Supp. 60-455; and K.S.A. 21-3205(a), -3504(a)(3)(A), 60-402, -408, -455, -459(g), -459(g)(3), -460, -460(c), -460(c)(2)(B)

STATE V. WILLIAMS
SEDGWICK DISTRICT COURT – AFFIRMED
NO. 109,353 – JANUARY 8, 2016

FACTS: In 2010, Williams lived in the same house with Weiss—whom Williams described as his common-law wife—and with Putnam. On the evening of December 21, Williams called the police in an attempt to have Putnam evicted from the home, but the police refused. Later that evening, Williams shot Putnam in the head, killing him. A few days after that, Williams buried Putnam's body in a shallow grave. A jury convicted Williams of first-degree premeditated murder. The district court imposed a hard 25 sentence.

ISSUES: (1) Evidence, (2) motion for new trial, (3) lesser included offense instruction, (4) prosecutor misconduct, and (5) cumulative error

HELD: First, Court held the record lacked any evidence establishing a nexus between the alleged prior bad act of the victim—Putnam in this case—and the defendant's state of mind at the time the defendant claims to have acted in self-defense, or defense of another concerning the victim's attempted rape of the witness. In these circumstances, the prior bad act of the victim is not relevant to a material fact and is not admissible. Second, Court held the trial court made a similar
ruling regarding evidence of another rape by the victim. Court stated that Williams became aware of the rape victim's statements at some point, but nothing in the record indicated he was aware of them at the time of the shooting. Next, Court held this was exactly the kind of case to which the skip rule for lesser-included offenses reasonably applies. The jury convicted Williams of premeditated first-degree murder when it had the option to convict of intentional second-degree murder. Such circumstances necessarily show that the jury would have rejected the still lesser culpable mental state required for a conviction of voluntary manslaughter. There was no reasonable possibility the error affected the outcome. Next, Court held the prosecutor's colloquial use of "story" to refer to a defendant's testimony does not by itself imply either truth or fiction and does not constitute prosecutorial misconduct. Last, Court found no error to cumulate. 

STATUTES: K.S.A. 21-3211; K.S.A. 22-3501, -3601(b) (3); and K.S.A. 60-401, -447

STATE V. WILLIAMS
WYANDOTTE DISTRICT COURT – AFFIRMED
NO. 112,417 – JANUARY 8, 2016

FACTS: Williams had previously filed unsuccessful motions to withdraw her 2008 no contest plea to a first-degree murder charge. In this instance, she argued the district court erred in holding that her latest motion failed to demonstrate excusable neglect as required by K.S.A. 22-3210(e)(2). She conceded that this motion is successive to others she had filed and lost. 

ISSUES: (1) Habeas corpus, (2) successive motions, and (3) excusable neglect

HELD: Court stated that under K.S.A. 22-3210(e)(1), a motion to withdraw a plea must be brought within 1 year of: (a) the final order of the last appellate court in this state to exercise jurisdiction on a direct appeal or the termination of such appellate jurisdiction; or (b) the denial of a petition for a writ of certiorari to the United States Supreme Court or issuance of such Court’s final order following the grant of such petition. But these time limitations can be extended upon an additional, affirmative showing of excusable neglect by the defendant under K.S.A. 22-3210(e)(2). Court held Williams failed to demonstrate excusable neglect. 

STATUTES: K.S.A. 22-3210, -3601; and K.S.A. 60-1507

Appellate Practice Reminders . . .

From the Appellate Court Clerk’s Office

Helpful Hints – Appellate Electronic Filing - Part 2

We hope you are finding these hints helpful as you continue to file electronically with the Appellate Court Clerk’s Office. If you have yet to register with the e-filing system, we encourage you to do so. This month we bring you the following helpful hints:

• The Courts have a system of firewalls in place to protect the integrity of the computer network. These firewalls will remove hyperlinks placed in a document by a filer. Filers may not insert hyperlinks in any document filed with the Courts. However, you still have a duty to properly cite to the record on appeal in accordance with Supreme Court Rules 6.02(a)(4) and 6.03(a)(3).

• Filers must follow Supreme Court Rule 7.043 and refrain from including, or must partially redact when inclusion is necessary, names and other identifying information for certain individuals. You should avoid using social security numbers and financial account numbers, or if used, redact.

• Remember that the responsibility for making redactions rests solely with the filer. But please note that if it is obvious from the face of the document that a requisite redaction has not been made, the filing will not be accepted.

Please visit the Appellate Practice Reminders section of The Journal next month for Part 3 of the helpful hints regarding Appellate e-filing. If you have any questions regarding e-filing, or need any assistance with your filings, please do not hesitate to contact the Clerk’s Office at (785) 296-3229. We are here to help.

For further information, call the Clerk’s Office at (785) 296-3229 and ask to speak with Heather L. Smith, Clerk of the Appellate Courts.
COURT OF APPEALS

CIVIL

ADMINISTRATIVE APPEALS; JURISDICTION; RESOLUTION OF ALL CLAIMS

GOLDMAN V. UNIVERSITY OF KANSAS, ET AL.
DOUGLAS DISTRICT COURT - APPEAL DISMISSED
NO. 113,283 - DECEMBER 18, 2015

FACTS: Goldman, while a fifth-year doctoral student in the School of Pharmacy at KU, was accused of scholarly misconduct. KU investigated, held a hearing, found Goldman had committed scholarly misconduct, and ultimately dismissed him from the School of Pharmacy. Goldman then filed suit in the district court via a petition alleging only one count—“judicial review of agency action.” But the case was stayed pending exhaustion of Goldman’s administrative remedies at KU. When those administrative remedies were exhausted and the stay was lifted, Goldman chose to amend his petition by expanding his petition for judicial review and adding additional counts of tortious interference with prospective business relationship, breach of contract, and procedural due process violation. The district court issued a lengthy memorandum decision resolving only Goldman’s first four counts, stating the “matter comes on before the court on Petitioners’ petition for judicial review.” The decision made no mention of Goldman’s remaining three counts. After its analysis, the court affirmed the actions of the University and denied petitioner’s appeal.

ISSUES: (1) Administrative Appeals, (2) Jurisdiction, and (3) Resolution of All Claims

HELD: Court held that when tort, contract, and due process claims are joined in the same action with KJRA claims, an appeal from a decision resolving only the KJRA claims is not from a final order. Consequently, Court lacked jurisdiction. Court stated it had no discretion to act in the interest of judicial economy or accept a piecemeal appeal in the absence of a statutory basis for jurisdiction.

STATUTES: K.S.A. 60-202, -203, -254, -2102; K.S.A. 72-5446; and K.S.A. 77-623

CHILD IN NEED OF CARE; JURISDICTION OF STATE APPEAL

IN RE A.S., R.J.S., AND N.A.S.
MIAMI DISTRICT COURT – APPEAL DISMISSED
NO. 113,315 - DECEMBER 18, 2015

FACTS: A.S., R.J.S, and N.A.S. were adjudicated children in need of care (CINC)—a finding not challenged on appeal. The State believed the reintegration plan failed and filed a motion to terminate the parental rights of R.S. (natural father) and E.S. (natural mother). The district court denied the State’s motion. The State appealed pursuant to K.S.A. 2014 Supp. 38-2273(a). R.S. and E.S. objected to the State’s appeal, claiming this court does not have jurisdiction.

ISSUES: (1) Child In Need of Care and (2) Jurisdiction of State Appeal

HELD: Court stated under the Revised Kansas Code for Care of Children, K.S.A. 2014 Supp. 38-2273(a) is a specific statute controlling the right to appeal. It limits appealable orders to five types: temporary custody, adjudication, disposition, finding of unfitness, or termination of parental rights. Court held that K.S.A. 2014 Supp. 38-2273(a) does not provide the right to appeal the denial of a motion to terminate parental rights. Appeal dismissed.

STATUTES: K.S.A. 38-2255, -2256, -2269, -2273

TAX APPEAL; CASINOS; ELECTRONIC GAMING MACHINES

IN RE TAX APPEAL OF BHCMC, L.L.C., D/B/A BOOT HILL CASINO & RESORT
KANSAS BOARD OF TAX APPEALS – AFFIRMED
NO. 112,911 – DECEMBER 31, 2015

FACTS: The Kansas Department of Revenue (KDOR) appealed the determination that BHCMC, L.L.C. did not owe compensating use tax (use tax) on electronic gaming machines (EGMs) at the Boot Hill Casino & Resort (Boot Hill). BHCMC paid use tax in the total amount of $801,588.05 when it bought the EGMs for the Kansas Lottery. The EGMs were purchased from five out-of-state vendors. Each EGM sales agreement identified BHCMC as a purchasing agent and the Kansas Lottery as the owner of the EGMs purchased. After paying the tax under protest, BHCMC applied to the KDOR for a refund, which was denied. The Kansas Board of Tax Appeals (BOTA) found BHCMC was only the manager of Boot Hill, where it uses and operates the EGMs owned by the Kansas Lottery on behalf of the State of Kansas (Kansas Lottery). BOTA found BHCMC had no indicia of ownership in the EGMs for the use tax to be imposed.

ISSUES: (1) Tax Appeal, (2) Casinos, and (3) Electronic Gaming Machines

HELD: Court agreed with BOTA that a compensating use tax may not be imposed on a lottery gaming facility manager because the State of Kansas is the ultimate consumer of the electronic gaming machines and the lottery gaming facility manager has no indicia of ownership in the electronic gaming machines.

STATUTES: K.S.A. 74-8701, -8703, -8733, -8734, -8749, -8750; and K.S.A. 79-3226, -3701, -3702, -3703

TELECOMMUNICATIONS; RURAL CARRIERS
BLUESTEM TELEPHONE COMPANY, ET AL.
WASHINGTON DISTRICT COURT – REVERSED IN PART, VACATED IN PART, AND REMANDED WITH DIRECTIONS

FACTS: Bluestem Telephone Company and numerous other rural local exchange carriers (RLECs) appeal the district court’s order affirming an order from the Kansas Corporation Commission (Commission), altering the manner in which the RLECs would receive support from the Kansas Universal Service Fund (KUSF) in light of a new order from the Federal Communications Commission (FCC) and subsequent state statutory amendments.
The district court upheld the Commission’s determination that K.S.A. 2013 Supp. 66-2005(c)(1) was preempted, either expressly or impliedly. The district court determined that the KUSF reimbursement statute stood as an obstacle to the objectives of the Transformation Order’s reform of intercarrier compensation and its transition to a bill-and-keep methodology. The district court also found that the Commission’s interpretation that the statute’s only require embedded costs and revenue requirements be the “starting point” for calculating KUSF subsidies was a reasonable interpretation of the statute and that the Commission appropriately considered the transformation order and the public policy goals supporting it.

ISSUES: (1) Telecommunications and (2) Rural Carriers
HELD: Court held that absent evidence that KUSF is being used to undermine the FCC’s goals of expanding broadband deployment, ensuring more efficiencies as a condition of FUSF support, and transitioning to a bill-and-keep marketplace, it concluded that the Commission and district court erred in finding the Transformation Order preempted state aid mechanisms to assist RLECs in carrying forth with obligations under the transformation order. In light of the fact that the federal transition for RLECs is scheduled to take place over 9 years from 2011, it does not appear at present that K.S.A. 2014 Supp. 66-2005(c)(1) is expressly or impliedly preempted by the transformation order. Court also found that the RLECs failed to establish how the Commission has taken any action to compensate them less than required by the KTA or "traditional ratemaking." Therefore, the RLECs’ challenge to the Commission’s rulings regarding reimbursement for their reasonable embedded costs and revenue requirements is not ripe for adjudication. Court vacated the district court’s order approving the Commission’s ruling that support for rate-of-return carriers could be less than each carrier’s "embedded costs, revenue requirements, investments and expenses" as provided in K.S.A. 2014 Supp. 66-2008(e)(1) and remanded the matter to the district court with instructions for it to dismiss that part of the petition.


WORKERS COMPENSATION; PRE-EXISTING CONDITION
LE V. ARMOUR ECKRICH MEATS, ET AL.
WORKERS COMPENSATION BOARD - REVERSED AND REMANDED WITH DIRECTIONS
NO. 110,761 – DECEMBER 14, 2015 (MOTION TO PUBLISH ORIGINAL OPINION FILED OCT. 24, 2014)

FACTS: Le, who had preexisting but asymptomatic osteoporosis, fell at work and suffered a vertebral fracture at the T-10 level. The fracture healed, but Le continued to suffer pain which prevented her from returning to work. The administrative law judge (ALJ) found Le was permanently and totally disabled and entitled to future medical benefits on account of her injury, including pain management care for her chronic pain. On appeal, the Workers Compensation Board set aside the finding that Le was permanently and totally disabled and limited her award to a 15% permanent partial general disability and authorized future medical treatment only for the fracture.

ISSUES: (1) Workers Compensation and (2) Pre-existing Condition
HELD: Court stated there is no dispute that Le suffered a vertebral fracture in her work accident. The Board determined that the prevailing factor that led to Le’s T-10 fracture was her fall at work, but that her chronic pain was caused by her preexisting osteoporosis, not the fracture. The Board agreed with Dr. Ciccarelli that osteoporosis was the prevailing factor in the inability of Le to return to work. Court disagreed and held that when viewing the record as a whole, the evidence undermines Dr. Ciccarelli’s conclusion that Le’s ongoing pain which prevented her from working was attributed solely to her preexisting osteoporosis and was not a consequence of the injury she sustained at work. Therefore, there was insufficient evidence to support the Board’s conclusion on this point, and Court reversed and remanded for the Board to reinstate the ALJ’s award based upon the finding that Le was permanently and totally disabled. Based on its decision, Court also reversed the Board’s decision regarding future medical care and reinstated the ALJ’s award including future pain management.

STATUTES: K.S.A. 44, -501, -508, 510c, -510h, -556; K.S.A. 77-601, -621

WORKER’S COMPENSATION; TIMELY CLAIM; EXTENSION OF TERMINAL DATES; FAILURE TO BRIEF ISSUE; ATTORNEY FEES
ROGERS V. ALT-A&M JV LLC,
WORKERS COMPENSATION BOARD – AFFIRMED IN PART AND DENIED IN PART
NO. 113,043 – DECEMBER 18, 2015

FACTS: On September 15, 2008, Rogers injured his knee at work when he fell while carrying a 5-gallon bucket of hydraulic fluid down a muddy incline. He filled out an incident/accident form the same day. Rogers was seen by multiple doctors and ultimately had knee surgery in February 2009. Dr. Prostic determined that Rogers had 10% permanent partial impairment of his left lower extremity due to partial synovectomy and recurrent subluxation of the patella. There was some issue with a knee injury in the mid-1980’s. Dr. Peter Bieri, through an independent medical examination, determined Rogers had 5% left lower extremity impairment due to patellofemoral pain. After reviewing a supplemental report, Dr. Bieri rated Rogers’ impairment at 3%. After reviewing medical records from the 1999 injury, Dr. Prostic again rated Rogers’ impairment at 10%. The ALJ issued an award for Rogers, finding a 7.5% permanent partial impairment to Rogers’ lower left extremity. ALT-A&M requested the Board review the award. The Board affirmed the ALJ’s award. ALT-A&M’s appealed. Rogers filed a motion for attorney fees pursuant to K.S.A. 2014 Supp. 44-536(g).

ISSUES: (1) Worker’s Compensation, (2) Timely Claim, (3) Extension of Terminal Dates, (4) Failure to Brief Issue, and (5) Attorney Fees
HELD: Court found that ALT-A&M did not cite any authority that Roger’s incident/accident form was not a claim. Instead, it argued Rogers was required to fill out the form to document an injury. Court held ALT-A&M had failed to properly brief whether Rogers timely filed a claim and the issue was waived. Court found the record reflected the case had been pending for more than 3 years when the ALJ denied ALT-A&M’s motion for extension of terminal dates. Court held the ALJ did not abuse his discretion when he denied ALT-A&M’s motion to extend the terminal date. Court stated the record reflected the Board considered ALT-A&M’s argument that
STATE V. DELACRUZ
RENO DISTRICT COURT – AFFIRMED
NO. 111,795 – DECEMBER 11, 2015

FACTS: After Jose Delacruz was convicted of aggravated burglary and acquitted of first-degree murder, he refused to testify against a codefendant. Delacruz was convicted of direct criminal contempt of court and was sentenced to 9 years’ imprisonment to run consecutively to his previous sentence. Delacruz raised six issues: (1) that he was exercising his right to remain silent under the Fifth Amendment to the United States Constitution; (2) that a special prosecutor should have tried the case; (3) that his contempt was a single ongoing event rather than three separate events; (4) that the delay in filing and docketing his appeal deprived him of due process; (5) that his 9-year sentence was excessive and the result of bias and prejudice; and (6) that cumulative errors deprived him of due process and a fair trial.

ISSUE: Contempt of Court

HELD: First, Court rejected Delacruz’ claim that he was validly exercising his right to remain silent under the Fifth Amendment to the United States Constitution. Court stated that under the plain language of K.S.A. 22-3415(c), Delacruz failed to establish that his testimony might form the basis for a violation of federal law. Moreover, while the letter from the federal prosecutor was not a formal grant of immunity, it clearly stated that no federal prosecution would be forthcoming. Second, Court stated that aside from Delacruz’ allegations of bias against the district attorney, he failed to show why a special prosecutor was necessary in this case. Moreover, even if the district attorney was biased against Delacruz which may have led to an excessive sentencing recommendation, the trial court judge makes the ultimate sentencing decision. Court held there was nothing else a special prosecutor could have done differently in this case. Last, Court found no merit in Delacruz’ arguments that his contempt was a single ongoing event rather than three separate events, that the delay in filing and docketing his appeal deprived him of due process, that his 9-year sentence was excessive, and there was no error to cumulate.

STATUTES: K.S.A. 20-1201, -1202, -1203, -1206; K.S.A. 21-3805; K.S.A. 22-3415

STATE V. HAYDEN
JOHNSON DISTRICT COURT - AFFIRMED IN PART, VACATED IN PART, REMANDED WITH DIRECTIONS
NO. 112,333 – DECEMBER 18, 2015

FACTS: Hayden entered guilty plea in 11 CR 1335 and remand for resentencing so district court may clarify its intent.

HELD: Hayden claimed K.S.A. 2011 Supp. 21-6817(b)(4) is procedural rather than substantive because it does not alter the acts that qualify as crimes nor the punishment for any crime. It regulates the steps of the judicial process by defining who may, therefore, be applied retroactively. Hayden's ex post facto argument was not properly before the court, and was not considered.

State and Hayden agree that district court erroneously departed on count of theft to which Hayden had not stipulated to the existence of a fiduciary relationship with the victim. Appropriate remedy under the circumstances is to vacate sentences for all counts in 11 CR 1335 and remand for resentencing so district court may clarify its intent.

Hayden's Apprendi claim was defeated by Kansas Supreme Court's
Appellate Decisions


STATE V. MORALES
RENO DISTRICT COURT - AFFIRMED
NO. 113,730 - DECEMBER 11, 2015

FACTS: Around 2:30 AM, officer spotted car stopped on side of remote rural road with lights on. As officer pulled up, the car’s brake lights engaged. Believing car was attempting to drive away, officer reported location and tag number to dispatch and activated emergency lights. Officer administered sobriety tests upon smelling alcohol and observing Morales’ condition. State charged Morales with DUI. Morales moved to suppress all evidence obtained from the alleged improper stop. State maintained the stop was a valid public safety stop. District court granted the motion, finding no specific and articulable facts had been presented as to why this stop needed to be made. State appealed.

ISSUE: Public Safety Stop

HELD: District court’s suppression of evidence was affirmed. Under circumstances of this case, community caretaking exception does not apply, and seizure of Morales’ vehicle was impermissible. Court discussed public safety stops in Kansas, and distinguished this case from Nickelson v. Kansas Dept. of Revenue, 33 Kan. App. 2d 359 (2004). Here, county’s community caretaking policy contained an expressed investigatory component where the detection of crime was principle reason for running license plate tag in a rural area. This violates legal principles in City of Topeka v. Grabauskas, 33 Kan. App.2d 210 (2004), State v. Gonzales, 36 Kan.App.2d 446 (2006), and State v. Marx, 289 Kan. 657 (2009). Also, even if solely based upon objective evaluation of the evidence, seizure of Morales after he was prepared to drive his vehicle away cannot be sustained as a bona fide community caretaking function within meaning of Kansas legal precedents.

STATUTE: None

STATE V. OCHOA-LARA
JOHNSON DISTRICT COURT - AFFIRMED
NO. 112,322 - NOVEMBER 25, 2015

FACTS: Ochoa-Lara used another person’s Social Security number to obtain employment. Because his actions were subject to Kansas identity statute before and after the date that K.S.A. 21-4018 was repealed and replaced by K.S.A. 2011 Supp. 21-6107, State charged separate identity theft charges under each statute. Ochoa-Lara was convicted of two counts of identity theft following bench trial on stipulated facts. On appeal he argued the charges should have been dismissed for lack of jurisdiction because the Immigration Reform and Control Act (IRCA) preempts state prosecution for identity theft based on unlawful use of another person’s Social Security number. He also claimed the charges were multiplicitous.

ISSUES: (1) Preemption and (2) Multiplicity

HELD: Kansas identity theft statute does not regulate conduct associated with employment-related verification of immigration status, nor does it create criminal penalties for unauthorized aliens working or seeking work in Kansas. State prosecution of identity theft based upon unlawful use of another’s Social Security number is not preempted by IRCA. Cases in accord from other jurisdictions were cited. Here, State’s prosecution of Ochoa-Lara for illegal use of another person’s Social Security number did not depend on his immigration status, the lawfulness of his presence in the U.S., or his eligibility for employment.

Ochoa-Lara failed to preserve multiplicity claim for appellate review. He articulated no exception allowing court to consider issue for first time on appeal, filed no reply brief to State’s preservation argument, and failed to comply with Rule 6.02(a)(5).

STATUTES: 8 U.S.C. §§1324a, 1324a(a)(3), 1324a(b)(5) (2012); K.S.A. 2011 Supp. 21-6107, -6107(a)(1); and K.S.A. 21-4018, -4018(a)

GET NOTICED!

Place your advertisement in the Journal today. Color or black & white ads cost the same.

If you don't have a design team, we can create your ad for a modest add-on fee.

Contact Jennifer Salva, Journal editor, at jsalva@ksbar.org or (785) 861-8816 for size and pricing information.
Congratulate

Todd N. Thompson & Wendel Scott Tooth
ON THEIR INDUCTION
As Fellows of the American College of Trial Lawyers

The College strives to improve the standards of trial practice, the administration of justice and the ethics, civility and collegiality of the trial profession.
Invitation to the Fellowship is extended only after careful investigation to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality.
Lawyers must have a minimum of fifteen years trial experience before they can be considered for Fellowship and membership in the College cannot exceed 1% of the total lawyer population of any State or Province.

-Amy S. Lemley, Kansas Chair, American College of Trial Lawyers
Committee Members: Steven C. Day, Pedro L. Irigonegaray, Bruce Keplinger, Jeffrey D. Morris, Craig Shultz & Brian C. Wright

PRO BONO
LEGAL SERVICES

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 interest of justice requires it.

Visit http://www.ksbar.org/probono for more information.
I. INTRODUCTION

Litigation frequently is filed within days of the announcement of a proposed merger, involving a publicly owned domestic corporation. These lawsuits often are filed on behalf of a putative shareholders class, and typically challenge the terms of the proposed merger (i.e., the sufficiency of the merger consideration), the process by which the transactions was deliberated and negotiated by the board (or board committee) and its advisors, and the target company’s disclosures about the merger. Shareholder claims may focus on the conduct of the target company’s directors or controllers commonly assert that the directors or controllers did not adequately discharge their fiduciary responsibilities owed to the target company and its shareholders. In addition, claims may be asserted against the acquiring company for aiding and abetting the alleged breaches. Apart from state law breach of fiduciary duty claims, shareholders may assert federal securities claims under Section 14(a) of the Securities Exchange Act of 1934 alleging that the proxy statement was materially misleading.

As courts have recognized, the practice of filing lawsuits on behalf of small stockholders immediately upon the announcement of major corporate transactions has become so prevalent that the overwhelming majority of mergers involving publicly owned companies now attract such lawsuits. In re Topps Co. S’holders Litig., 924 A.2d 951, 957 (Del. Ch. 2007). In 2012, shareholders challenged 93 percent of merger deals (“M&A”) deals valued over $100 million and 96 percent of transactions valued over $500 million. Robert M. Daines and Olga Koumrian, Cornerstone Research, Shareholder Litigation Involving Mergers Acquisitions, Review of 2012 M&A Litigation (Feb. 2013 Update), available at: https://www.cornerstone.com/GetAttachment/9d8fd78f-7807-485a-a8fc-4ec4182ded6d/2012-shareholder-Litigation-Involving-M-and-A.pdf.

Historically, the majority of merger lawsuits have been resolved by settlement, and in more than 80 percent of such settlements, the only relief to shareholders is additional disclosures. Id.

The substantial transaction cost associated with public company mergers puts powerful pressure on a defendant to settle and pay attorney fees rather than incur significant defense costs and risk delay in consummating the merger. While suits by significant institutional or high-stake individual investors occur, lawsuits filed by small stockholders whose economic interest in the challenged transaction is dwarfed by the potential award of attorney fees in a settlement are common. Depending in part on the jurisdiction, some of these lawsuits may be commenced in a hasty fashion, with conclusory allegations that the challenged transaction is unfair to stockholders and must have resulted from a breach of fiduciary duty by the company’s directors. Plaintiffs in these lawsuits frequently commence suit without the benefit of public filings containing important facts, foremost the comprehensive disclosures contained in the proxy statement filed with the United States Securities and Exchange Commission (the "SEC") and disseminated to all stockholders in accordance with federal securities law. The haste in filing is encouraged by the belief that early filers will be more likely to control the litigation (and be in line to share in any attorney fee award). Id. (“An unseemly filing Olympiad ensues, with the view that speedy filing establishes a better seat at the table for the plaintiffs’ firms involved.”). In re The Topps Company Shareholders Litigation, No. Civ.A. 2786-VCS, 2007 WL 1412990 (Del. Ch. May 9, 2007).

PUBLIC MERGERS:
SHAREHOLDER LITIGATION IN KANSAS

This handbook addresses procedural and substantive issues encountered in the defense of merger-related shareholder suits in the Kansas courts.

About the Author

Kelly Stohs is a shareholder at Polsinelli. Ms. Stohs focuses her practice on business litigation in Kansas. Ms. Stohs has experience representing public companies as local counsel in shareholder litigation. She is experienced in a variety of litigation areas and has significant experience in real estate litigation, with an emphasis on lease litigation. She has broad experience litigating contract disputes, business torts, commercial breach of warranty, the Uniform Commercial Code (UCC), fraud, and others. Ms. Stohs is a frequent presenter on civil litigation topics. In addition to her courtroom experience, Ms. Stohs possesses a strong knowledge of discovery, trial, and negotiation tactics, as well as procedural matters. She is actively involved in numerous civil, municipal, and community organizations in the Kansas City area.
Positions Available

**Lateral Attorney.** McDowell Rice Smith & Buchanan P.C. is seeking lateral mid-senior level candidates with established practices to provide both the highest quality services to the candidate's existing clients and depth and experience to the firm in the areas of commercial, business, dispute resolution, tort and professional liability litigation and/or transactional work. Must be licensed in both Missouri and Kansas. If interested, please forward introductory letter and resume for consideration to gspies@mcdowellrice.com.

**Lawrence Firm Seeking Attorney.** Pete fish, Immel, Heeb & Hird LLP, a small, AV-rated firm in Lawrence, is seeking an attorney for general practice, including family law. Please send resume to: Rick Hird, 842 Louisiana, Lawrence, KS 66044 or rhird@petefishlaw.com.

**Overland Park Law Firm.** Ferree, Bunn, Rundberg & Ridgway seeking attorney experienced in complex Estate Planning and Probate work. Must be licensed in Missouri and Kansas. If interested please forward introductory letter and resume for consideration to pbunn@fbr3law.com

**Attorney Services**


**Contract Brief Writing.** Experienced brief writer is willing to take in appellate proceedings for any civil matter. Attorney has briefed approximately 40 cases before the Kansas Court of Appeals and 15 briefs before 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@mcdonaldtinker.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.

**Contract Brief Writing.** Former research attorney for Kansas Court of Appeals judge, former appellate division assistant district attorney in Sedgwick County. Writing background includes journalism degree, Kansas City Times intern, U.D.K. beat reporter and grant writer. I have written more than 50 appeals and had approximately 30 oral arguments in the Kansas Court of Appeals and Kansas Supreme Court. I have criminal and civil litigation experience, in addition to civil and criminal appellate experience. I welcome both civil and criminal appeals. Rachelle Worrall, (913) 397-6333, rwlaw310@outlook.com.

**Estate & Trust Litigation.** Available to assist you in probate and trust litigation in Kansas, Missouri and other states. www.nicholsjilka.com.

**QDRO Drafting.** I am a Kansas attorney and former pension plan administrator with years of experience in employee benefit law. My services are available to draft your QDROS, communicate with the retirement plans, and assist with qualification of your DROs or other retirement plan 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.

**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 attorneys can offer their 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 services, please contact the Law Office of Scott W. Sexton P.A. at (785) 409-5228.

**Law Office Software**

**JURIS DOC PRO Law Office Software.** Free use of Juris DOC Pro law office software for 60 days, to see if it may be useful in your practice, by saving time and helping to increase billable hours each month. Application contains child support worksheet for both Kansas and Missouri, in addition to an extensive library of other forms connected to a database. If interested, download the trial version at http://www.jurisdocpro.com/ then request a 60-day license key from Tom Harris at gtharris@sbcglobal.net.

**Office Space Available**

**Mentoring and Referrals Provided.** Perfect opportunity for an attorney who would like to establish a private practice, particularly in domestic and/or criminal law, in a smaller town in south central Kansas. Office space, secretarial support, utilities, library, conference room, kitchen all provided. Mentoring and referrals provided if desired. Call 620-221-6330.

**Office Sharing for Attorney.** Located at 130 N. Cherry St., Ste. 100, in Olathe, which offers quick and easy access to the Johnson County Courthouse. New Tenant renovations that include a café style open kitchen and bar seating, a collaborative area surrounded by large bay windows, a conference room, and reception area. Services available include telephone, Internet, online faxing, scanner, printer, TV, and space for staff person if needed. Call Margot Pickering for more information at (913) 647-9899.

**Office Space for Lease.** Located at 3615 SW 29th St. in the Topeka Office Suites (TOS), ADA accessible. Available spaces 310 sqft and 450 sqft with options for customized space available. Features:

  - Efficient Office Suites
  - Cisco Phones with free long distance
  - High-speed Internet
  - Copier/Printer/Fax
  - Quick and affordable access to your own office space
  - Conference rooms for small, medium and large meetings
  - Attractive reception areas
  - TOS offers beautiful, full-service office space in a contemporary, elegant office building located along the busy 29th Street Corridor. Call (785) 228-6662 for more information and tours. http://www.topekaofficesuites.com.

**Law Office for sale in El Dorado, Kansas.** The building is excellent for a solo practice or two attorneys. It has been used as a law office since the 1950’s. There is space above the main floor excellent for a small living space, conference area, or can be used as file storage. Newer roof, new bathroom fixtures, new carpet throughout the main office area downstairs. All desks, law books, file cabinets and book cases will be sold with the building. Only 30 minutes to Wichita. It is currently listed with SunGroup Real Estate, phone number (316) 321-6100. Photos on the website at commercialsearch.com. $65,000.
A TRADITION OF SUCCESS

SHAMBERG
JOHNSON
AND
BERGMAN

816-474-0004
www.sjblaw.com

2600 Grand Boulevard,
Suite 550
Kansas City, MO 64108

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.