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Our Mission

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.
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A Recognition of Service

No professionals volunteer their time for the betterment of others and their profession more than lawyers. Having worked alongside KBA President Natalie Haag this past year, I have been continually impressed by the dedication of KBA members who have volunteered their time to important causes that benefit Kansans; I’ve seen attorneys serving their local communities on school boards and county commissions, and others making the trip to the statehouse to present testimony in support of causes important to our profession (or more recently to oppose legislation that would be step backward in maintaining our strong and independent state courts).

The new KBA Board of Governors officers began their roles on July 1, 2016:

President-Elect Gregory Goheen (Kansas City, Kan.)
Vice President Bruce W. Kent (Manhattan)
Secretary-Treasurer Mira Mdivani (Overland Park)
Immediate Past President Natalie G. Haag (Topeka)

These are busy, talented lawyers from across the state who volunteer their time to steer the KBA through what looks to be a challenging year on many issues of critical importance to Kansas. And just as these new members are stepping up, several long-serving members are stepping down. I would like to thank and recognize those who have provided the KBA with many hours at great sacrifice to their firms:

Mike Kennalley (Wichita)
Dave Rebein (Dodge City)
Justin Ferrell, Outgoing YLS President (Topeka)
Hon. Michael Powers, Kansas District Judges Representative (Marion)

KBA Annual Meeting

KBA’s annual meeting in Wichita was a great success. Lawyers and judges from across the state got together for a terrific meeting, CLE and networking. I would have wagered that today’s politics could not be the subject of parody, but then I attended the Wichita Bar Show: "REPORTER: ‘Mr. Trump, do you still want to ban Muslims?’ TRUMP: ‘Look I probably never said that. Ban the Muslims? The thing is, if we’ve learned anything from Prohibition, it’s that people will just make Muslims in their bathtub.’” See what you missed if you did not come to the Annual Meeting? These meetings don’t just happen; I would like to recognize and thank the KBA Annual Meeting Committee for their countless hours of time:

Amy Cline (Wichita)
Joslyn Kusiak (Independence, Mo.)
John Rapp (Wichita)
Brett Reber (McPherson)
Kelly Rundell (Wichita)
William Sampson (Kansas City, Mo.)
Drew Steadman (Wichita)
Deana Mead (Topeka)

The practice of law is busier than ever. I am inspired by the willingness of attorneys to continue to give up their time to work to better the practice of law while promoting many other causes that benefit our state—from work to maintain a strong and independent judiciary to the KBA programs that provide access to justice for low and modest income Kansans. These efforts move forward on the volunteer time of busy attorneys, and reinforce that lawyers are not just doing a job, but serving a noble profession. Finally, I would like to thank Natalie Haag, KBA’s outgoing president, for the countless hours away from her family and practice. It has been a pleasure to work with her.

Where is the KBA headed? The practice of law is changing; new lawyers are facing struggles in establishing practices that my generation did not face, from increasing debt to declining income. Various legal services are offered over the Internet that challenge lawyers’ practice and services to clients. The KBA is not sitting still. Last year we began a strategic planning process to focus on the core missions for the KBA and how we can better serve the lawyers joining our practice. The strategic planning committee has devoted many hours to studying how the KBA can better serve Kansas attorneys. As we bring the strategic planning to a conclusion this year, I would like to recognize those attorneys and the countless hours they gave to our plan:

Mark Dupree (Olathe)
Justin Ferrell (Topeka)
Gregory Goheen (Kansas City, Kan.)
Bruce Kent (Manhattan)
Joslyn Kusiak (Independence, Mo.)
Margaret Mahoney (Oberlin)
Hon. Christel Marquardt (Topeka)
Jeffery Mason (Goodland)
Mira Mdivani (Overland Park)
Deana Mead (Topeka)
Jacob Peterson (Salina)
Rachael Pirner (Wichita)
William Quick (Kansas City, Mo.)
Eric Rosenblad (Pittsburg)
John Swearer (Hutchinson)
Sarah Warner (Lawrence)
Jordan Yochim (Topeka)

About the KBA President

Steve Six is a partner at Stueve Siegel Hanson in Kansas City, Mo. He specializes in complex litigation, focusing on class actions and commercial litigation.

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Kill all the Lawyers

My wife and I were in law school together for two years, which provided an opportunity to take classes together and discuss the law. Tara analyzed legal scenarios with speed and accuracy, a reflection of her talents. And while she discerned the outcomes as they were according to case law or the applicable statute, I most often countered with what the answers should be.

My inclinations in mind and heart have long included a love of policy. Researching why systems operate the way they do and probing for potential improvements is a pursuit that seldom feels like work to me. So it is of little surprise that public policy is a significant focus in my career. Since 2008, I have worked on behalf of municipalities in the Kansas Legislature—first with the League of Kansas Municipalities and now with the Kansas Association of Counties.

During my time in the statehouse, I hear often from friends and acquaintances that we have too many lawyers involved in politics: “No offense,” they say, “but Shakespeare had it right; ‘The first thing we do, let’s kill all the lawyers.’” I am too thick skinned to take offense from such statements, but the English major in me suspects Shakespeare might.

Shakespeare’s famous line from Henry VI takes place after Jack Cade—false pursuer of the throne—announces his idyllic rule: “I thank you, good people: there shall be no money; all shall eat and drink on my score; and I will apparel them all in one livery, that they may agree like brothers and worship me their lord.” His henchman, Dick the Butcher, then offers the famous line: “The first thing we do, let’s kill all the lawyers.” His retort explains that the only way Cade’s unrealistic kingdom might be possible is by eliminating reason and legal adherence by way of eliminating lawyers.

I am concerned that while we have not yet witnessed a mass extermination of lawyers, we have witnessed the same effect in how we form laws in Kansas. It is striking—or perhaps ought to be—how rare it is for attorneys to serve in the Kansas Legislature, county commissions, or city councils. Despite the perception that there are too many lawyers involved, the opposite is quite pervasive and problematic. Lawyers possess specific training on statutes, case law, and the structures of government. Even if a lawyer has never drafted legislation, there are still tools of the trade that predict how practitioners and the courts might implement the laws. If we collectively cede this responsibility, the effect is the same as Shakespeare’s template for a ruler without rule.

A failure by lawyers to engage in the law-making process has the same effect on the rule of law as killing all the lawyers. Regardless of political affiliation, I long to see more lawyers participate in making the laws. Increasingly, I care less about political labels and care more about finding people who listen critically and ask questions thoughtfully. Whether conservative or liberal, lawyers often have analytic talents, which is just what we need to create laws that properly serve our state and our communities.

The preamble to Rule 226 in the Kansas Rules of Professional Conduct specifies a lawyer’s responsibility as “an officer of the legal system and a public citizen having special responsibility for the quality of justice.” The rule further emphasizes that lawyers should strive “to improve the law and the legal profession and to exemplify the legal profession’s ideals of public service.” This is a pursuit that unifies our profession so that our legal system includes a lawyer’s expertise in reason and procedure—two hallmarks of a well-functioning society.

Despite my Pollyannaish imploring, there is a selfish element to my writing. I love public policy and enjoy sharing hearty discourse with others who share my passion. It is part of why I found law-school discussions with my wife so engaging. I know many lawyers claim To Kill a Mockingbird as their favorite movie, but I hope that a few who prefer Mr. Smith Goes to Washington will engage in lawmaking to also share in the conversation.

Shakespeare concludes Jack Cade’s scene by hanging Emmanuel, the Clerk of Chatham, for his ability to read and write. This is an absurd conclusion. And it is similarly absurd for lawyers to disengage from policymaking, which increases the risk of folly in crafting the laws that shape this land. Over the next year, I intend to highlight attorneys who have given their time in public service. Whether it is the Kansas Legislature, a municipal governing body, or a non-profit board, we need lawyers who are willing to “to improve the law and the legal profession.” If we fail to do so, we may not face a literal end like the Clerk of Chatham. But we risk complicity in creating a system of laws where the resulting lack of reason is the same.

About the YLS President

Nathan P. Eberline serves as the Associate Legislative Director and Legal Counsel for the Kansas Association of Counties. His practice focuses on public policy, legal aspects of management, and KOMA/KORA. Nathan holds a J.D. from the University of Iowa College of Law and a B.A. from Wartburg College in Waverly, Iowa.

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Annual Meeting: A Note of Thanks

The awards ceremony at the KBA Annual meeting is one of my favorite events. Lawyers in Kansas do remarkable things in both their professional and personal lives. Some quietly provide service to their communities over decades with expertise and humility. Some stand up to power in the name of what’s right, even when what’s right isn’t popular or well understood. Some work together to take down barriers that prevent those who have stumbled from getting back on their feet. Some do their jobs on behalf of the public, unsung yet with unwavering standards of excellence. None of them do these remarkable things to win an award from the KBA. But each year, their peers are inspired to nominate such lawyers for an award as a means, perhaps meager by comparison, to recognize the good work, and the just-plain-good each has done. This year was no different.

The awards ceremony is among my favorites as much for the chance to learn about such deserving lawyers, and to meet a few, as for the context that surrounds the ceremony, the KBA Annual Meeting. And context is important here. The Annual Meeting is full of opportunities for Kansas lawyers to connect, to talk about mutual interests and concerns, and in so doing to ignite that spark of professional camaraderie in one another. The awards ceremony is just the most formal and public expression of that camaraderie.

The award recipients are profiled on pages 24-34 in this month’s issue of the Journal. I encourage you to read about each of them. You’ll be inspired, too. I want to take advantage of this opportunity to thank those who made the Annual Meeting possible through their hard work and commitment to ensuring that Kansas attorneys have the chance to come together to celebrate their profession and the excellence in it each year. I’ll begin with the Annual Meeting Planning Committee. The members of this committee began their work in late 2015 (it takes 9 months+ to plan the meeting!) and devoted many otherwise billable hours to determining all the details that made this year’s meeting such a success. My thanks go to Amy Cline and Kelly Rundell who served as our committee co-chairs and organizers, and Joslyn Kusiak, John Rapp, Brett Reber, Bill Sampson, and Drew Steadman. Each brought a perspective from across the profession and across our state that informed the design of this year’s meeting. Thanks team!

I want to thank our sponsors and vendors, listed on pages 36 and 37 of the Journal. Their generous support of the KBA and of the Annual Meeting through the years has allowed us to enhance the quality of KBA membership and the impact of our Annual Meeting for attendees.

Deana Mead, Associate Executive Director of the KBA, deserves special mention and my sincere thanks. This was the 17th year that Deana has been the heart, soul and backbone of the KBA Annual Meeting. While the entire staff helps out each year, we do so at Deana’s direction, following her example. Her steadfast good nature is matched by the care she has for you, our members—care that is expressed in the meticulous way she plans for and executes the Annual Meeting each year, and personally greets nearly everyone who attends.

Lastly I want to thank you, our members. We loved seeing those of you who attended this year and by all accounts you had a great time. And while most of you don’t attend the annual meeting each year (we miss you and wish you would), everyone seems to recognize the importance such a gathering has—both for those who do attend, and as a symbol of the significant presence the profession has in the well-being of our communities and our State. Lawyers in Kansas do remarkable things.

About the Author

Jordan Yochim studied anthropology (BA) and business (MBA) at the University of Kansas. He worked as a research administrator for a large, state university before joining the KBA. In his spare time he serves as a member of the Douglas County Citizen Review Board and of a local nonprofit children’s respite organization.

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Donald Trump (David Rogers), accompanied by his cadre of dancing border guards (Kristen Wheeler, Christy Campbell, Kelsey Frohisher, Moji Fanimokun, Katie Andrussak, and Sara Zafar) declares that when he builds his wall (inspired by Israel, Pink Floyd and Game of Thrones), “11 million people are going to have to pack and go.”

Stephen J. Rapp, Annual Meeting keynote speaker and current Sonia and Harry Blumenthal Distinguished Fellow for the Prevention of Genocide at the U.S. Holocaust Memorial Museum’s Simon-Skodt Center
Justice Johnson (Brian McLeod), Chief Justice Nues (Jason Hart), Gary Ayers Justice Rosen (Gary Ayers), Justice Luckert (Alisa Nickel Ehrlich), Justice Stegall (Andrew Kovar), Justice Biles (Hon. Mark Vining) and Justice Beier (Jaime Blackwell), place a telephone call in 1956 in order to cause a big fracking earthquake that will in turn activate the time machine that will take them back to 2016. You probably had to be there.

Hillary Clinton (Debs McIlhenny), surrounded by calypso dancers, rhythmic bananas, and flying pigs, claims that she “don’t know a thing about Benghazi,” while the chorus responds, “Hillary reliable as Ford Pinto.”
Nearly 200 Students Compete in Kansas Mock Trial

The Kansas Mock Trial program is part of the National Mock Trial program that was designed to provide students with experience and first-hand knowledge of the legal process. Students develop persuasion, critical thinking, and communication skills as they prepare and participate in competitions across the state. This year, the Kansas Mock Trial regional competition took place in Wichita and Olathe on February 27. Approximately 100 students in each city participated in four rounds of competition. This year’s case was a criminal case involving revenge, arson, and murder. It was originally prepared by the Nebraska State Bar Foundation, and adapted for the Kansas competitions by Mitch Biebighauser and Lisa Brown.

This year’s state competition was held on March 25 and 26. Three teams from the Wichita regional competition (Sunrise Christian Academy, The Independent School, and Northeast Magnet) and three teams from the Olathe regional competition (Shawnee Mission East, Blue Valley Northwest, and Olathe North) advanced to the State competition in Topeka. Blue Valley Northwest advanced to compete at the National Mock Trial Competition in Boise, Idaho, between May 12 and 14. At the national competition, a competitor from Blue Valley Northwest won an outstanding attorney award!

This year, the Kansas Young Lawyer’s Section Mock Trial committee transitioned into new leadership. First time co-chairs Mitch Biebighauser and Lisa Brown spent time learning the competition structure and working on ways to bring a fresh perspective. Mitch and Lisa also reached out to new networks of volunteer judges and were able to incorporate young lawyers, trial lawyers from across the state, and members of the bench. Next year’s program leaders hope to focus on unity in its statewide program, address rule changes causing consternation for coaches, competitors, and organizers, and build an institutional group of volunteers familiar with the program. The program is always looking for more legal professionals interested in volunteering their time to help inspire the next generation of Kansas attorneys.

The Mock Trial Committee, competitors, and coaches sincerely thank the Kansas Bar Foundation, American Bar Foundation, and Shook, Hardy & Bacon LLP for their generous donations and funding for the competition.

About the Author

Mitch Biebighauser is the state coordinator for the Kansas Mock Trial program. He practices criminal law in Overland Park, Kan., with Bath & Edmonds, P.A., and is admitted to practice law in both Kansas and Missouri. He serves on the Kansas Bar Association’s Young Lawyer’s Section Board and served on the 2015 Kansas Bar Association Annual Convention Planning Committee. Mitch graduated from the University of Missouri Law School in 2014.

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The program sincerely thanks each volunteer who helped make the 2016 competition a massive success:

Ashley Aramjoo
Paemon Aramjoo
Mark Braun
Aaron Breitenbach
Craig Brown
June Brown
Trent Byquist
Sara Christensen
Matt Coleman
David Debenham
Nathan Eberline
Stacy Edwards
Zach Enterline
Joni Franklin
Matt Franzenburg
John Frieden
Lance Gillett
Phillip Gragson
Sarah Green
Mark Haddad
Hon. Larry D. Hendricks
Kahlie Hoffman
John Hutton
Mary Kuckelman
Paula Langworth
Nathan Leadstrom
Hon. Marla J. Luckert
Lauren Mann
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Mira Mdivani
Mike Merriam
Robert Moody
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Stephen Netherton
Laura Oblinger
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Samantha Woods
Shawn Yancy
Hon. Frank J. Yeoman
Glenn Young

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Jamey Metzger
Ryan Purcell
Jennifer Salva
Anne Woods

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Your Fall Writing Workout

As the summer began, I was determined to exercise more and get in better shape. I needed a jumpstart to feel stronger and leaner. I developed a plan to train a certain number of times a week, chose exercises that would make me stronger, and gave myself about three months to see improvement.

Fall is a perfect time to begin a writing workout. A lot of legal writing is flabby. The writing isn’t terrible—it uses correct grammar, doesn’t have a lot of typos, is organized, etc.—but it isn’t strong or efficient. Because it’s not strong and efficient, it’s less effective than it could be.

As the fall begins, commit to a workout that strengthens and slims down your writing. Commit to regularly practicing the following specific editing techniques for three months as a way to sharpen, or re-sharpen, your pencil. Reading these tips isn’t enough: You must be willing to exercise.

This is a short column, so you have only three exercises, a manageable amount. Each time you edit something you have written, do the following:

• Your crunches. Put the subject and the verb closer together in your sentences.
• Your high kicks. Slash needless words that drag down sentence flow.
• Your pushups. To power your prose, draft strong roadmap paragraphs for each major part of your document

Crunches. Crunch that subject and verb together. “Readers read in a subliminal state of anxiety, especially when they are trying to understand something complex. They do not want to be tantalized by a sentence’s structure.” Law-trained readers are likely in a hyper state of anxiety, so put them at ease with something familiar. As children we learned to write with our subject and verb close together, so this structure is most familiar to readers and easiest to process.

Example from a letter:

*The District,* in response to Plaintiff’s first request for production, **must provide** a copy of its student handbook.

**Better:** In response to Plaintiff’s first request for production, **the District must provide** a copy of its student handbook.

Example from a contract:

*Any work* covered by the Agreement that requires the Company to sub-contract out the work **must first be submitted** to a committee comprised of an equal number of Union and Company representatives.

**Better:** When the Company plans to subcontract out work covered by the Agreement, **the Company must first submit** the proposed sub-contracting for approval to a committee comprised of an equal number of Union and Company representatives.

Example from a brief:

*Unilateral mistake* for delivering the trucks before execution of the agreement by Springfield headquarters is unavailable to Longhaul.

**Better:** Longhaul cannot plead unilateral mistake for delivering the trucks before the Springfield headquarters signed on to the agreement.

You’ll notice that in the last two examples the subject changed in the edited sentence. To put the subject and verb close together, the writer had to choose a different subject. In this editing process, it often works best to identify the ACTOR and the ACTION in your sentence. You may decide you need a different or better ACTOR to improve the sentence. The better ACTOR is the actor you want to emphasize. So in the second example, Company is the better actor (better subject) because the writer wants to be clear about Company’s contractual obligations. In the third example, Longhaul is a better actor than “unilateral mistake.” Only a lawyer or professor would come up with “unilateral mistake” as the actor for her sentence in the first place!

This exercise often needs a multi-step process to accomplish the task of moving the verb closer to the subject. You might need to change the subject and add words to your sentence. This tip does not always cut down words, but it will result in a clearer, more precise sentence.

Follow these steps: (1) locate the ACTOR in (subject of) your sentence; (2) locate the ACTION (verb); (3) decide whether a better ACTOR exists and change the actor (subject) if necessary; (4) put the ACTOR next to the ACTION (subject next to the verb).
High Kicks. Slash and smash needless words to improve sentence flow. Your entire workout could likely consist of slashing needless words, but here is one edit you should be sure to incorporate. Circle every preposition and get rid of each one you don’t need. Pay special attention to “of”; it’s the prime offender.

Examples:

The facts of this case indicate that the Penate Corporation, of which Burgos was the CEO, bribed certain officials of the State Department of Taxation and Finance to resolve some tax problems of the Corporation. [36 words, 6 prepositions]

Better: The facts show that the Penate Corporation – and Burgos, its CEO – bribed certain state officials to resolve corporate tax problems.

[20 words, 1 preposition]

Many courts have found that the use of another party’s letterhead, without actual participation by that party in the collection of the debt, is a deceptive practice in violation of Section 1692e.

[32 words, 7 prepositions]

Better: Many courts have found that using another party’s letterhead without that party’s actually helping to collect the debt, is a deceptive practice that violates § 1692e. [25 words, 2 prepositions]

Push-ups. Include a roadmap paragraph at the beginning of your document and at the beginning of each major subsection. The roadmap should be a series of sentences that communicate each of your main points in the order in which you will address them.

Readers absorb information best if they understand its significance as soon as they see it or if they have seen it before. They can better understand complex information or detailed information when it fits a structure that has already been introduced to them. Roadmaps ensure that the general point is already familiar as your reader reaches the more detailed information in each subsection; therefore, the reader can better process the more complex information. And if the information comes in the order in which it was summarized in the roadmap, then it will fit into an already established context and the details will have a better chance of being retained.

So in a trial or appellate brief for example, draft a roadmap paragraph at the beginning of the brief and then draft additional roadmaps for each major subsection. The introductory roadmap identifies the macro structure of the brief. The subsection roadmap tells the reader the specific reasons you win on that sub-issue.

Roadmaps are important even in relatively short writings. It’s not the communication’s length that causes you to write a roadmap. You write a roadmap because you want your reader to understand and retain the information’s details. Even in a short client letter or email, you should draft a roadmap paragraph at the outset that tells your reader each of the points you will make in the communication.

You may hesitate to draft roadmaps because you think introductory roadmaps are simplistic in shorter documents or multiple roadmaps are repetitive in longer documents. They seem simplistic and repetitive to you because you already understand the document’s underlying structure. But your reader won’t find them simplistic or repetitive because all of the information ahead is new.

Good luck with your writing exercise regime. I hope you stick to it. Just a few exercises can make a big impact.

ENDNOTES

1 Brian Garner has described some legal writing as flabby. See Bryan A. Garner, The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts 273 (3d ed. 2014). Since reading The Winning Brief, I have seen other writers also use the term to refer to wordy and lethargic legal writing.


3 This example is from Armstrong & Terrell, supra note 2, at 243.

4 This example is from Garner, supra note 1, at 286.


6 These examples are from Garner, supra note 1, at 273-74.

7 Armstrong & Terrell, supra note 2, at 15.

About the Author

Pamela Keller is a clinical professor at the University of Kansas School of Law. She directs the lawyering skills program, moot court, and the judicial field placement. Before teaching she practiced employment law with Ice Miller in Indianapolis and clerked for the Hon. John W. Lungstrum, U. S. District Court of Kansas.

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Much to be Gained Through International Travel

“If a man’s real possession is his memory. In nothing else is he rich, in nothing else is he poor.” — Alexander Smith

If you have ever been abroad, there is something lingering inside of you. Right now, at this very moment, your mind is churning to remember. A restaurant in a distant country where they didn’t understand you? A place where others acted strange to you—or were you the strange one? Studying, exploring, and working abroad become lifelong memories that forever shift our perceptions of ourselves and the world around us.

During international travels the most valuable memories I have are those with cultural experiences. Your immersion into another culture begins at your departure gate. The people around are heading home or are also heading on a journey abroad. The language changes, or the accents, and the culture as well. On board, everything becomes real. In-flight instructions are given in two languages, and everything becomes more intimidating. It becomes even more intimidating if you are in a non-English speaking country. Even standing in front of a judge can be far less intimidating than struggling through a sentence of Italian. As we travel internationally, our memories and shifted perceptions are the foundation on which we are invited to reflect on our values, growth, and development. With these new insights we become more developed. These international experiences have shaped my life both personally and professionally, and can change yours, too.

First, cultural differences can cause you to better realize your own cultural beliefs and ways of life. Differences are not a bad thing; being exposed to new cultures invites you to assess your own practices. For example, Peruvians often believe if you drink cold water when you have a cold your illness will worsen. Just now, you notice the difference. It may seem to you—outlandish. You hear it. You think about it. Then you agree, disagree, or are unaffected. However, that brush with cultural difference stays with you. Regardless of your position, the memory will surface next time someone’s cough seems to worsen after drinking ice water, and may even cause you to question your assumptions all over again.

Second, when immersed in a new culture, you cannot help but absorb some part of it. As you encounter not only new ways of thinking, but also new ways of doing, the opportunity to learn presents itself. For example, when I visited Lemma, Peru, families supported each other in ways different from the traditional American family support system. It is not uncommon for grandparents to build the first level of the house. Then as children mature, they build a second level, and finally, their children add another level to the home. The family works together, celebrates together, and shares sorrows together, all in very close quarters. This way of “doing” may seem smothering to many, however understanding the importance of keeping
family close helps me to view my own family time with greater appreciation. When new cultural experiences present themselves, we are given a chance to grow.

As lawyers, it is not uncommon to observe or even interact with other cultures on a regular basis. How you handle that opportunity is important. How we treat others who are different from ourselves often dictates our successes in life, so it is necessary for attorneys to handle differences in a positive manner. Moreover, in our interactions with others, it is a great advantage to be able to relate on some level with their culture. Travel builds skills in cultural literacy partly because it requires us to experience being the “other.” Every client is unique—even those whose families have been in the United States for generations. The cultures of our ancestors are still living on today through our actions. That is what makes America “the great melting pot.” Attorneys who have traveled abroad or engaged in cultural experiences communicate more effectively with people. New fact patterns, new challenges, and new clients: being able to notice these differences and having a willingness to engage can assist your ability to interact with these potential clients.

Finally, the more you travel and encounter other cultures, the more confidence you will gain in all areas of life. To me, everything abroad is exciting, yet intimidating. The mundane becomes insane; ordering a pizza with, or without, certain toppings becomes an intense game of charades, while the Italian businessman behind you is losing his patience. When I first arrived in Columbia for an industry conference, I found it intimidating because I did not know any foreign attorneys at the convention. As I mingled during the breaks, I slowly joined into Spanish conversations among the attorneys as they laughed and joked. Over time, my confidence grew as I created connections with other attorneys. With these beginnings, I was connected to a new network—all because I was willing to engage with different cultures.

Why go abroad? In addition to all the practical reasons discussed above, consider that travel leads to communion with other human beings and their ways, and that communion is the stuff of life. You can read about gelato in a brioche (a warm sweet roll with ice cream inside) which is often served in parts of Italy during the hot summer. Or you can ask for this odd ice cream sandwich, in broken Italian—while your friend says that it is too fattening—watching the Italian teenage girl wedge two spheres of ice cream into the freshly broken bread, then stuffing your face with the result while walking down the strada. I would choose the latter.

About the Author

Stephen Jay Stocks will graduate from Washburn University School of Law in May 2016 with an Oil and Gas Law Certificate. He has traveled extensively, especially in South America, and has worked as a professional Spanish-English translator.

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The "First Column" as KBF President

Upon becoming President of the Board of Trustees of the Kansas Bar Foundation last month, I was advised that I have the "option" to write a column for each issue of the Journal. I considered not exercising the option, but each time I did so the word "shirk" popped to mind. And I didn’t want to start my tenure as a shirker.

Besides, I wondered, how hard can it be? I’ve seen hundreds of those "new-president’s-first-column" writings in the Journal over the years, and they seem to follow a fairly predictable path. So, as I started to draft my own "new-president’s-first-column" I decided to review the work of some former new presidents—not at the Foundation—who had written "first-columns." I discovered there are a few consistent sentiments expressed using a few dozen standard phrases, and that by changing the organization name to "Bar Foundation" and altering a pronoun or two, the work was mostly done. Cheers to the search-and-replace function.

The beginning is usually a self-effacing comment. For example: "I would like to begin my first column as the new president by stating how honored I am to be leading the organization this year. I am pleased and yet humbled to be the new President of the Foundation."

Next, there is a mention of the prior leaders. Something along these lines: "I would like to thank our Past President, and the board for their accomplishments in 2015-16, and for raising the bar for future presidents to strive for. To all our departing board members, as well as those continuing on, thank you for your commitment and involvement. We all realize she is going to be tough act to follow." Sometimes this recognition of the past leaders goes way back: "It is not easy to follow in the footsteps of past presidents who have done so much over the past 55 years to bring the organization to where it is today." This comment seemed appropriate as the Kansas Bar Foundation plans to celebrate its 60 year anniversary.

Then, perhaps, there is a mention of recent accomplishments, such as: "We celebrated a number of spectacular moments this past year ... and I’m pleased to report that we funded over $170,000 of grants and scholarships. We received contributions far above our initial expectations, and hope that this is a sign of appreciation for our good stewardship. The awards banquet celebrating our generous donors was a delight, and if you missed it this year, be sure to get it on your calendar for next year."

Next is the effort to fire-up the team. This section uses phrases like these:

- "I want to ignite your enthusiasm"
- "2016 promises to be a pivotal year"
- "Every increment of participation no matter how large or small, always proves invaluable"
- "We will pursue potential growth and betterment of the organization"
- "As we move forward we will need new collaborations with next-generation donors"
- "We will mark important milestones in the coming months"
- "I’m proud to write about our long list of accomplishments, and outline plans for the year ahead, but none of it would be possible without the personal passion and creativity of our team"
- "With determination, motivation, leadership, and cooperation we can do much"
- "The foundation is a vehicle for positive change"
- "Let’s work hard together to serve our community better in the year ahead"
- "I know this challenging year will be met with enthusiasm and achievements!"

(Now the exclamation point; using at least one exclamation point seems to be a requirement of any new-president’s first column.)

A new president must also state goals for the coming year, although I detect that vagueness is a common attribute of how those goals are described. "One of my goals in the coming year is the development and maintenance of our membership. We will work to enhance our strategic plans for the future of our foundation." "Ultimately, the strength of our group rests on the character and commitment of each of us individually. And a core part of our character is formed as we contribute to our fellowman. Our goals, both large and small, when woven together represent the building blocks of our organization."

Lastly, most new presidents thank their family for allowing them to spend time on the organization’s activities. My wife seemed eager to give permission (maybe too eager, but that’s a story for another day). For the time being I will, as she suggested, "take all the time needed." So—here we go—a new year for the Kansas Bar Foundation is underway. Join us by making a pledge to be a Fellow: $100 per year for ten years.

About the KBF President

**Todd N Thompson** is the senior attorney at Thompson Ramsdell Qualseth & Warner, PA in Lawrence. He graduated from the University of Kansas School of Law in 1982, and is a Fellow of the American Bar Foundation, the Kansas Bar Foundation, and the American College of Trial Lawyers.

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IOLTA Snapshot: TFI Family Services
Three Visitor Exchange Center employees to attend mediation training

TFI Family Services, Inc. received a $3,000 IOLTA grant to train three staff members to provide mediation services to clients across Kansas at the Visitation and Exchange Centers (VEC). This will ultimately provide advice rather than opinions to people in conflict to resolve their differences. In the past year, VECs served over 300 families statewide (538 children and 692 adults). The centers serve clients of all diversities and backgrounds. A majority of their clients fall at or below the poverty line.

TFI employee, Tara Roseberry will use her training to provide mediation services to Kansans at a TFI Family Services, Inc. Visitor Exchange Center.

“TFI Family Services, Inc. is devoted to the strength of family. We believe in providing the highest quality services and helping children and families in conflict through our three Visitation and Exchange Centers (VECs) located in Wichita, Topeka and Lawrence. IOLTA funds will be used to train staff to provide mediation services to clients across Kansas at our VECs. We can offer these services to the clients who need it most and will make the greatest impact (low income, domestic violence victims, children and families). Through Transformative Mediation Intervention, TFI will be able to provide people in conflict with options rather than litigation to resolve their differences, with services that are easy to access and better address their needs,”

– Shirlon Douglas-Harris, Licensed Master Social Worker
Director Transitional Living/Foster Care Visitation & Exchange Centers
www.tfifamilyservices.org

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Diversity through my Eyes as a Naturalized Citizen

How fragile the concept of diversity is has been on my mind lately.

Diversity thrives when people feel optimistic and hopeful. Societies engaged in building a bright future often make space for different kinds of people and ideas. In contrast, when fear and chaos take control of human beings, we tend to concentrate on our own survival, and look for scapegoats, who often are the minorities. It is easier to believe that the calamities we are subjected to are caused by someone of a different color, gender, sexuality, country of birth, or those who have religious beliefs or political views that are not the same as ours.

Diversity requires leadership that is not afraid to engage in persuading the majority that it is moral, necessary and beneficial to include “the other” into the fabric of life and mainstream discourse. Importantly, in order to become the accepted norm, the idea of diversity needs to become the law. Leaders like Martin Luther King Jr., John F. Kennedy and Lyndon B. Johnson were able to engage the country in a difficult conversation about race that lead to the passage of the civil rights legislation over 50 years ago. On the other side of the diversity spectrum, we should remember Nazi Germany. The Nazi regime did not tolerate any deviations from purity of race, religion, or thought, and it legislated accordingly. The Nazi regime did not only deport and kill its Jewish citizens in gas chambers. Prior to that, its legislature passed laws stripping Jewish lawyers and judges of the right to practice law or act as judges if at least one of their grandparents was Jewish. It appears to be insane to be judged by the ethnicity of your parents or grandparents! Yet, that was the law of the land.

I am a naturalized U.S. citizen. I grew up in what used to be called “the Eastern Block”, in a country ruled by one and only one party. No other point of view was allowed—If you had anything different to say but “Glory to the Communist Party,” off you went to Siberia. Officially, that country had no problem with women, gay people, or foreigners.Factually, there was not one single women in the country’s top decision-making body, which in a government-planned economy meant that the country produced a lot of tanks and no feminine products. The criminal code prosecuted gay citizens for who they were. The country’s border was certainly under lock; we were shown pictures of stoic soldiers patrolling our borders to prevent evil westerners from crossing illegally and hurting our homeland. The border extended as far as Germany, where the Berlin wall was built ostensibly to protect people in the Eastern block from the aggression of the West. Very few foreigners were allowed to come in. In order for us to travel abroad, we had to apply for an exit visa, which was only granted if the government approved of your visit. Under such a regime, few new ideas trickled in from abroad. No diversity of thought was just fine for the closed, oppressive regime that needed to control its citizens.

When I finally got a chance to travel to Western Europe and to the United States, I was delighted to hear people discussing diametrically opposing points of view without losing their freedom for it. I deliberately sought to immigrate to the United States because I thought that the society in the U.S. is more confident in its future, more tolerant of newcomers and is more interested in different points of view. I have been seeing the progress minorities have been making, including many hopeful firsts: first black U.S. President, first female presidential candidate, first openly gay state governor, first female Managing Partner at Shook, Hardy and Bacon. Lately, we have also seen senseless killing of people because of their sexual orientation or race, uncivilized insults of women, backlash against religious minorities and immigrants. It looks like the society is equally dividing into two camps: one is hopeful and welcoming of diversity, and the other is fearful and attacks diverse people and ideas. Our Constitution and many of our laws protect minorities and the idea of diversity, but they are often challenged. As lawyers and judges who are members of the KBA, we should not be indifferent when fragile diversity is under attack. We should take time to think about our role in protecting the concept of diversity, and supporting public discourse and laws that would make us more American and less “Eastern Block”.

About the Author

Mira Mdivani is a member of the KBA Diversity Committee. She practices business immigration law at Mdivani Corporate Immigration Law Firm in Overland Park.

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Nightmare at 20,000 Feet on the Tarmac

I’ve been writing this column for 11 years. That translates to roughly 80 commentaries; there have been many about travel, travel bags, bad hotels, scary motels, hostile gate agents, over-sold flights, missed connections, and hyperactive kids impersonating Satan sitting behind me on airplanes and kicking my seat. I’ve spent days, and some nights, in airports. I mean, like, all night. Ever used a litigation bag as a pillow?

Didn’t think so. I’ve seen everything, done everything. And that’s not bragging—it’s a cry for help.

But what happened last month on my flight to Chicago was new ground. In all my years, this was a first. And, I’m willing to bet, it hasn’t happened to you either.

As you probably know, Southwest Airlines has open seating. If right now you are sitting down and saying “WHAT?” then congratulations are in store. It means you have spent most of your life away from airports, which means you have a life most of us would gladly trade.

But in the unlikely event you were on flight 3010 to Chicago on Wednesday, May 18, you probably saw it. Everyone saw it. Every single person on the plane witnessed what I’m about to describe. The Southwest baggage handlers on the tarmac may have missed it, but they surely heard about it later.

Let me begin by saying what we come to know about pretty much every Southwest flight these days. This flight was not just full. It was oversold. They were begging people to trade in their tickets for another flight. Eventually there were two takers. I took seat A 49. I was sitting with a younger attorney from the firm, Chris Kaufman. So I decided to go for it: “Do you want to sit here?”

“Sure,” she said. She was petite but otherwise unremarkable. I decided to go for it: “Do you want to sit here?” This was not a come on. There was not a hint of anything other than a Southwest passenger trying to cut his losses.

She looked at me as if I just delivered a horrible insult. Like I asked her to hold a sign that said “Make America Great Again.” She paused, tilted her head like someone about to unleash a profane reply and said “No. I’m with my husband,” pointing to man behind her.

Her husband would never be mistaken for Dale Carnegie. It would be incorrect to say he glared back at me. Think Jack Nicholson in A Few Good Men.

At that moment, the world stopped spinning. Those windmills near the Ellsworth exit I-70 froze. That annoying K-State buddy who talks non-stop about their football team suddenly went silent. Salmon stopped going up the Columbia River. Capistrano birds took a detour. The mating season of giant pandas went on hiatus.

And all people on flight 3010 who had been staring at their iPhones, playing with Kindle Fire, completing Sudoku puzzles—paused and yanked their heads up.

It was not simply awkward. It was horrible. Like a watching drunk guy flunk a field sobriety test. There was no place to stare but straight ahead. Normally you would leave the scene. Go somewhere. Find a book. No one could walk away. They were buckled in their seat. All 184 people condensed in a space the size of a phone booth. My fellow associate began to laugh. He kept laughing. I began to chuckle. We got the giggles. You know how laughter sometimes becomes contagious and others find humor in a situation.

That’s not what happened.

Eventually a guy sat next to us. He knew none of what transposed. He was boarding group C-99, which meant he was lined up in the Kansas City International Airport parking lot when it happened.

The plane landed in Midway and in seconds I ran off the plane.

I’ve been in counseling ever since.

About the Author

Matthew Keenan has practiced with Shook, Hardy & Bacon LLP, Kansas City, Mo., since 1985.

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Artificial Intelligence in the Judiciary

On October 7, 2001, Dodgers pitcher Dennis Springer threw a 43 mph knuckleball in the bottom of the first inning to the San Francisco Giants’ Barry Bonds. Bonds connected with a crack and the ball flew into the left-center stands for a record-setting 73rd home run.

Alex Popov was in the stands at Pacific Bell Park ready and waiting with his glove when Bonds’ 73rd home run ball came his way. For a second, the ball was in his mitt before he was taken to the ground by a wild mob. The ball rolled away from Popov in the scrum and another fan, Patrick Hayashi, eventually emerged with the prized ball in hand. Popov looked on with dismay. (Video of the melee is available on YouTube at http://bit.ly/popovvhayashi.)

Popov urged Hayashi to surrender the ball but Hayashi refused. Though Hayashi had not committed any wrong-doing in getting the ball, Popov maintained it had become his when it touched his glove and Hayashi had a duty to return it. Eventually, the two would land in court fighting it out in Popov v. Hayashi, (WL 31833731 Ca. Sup. Ct. 2002).

Making a Hard Call

Katie Atkinson of the University of Liverpool’s Department of Computer Science saw in Popov v. Hayashi an exciting opportunity to explore modeling legal arguments as computer code. Could she reproduce a human judge’s ruling by feeding case law into the computer and weighing the arguments of the parties? Atkinson explains her approach in a BBC Radio 4 Law in Action podcast, “You represent arguments as a graph…and then you do a calculation on which arguments attack one another, which are counter-arguments, and then you have to have a method of deciding which are the winning arguments. This argument beats this argument because of this particular reason.”

The computer churned the numbers and returned a fence-sitting finding. On the one hand, Mr. Popov made a valid claim and it would be reasonable for him to be victorious but Mr. Hayashi made a compelling argument as well and could be an acceptable victor. Neither side hit a legal home run. The computer’s wishy-washy result feels like a cop-out but it mirrored the California Supreme Court’s reasoning. The human court held that both Popov and Hayashi had legal rights to the ball and neither could be lawfully deprived of it so the most equitable solution was the Solomonic order to have the ball sold with the proceeds of the sale divided evenly.

Popov v. Hayashi was such an unusual case with facts and arguments tilting either way that the computer model reaching the same result as the humans turns out to be a significant step forward in legal-minded artificial intelligence. Atkinson has continued her efforts incorporating bodies of case law into a computer model which are then fed the facts and arguments of real cases. Her computer has accurately matched the outcome of the human judges in 96 percent of the cases. It should be noted that this is still a relatively small sample of 32 cases, but that is enough to send reverberations through the legal community. Might judges (and lawyers) be replaceable with artificial intelligence?

Hidden Agents

Atkinson’s experiments are at a bleeding edge of legal-minded artificial intelligence handling truly difficult tests like Popov v. Hayashi. Other artificial intelligence agents are tackling simpler cases wholesale and have been doing quietly for years. Companies like eBay and PayPal inevitably generate a lot of disputes—mistaken charges, misrepresented items, shipping errors, etc.—so they developed an online dispute resolution tool that uses a form of artificial intelligence to resolve over 60 million cases per year. These “small claims” disputes are simple compared to Popov, but they take time and money to resolve and leave a bad taste in consumers’ mouths if handled carelessly. The artificial intelligence agents can adjudicate these cases in minutes with a fairness that has actually boosted customer satisfaction.

Just as courts can raise revenue from filing fees, the artificial intelligence agents can make money resolving cases also, and the online dispute giant, Modria, was spun off from the eBay solution as a separate company offering adjudication solutions for the small disputes that trouble consumers and companies. The market for artificial intelligence adjudication is expanding rapidly with direct offerings to customers through sites like OneDayDecisions.com. Where a small claims case might cost about $50 to adjudicate with several weeks or more of waiting, OneDayDecisions can adjudicate a claim with a form of artificial intelligence for $19 in a day with payment to the prevailing party within 7-10 days.

Black-Robed Robots

It may be some time before the black robes in the courtroom are worn by robots, but we already live in a world where our human judges hear fewer simple disputes due to the efforts of artificial intelligence agents. More likely—in the beginning, at least—artificial agents will be used as assistants which wade through mounds of complex data and help summarize existing or developing case law. In fact, one such artificial intelligence lawyer has already been hired by the law firm Baker & Hostetler. His name is Ross, a descendent of the Jeopardy-winning Watson from IBM. Perhaps Ross will one day put his name in for a judgeship after a few more years of experience.

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.

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Members in the News

Changing Positions

Marisa Bayless has joined McDonald, Tinker, Skaer, Quinn & Herrington, P.A. as a summer associate, Wichita.

Kyle Calvin, Travis D. Hanson, Meghan Harper, Kelsey Hauserman, Nathaniel Mannebach & Corey Moomaw have joined Foulston Siefkin LLP as summer associates, Wichita.

F. Charles Dunlay has joined McAnany, Van Cleave & Phillips, P.A. as shareholder.

Jordan J. Ford & Louis A. Huber III have joined Lewis Brisbois Bisgaard & Smith LLP as partner, Wichita.

Samuel A. Green has become partner at Fisher, Patterson, Sayler & Smith LLP, Topeka.

Brenda W. Hagerman has joined the law firm of Smith & Burnett, LLC, Larned.

Gary H. Hanson is Of Counsel to the firm, Stumbo Hanson LLP, Topeka.

Kendra D. Hanson has joined Fredrikson & Byron, P.A., Des Moines, Iowa.

Marshall Honeyman has joined Erise IP at 6201 College Blvd.

Chief Judge J. Thomas Marten has announced his intention to take senior status and to step down as Chief Judge of the District of Kansas, effective April 30, 2017.

Kenneth J. Morton has been promoted to partner at Frischer & Schaffer, Overland Park.

Harry J. Pratt has joined Ela Land Office, Hoxie.

Alexander T. Ricke has joined Stueve Siegel Hanson LLP as an associate, Kansas City, Mo.

Allison Tanner has joined the Spencer Fane LLP Financial Services Practice Group as Of Counsel, Kansas City, Mo.

Nikkolas C. Templin has joined Sanders Warren & Russell LLP as an associate, Overland Park.

Keith Allen Greiner

Keith Allen Greiner, 76, passed away on May 31, 2016, at his home in Washington, D.C. from Amyotrophic Lateral Sclerosis (ALS). He was born on February 24, 1940 near Hunter, Kan., the first child of Wendell Whitson Greiner and Lois Elaine (Jaeger) Greiner. Keith grew up in Mulvane, Kan. He graduated from Mulvane High School and attended Emporia State University in Emporia, Kan., where he received a Bachelor of Arts degree in 1962. In 1966, he received a LLB (J.D.) degree from the University of Virginia in Charlottesville, Va. He practiced law for more than 50 years in Emporia, Kan., beginning at the law firm of Steerman and Perkins in June, 1966, later founding Keith A. Greiner, Chtd.

Keith married Sarah (Steerman) Greiner in 1962. They were married for 14 years. On June 25, 1989, Keith married Linda (Wright) Greiner. Keith was an active member of numerous organizations, including the American Cancer Society (past Kansas Chairman and past National Board of Directors), Kansas Bar Association, American Bar Association, Emporia Rotary Club (past president), First Congregational Church of Emporia (past moderator), Emporia Chamber of Commerce (past director), Emporia Country Club (past director), Emporia State University Foundation (trustee), Current Club of Emporia, Camp Alexander of Emporia (past director).

He was active in the Kansas Republican party as a moderate (College Young Republican president and Lyon County chairman). He also supported NAACP (life member), ACLU, Kansas Legal Services, Southern Poverty Law Center, United Negro College Fund, Metropolitan Opera (guild member), Interlochen Adult Chamber Music, USTA and supported all of his children’s colleges and universities over the years. He was honored with awards including the Paul Harris Fellow (Rotary), Kansas Bar Association (50 year member), and American Bar Association (50 year member). Keith was devoted to his children’s development and well-being. He was an avid snow skier and tennis player and loved classical music.

Keith was preceded in death by his parents. Keith is survived by his spouse Linda Wright Greiner of Washington, D.C., his children, and their mother Sarah Greiner, Laura Greiner Stasiowski (Robert) of Atlanta, Georgia, K. Allen Greiner, Jr., M.D. (Kelli), of Lenexa, Kan., S. Anne (Greiner) Safly (Jason) of Lenexa, Kan., and William Samuel Greiner, M.D. of Kansas City, Kan.; his siblings Dale Greiner (Barbara) of Broken Arrow, Okla., Joyce O’Hern (Paul) of Shreveport, La., and Neal Greiner of Lafayette, La.; and his grandchildren Reese and Alexandra Greiner and Samuel and Lydia Safly.

Memorial donations may be made to Emporia State University Foundation for the Greiner Family Scholarship (1500 Highland Street, Emporia, KS 66801).

Miscellaneous

Wichita Bar Association presented Hon. Benjamin L. Burgess a Lifetime Achievement Award and F. James Robinson Jr. the Howard C. Klune Distinguished Service Award.

The Wichita Bar Association President’s Award was presented to Sharon L. Dickgrafe, Michelle R. Meier, Robert J. Moody Jr. & Dennis P. Wetta.

Ross A. Hollander, Stephen M. Joseph, Michelle Moe Witte and the firm of Joseph, Hollander & Craft LLC were honored by Chambers USA for individual accolades and as one of the state’s top labor and employment litigation firms.

Daniel E. Monnat named by Chambers USA as one of Kansas’ top litigators in white-collar crime and government investigations.

Barry R. Wilkerson, Manhattan, was awarded the Outstanding Prosecutor Victim Service Award by Kansas Attorney General Derek Schmidt at the Kansas Crime Victims Rights Conference.

The Wichita Bar Association Chester I. Lewis Diversity Achievement Award was presented to Martin, Pringle, Oliver, Wallace & Bauer, LLP.

Changing Locations

Norman E. Beal is now located at EC Manufacturing LLC, 27508 Lone Star Road, Paola, KS 66071.

Ed Dougherty and Phil Holloway have changed suites within their building, and are now located at Dougherty & Holloway, L.L.C. 7200 NW 86th Street, Suite T, Kansas City, MO 64153.

Aaron J. Mann is now located at 18001 W. 106th Street Suite 300 Olathe, KS 66061.

Mark C. Owens has moved his practice to The Granada Building 10983 Granada Lane, Suite 180, Overland Park, KS 66211.

S. Brady Short has opened his own firm, Short Law, 110 W. 9th Ave., Winfield, KS, 67156.
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 nor 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.

The Wichita Bar Association Clean Slate Project

The Wichita Bar Association celebrated its 100th anniversary in 2015 and wanted to do a pro bono project as part of the celebration. The Bar Association put together an expungement clinic for low income individuals who were eligible for an expungement, but had not been able to obtain an expungement due to limited funds. Planning for the project started in 2014. The end result was Clean Slate Day on March 4, 2016.

The Wichita Bar Association facilitated the project and different entities came together to make the project a success. Prosecutors, volunteer attorneys, clerks, judges, Kansas Legal Services, and Volunteer Kansas spent countless hours in the planning process. Robert Moody, an attorney with Martin, Pringle, Oliver, Wallace & Bauer, LLP, was able to secure $65,000 from three donors to cover the cost of court filing fees.

The clinic was scheduled to run from 9 a.m. to 2 p.m. Sixty attorneys and many non-attorneys volunteered their time to assist with all aspects of the clinic. At 6:15 a.m. two people were already in line. By 9 a.m. the line extended from the courthouse doors down the block to the parking garage.

Over 1,000 people came to the courthouse seeking expungement. Over 150 people were able to walk into the courthouse that morning and leave with a “clean slate” expungement, and the project ran out of time before it ran out of money. Wichita Bar Association attorneys are still processing expungement cases and will continue to do so until the donated money is spent, and expects to assist another 150 people. While 150 may sound like a small number of people assisted, it should be noted that the Clean Slate Project did more expungements in one day than the City of Wichita did in one year, and half the number of expungements that Sedgwick County did in one year.

Everyone who came to Clean Slate Day benefited even if they did not get the expungement they were seeking. Every person who appeared received free legal advice about expungement. Information sheets or free online forms were provided explaining options for those who were not otherwise assisted. The stories from those who received expungements were powerful: as those who had obtained their expungements passed through the courtroom by those waiting to be processed, the crowd cheered. We will never know the extent of the positive impact that obtaining the expungements will make for those individuals. We know for certain that they will be able to obtain better employment, better housing, and have increased access to higher education. The Wichita Bar Association identified a significant need in the community and put in the hours it takes to truly make a difference.
Hon. Karen Arnold-Burger

became a member of the Kansas Court of Appeals in February 2011 after serving 20 years as the Presiding Judge of the Overland Park Municipal Court. She previously served as First Assistant City Attorney for Overland Park and Assistant U. S. Attorney for the District of Kansas. She is also a former president of the Johnson County Bar Association, the Earl E. O’Connor Inn of Court, and the Kansas Municipal Judges Association. In 2006, she received the Justinian Award from the Johnson County Bar Association exemplifying her integrity and service to the community and the legal profession. Judge Arnold-Burger taught for 15 years at the National Judicial College in Reno, Nev., where she was elected by her fellow faculty members to its Faculty Council. She has presented judicial education programs around the country on topics as diverse as traffic law, racial profiling and disproportionate minority confinement, collateral consequences of criminal convictions, including immigration consequences, and legal issues related to jury selection and deliberation. In 2015 she received the American Bar Association Burnham “Hod” Greeley Award “in honor of her significant positive impact on public understanding of the role of the judiciary in a democratic society and its importance to the rule of law.” She currently serves on the ABA Judicial Division taskforce on Implicit Bias. She is a graduate of the University of Kansas School of Law.

Otis W. Morrow

is a native of Arkansas City. Morrow graduated from Cowley County Community College in 1968, and Southwestern College in Winfield, Kan. in 1970 with a dual degree, cum laude, in business administration and history/political science. He received his Juris Doctor from Washburn University School of Law in 1973. Morrow was inducted into the Business Hall of Fame at Southwestern College in 2013, and was honored as an outstanding Alumnus at Cowley County Community College.

Morrow is licensed to practice law in the States of Colorado, Kansas and Oklahoma, as well as numerous federal district courts, the 10th Circuit Court of Appeals and the U. S. Supreme Court. He is a Fellow of the Kansas Bar Foundation. Morrow served as city attorney for 30 years, and was a member of the Board of Directors of the City Attorneys Association.

In the early 1980’s, he drafted the legislation separating Arkansas City and the Arkansas City Memorial Hospital, and since separation, has provided legal counsel to the Medical Center, serving as a Member of the Board of Directors of the Kansas Association of Hospital Attorneys and as its President in 1987. Morrow served as Sr. Vice President and Sr. Trust Officer at the Home National Bank from January 2005 until his retirement from the bank in February 2013. He is in his 43rd year of practice.

Morrow has been involved in community and civic affairs for the past 41 years, serving on the Board of Directors of the Chamber of Commerce on several different occasions and as President in 1983. Morrow is a 25 year member of the Midian Shrine and Masonic Lodge #133, a member of the “One Thousand” Club sponsored by the Midian Plane of Mercy in recognition of sincere interest in crippled and burned children.

Morrow is a Member of Rotary and served as President in 1985, and is a Paul Harris Fellow. Morrow provided pro bono legal services in obtaining certification for the Arkansas City Rotary Foundation, earmarked for local community betterment. Morrow provided pro bono legal services to many organizations including the inception of Ark City Habitat for Humanity, and Etzanoa Conservancy, Inc. Morrow is an active member and Elder of the First Presbyterian Church in Ark City, and recently celebrated 46 years of marriage with his wife, Terri.
Distinguished Government Service 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 as identified by the KBA Hallmarks of the Profession.

Hon. Dale L. Somers

of Topeka is a native Kansan who grew up in Norton. He received his undergraduate degree from Kansas State University in 1968 and his juris doctorate from the University of Kansas School of Law in 1971. He was in the private practice of law in Topeka with the firms of Eidson, Lewis, Porter & Haynes and Wright, Henson, Somers, Sebelius, Clark & Baker for 32 years until he became a U.S. bankruptcy judge in 2003. Somers was appointed to the Bankruptcy Appellate Panel for the 10th U.S. Court of Appeals in 2010. He also serves as a member of the Judicial Resources Committee of the Judicial Conference of the United States. Somers served on the KBA Board of Governors from 1988-98, and as president from 1995-96. He is a Fellow of the American Bar Foundation, a Fellow of the Kansas Bar Foundation and a Fellow of the American College of Bankruptcy.

Robert W. Parnacott

graduated with Dean’s Honors from Washburn University School of Law in 1991. During law school he was a law clerk for the Shawnee County District Court. He then served as a research attorney for the Central Staff of the Kansas Court of Appeals and later for Justice Tyler Lockett of the Kansas Supreme Court. Following his clerkships he was employed by the Kansas Corporation Commission and subsequently the Kansas Department of Health and Environment as a staff attorney. From 2000 until his retirement in May 2016 he was an assistant county counselor for Sedgwick County, Kan. He wrote several articles for the Journal of the Kansas Bar Association on local government topics, as well as other articles on civil procedure and environmental audits. In addition to his government service, he was an associate with Woodard, Hernandez, Roth & Day in Wichita from 1997 to 2000.

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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.

Kellie E. Hogan

is Director of Children’s Advocacy at Kansas Legal Services where she has worked since 1997. Kellie received her Bachelor of Arts in political science summa cum laude, and J.D. from The University of Kansas. Kellie received the Chester I. Lewis Diversity Award in 2014. She received the Wichita Women Attorneys Association Louise Mattos Attorney of Achievement Award in 2013. In 2012, she was awarded the Jennie Mitchell Kellogg Attorney of Achievement Award by the Kansas Women Attorneys Association. In January 2011, the ABA selected Kellie to attend the ABA Bar Leadership Institute in Chicago on scholarship. In 2008, she received a Wichita Bar Association President’s Award for her work with the Grow Your Own Lawyer Program, which she has chaired since 2000. Kellie is a member of the Wesley E. Brown Inn of Court and serves as attendance chair. In addition, she serves on the Ethics Committee, Continuing Legal Education Committee and was stage manager for the 2010, 2013, and 2016 bar shows. Kellie served on the Wichita Bar Association Board of Governors from 2011-2013 and is currently Vice-President.

Kellie has been a member of the Kansas Supreme Court Permanency Planning Task Force since 2001. She is a past president of the Wichita Women Attorneys Association and the Kansas Women Attorneys Association. In addition, she has been a member of the Kansas Bar Association since 1997. In 2008, she was named a Champion of Respect by the Wichita/Sedgwick County Coalition against Domestic Violence. She is the recipient of the Kansas Legal Services Elizabeth Ferguson Award for Outstanding Service to Clients.

From 2006-2012, she taught Women and the Law at Wichita State University. Kellie is currently President of the Board for the Wichita Public Library. She serves on the board of Step-Stone and Dear Neighbor Ministries. Away from the office, she enjoys travel, volunteers for KMUW Wichita Public Radio, and is a season ticket holder at The Wichita Symphony, Music Theatre of Wichita, The Wichita Grand Opera, and Chamber Music at the Barn.

Courageous Judge Award

The KBA created a new award in 2000 to recognize a judge who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession. This award will be given only in those years when it is determined that there is a worthy recipient.

Hon. Larry T. Solomon

currently serves as chief judge of the 30th Judicial District. He was appointed as district judge of division IV of the 30th Judicial District in 1989, and appointed as Administrative Judge of the 30th Judicial District in 1991.

He served as First Chair of the Kansas Supreme Court Advisory Council on Dispute Resolution from 1994-2000, the Kansas Sentencing Commission from 2005-08, and has served on the Non-Judicial Salary Commission since 1991 and as chair since 2003. He is also a member of the Kansas District Judges’ Association (President 2003-04) and a member of the National Association for Court Management.

Solomon received a Bachelor of Arts degree from Wichita State University in 1972, and Juris Doctor Degree from Washburn University Law School in 1976.
Susan A. Berson
has over 20 years’ experience in handling tax matters. She began her career as a trial attorney in the Tax Division at the U.S. Department of Justice in Washington D.C., where she received the Outstanding Attorney Award by the Attorney General in 1996 for her work representing the IRS. In 1998, Susan entered private practice, and has enjoyed representing taxpayers in a variety of industries and professions concerning their federal and state tax matters. Her husband and law partner, Dave, specializes in banking, corporate and small business law. Their firm, Berson Law Group LLP, handles banking, tax and small business matters. Both Susan and Dave have been included in the Business Journal of Kansas City’s annual “Best of the Bar” publication in the categories of Tax and Banking, respectively. Susan is also a Certified Mediator, and serves as a FINRA Dispute Resolution Program Arbitrator.

J. Brett Milbourn
has been involved as lead and co-counsel in several multi-million dollar local and national lawsuits for individuals and businesses. In state and federal courts, Brett has represented a diverse clientele in complex cases involving business and commercial litigation, class action consumer fraud, property disputes with constitutional implications, and breach of contract actions. He has been retained by state treasurers, attorneys general, and other state officials across multiple states in cutting-edge, unclaimed property litigation against the U.S. Treasury involving U. S. Savings Bonds, as well as litigation that involved, among other parties, the National Collegiate Athletic Association (NCAA).

Joseph N. Molina III
is the director of legislative services for the Kansas Bar Association. Prior to joining the KBA, he was chief legal counsel for the Topeka Metropolitan Transit Authority, where his practice involved insurance subrogation, labor and employment law. He also previously served as an assistant attorney general, acting as the director of the Kansas No-Call Act, from 2002-06. Molina holds Bachelor of Arts degrees in political science, philosophy, and economics from Eastern Oregon University. He graduated from Washburn University School of Law in 2002. Molina is active in the National Association of Bar Executives where he served as chair of the Governmental Relations section from 2014-15. Molina is a native of Hawaii, and moved to Kansas in 1999 to attend law school at Washburn. He is married to his lovely wife Malessa and has two sons, Jonah and Isaiah, and one “hanai” daughter, Vanessa.

C. Stanley Nelson
continues as Of Counsel with Hampton & Royce, Salina, having joined its predecessor firm of Hampton, Royce, Dunham, Royce and Englemann in February 1951. Nelson grew up in Lawrence as his parents were in academia at the University of Kansas, and he earned his undergraduate and law degrees at KU after serving three years in the Marine Corps. Nelson’s main practice was in civil litigation and more recently he served as special administrative law judge for workers’ compensation. In 1978, he was inducted into the American College of Trial Lawyers. During his years in Salina he also served on various boards and as president of the YMCA, the library board, the recreation commission, and the chamber of commerce which was primarily involved in economic development following the close of the air force base. He believes that he is very privileged to be able to go to the office daily and be involved to some extent in legal matters.
Susan is the author of many articles and four books: Federal Tax Litigation (Law Journal Press) which she is responsible for updating twice a year, Personal Finance for Professionals (2nd ed. ABA 2014), The Lawyer’s Retirement Planning Guide (2nd ed. ABA 2014), and is co-author of The Dodd-Frank Wall Street Reform and Consumer Protection Act: From Legislation to Implementation to Litigation (ABA 2011). A contributing columnist to the American Bar Association Journal Magazine, in 2014, Susan received a Bronze medal from the American Society of Business Press Editors for her writing. Coinciding with the topics in her books and articles, Susan enjoys speaking at legal, banking and professional association conferences. She also counsels other authors concerning royalties and contractual matters.

Susan is active in many professional and community organizations. Currently, she is a trustee on the Board of Trustees for the Kansas Bar Foundation and Advisory Board member for the KBA Law Practice Management Committee, part of the KBA Law Office Management Assistance Program. Finally, Susan serves as the Past President of the Kansas Women Attorneys Association, and is a member of the Association of Women Lawyers in Kansas City.

Law Directory, as a Super Lawyer, Kansas and Missouri Super Lawyers Magazine, Best of the Bar, Kansas City Business Journal, and by The National Trial Lawyers Top 100 Organization. Brett has actively been involved in local and state bar associations, serving in a number of leadership positions and coordinating several community service projects.

Brett is a member of numerous professional associations, including the KBA, Kansas Association of Justice, Kansas City Metropolitan Bar Association, and the Missouri Bar. He is currently a member of the Tenth Judicial Nominating Commission, in Johnson County, Kan., having been twice elected (2012 and 2016) to the Commission by the 3,500 Kansas licensed lawyers that reside in Johnson County.

Outside of his legal education and practice of law, Brett also has a background in journalism, having graduated with a Bachelor of Science from the University of Kansas’ William Allen White School of Journalism in 1983. Brett currently resides in Leawood, Kan. He is active in local charities and has raised money for different charitable endeavors. Brett is a 2001 graduate of the Leadership Kansas program sponsored by the State Chamber of Commerce and a 1991 graduate of the Leadership Overland Park program sponsored by the City’s Chamber of Commerce.

Shelley Sutton of Topeka is the Executive Director of the Kansas Continuing Legal Education Commission, a position that she has held since 1991. Prior to joining the Commission, she worked in association management, lobbying and public relations. Shelley is very active in the professional association of regulators of continuing legal education (CLEreg) and is a past president of the organization.

She has an undergraduate degree in communications is from Fort Hays State University and a graduate degree in communications is from Kansas State University.

Shelley has served on the boards of the Alpha Gamma Delta Foundation and The Leadership Institute—Women with Purpose. She has also been an adjunct professor at Washburn University.

Melissa Wangemann is General Counsel and Director of Legislative Services for the Kansas Association of Counties (KAC). Prior to joining KAC in the fall of 2008, she served as counsel to Kansas Secretary of State Ron Thornburgh for 12 years. Before joining the Secretary of State’s Office she worked in the private practice of law in Wichita and Topeka.

Born and raised in Wichita, Melissa went to Wichita State University and graduated with a Bachelor of Arts degree in English. She received her Juris Doctorate from the University of Kansas in 1994.

She is married to an attorney, Jared Maag, and has two children, Emma and James.
The Pro Bono 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.

Debra Egli James

is a member of the Salina firm of Hampton & Royce, L.C., where she has been a partner since 1990. She has a broad range of experience in litigation involving personal injury, commercial, business and employment disputes, agricultural law issues, and automobile liability, and she practices in both state and federal courts. Deb is a graduate of Iowa State University and Drake University Law School and is licensed in Kansas, Iowa, and Nebraska. In 1997, Deb was appointed by the Kansas Supreme Court to the Kansas Board of Discipline for Attorneys and served 17 years in that position. Since 1996, Deb has been a member of the Professional Ethics and Grievance Committee of the Kansas Bar Association and has conducted investigations of ethical complaints, when called upon, for 20 years. She has served on the Federal Judicial Nominating Task Force and the Kansas Bar Association’s Membership and Fee Dispute Resolution Committees. She is a Fellow of the Kansas Bar Association Foundation. For six years, Deb served on the Board of Governors of the Kansas Bar Association for District 6 and the Board of Governors for the Kansas Association of Defense Counsel. Deb is the Past President of the Litigation Section of the Kansas Bar Association. She has also been an active member of her community, serving two terms as President of the Board of Directors of the Salina YWCA and two terms as President of the Great Plains Theater in Abilene, Kan. Deb also serves as a member of the Kansas Lawyer Assistance Program Foundation Board, is a KALAP volunteer and mentor, and represents adoptive parents on a pro bono basis in cases involving children adopted out of the foster care system in central Kansas.

Jill Bremyer

previously practiced with Bremyer & Wise (now Wise & Reber) law firm in McPherson before starting her own adoption practice, Adoption Law LLC in 2009.

Jill received a master’s degree from Kansas State University in family and child development before pursuing a law degree at Washburn University. She has always felt privileged to be able to combine her interest in families with her law practice.

Jill has been active as a member of the American Academy of Adoption Attorneys since 1993, and is also a member of the Kansas Women Attorneys Association, the Kansas Bar Association, and the McPherson County Bar Association.

Summer Ott Dierks

is a partner in Seaton, Seaton & Dierks, LLP. She was born in Kiowa, Kan., raised in Coffeyville, and graduated from Kansas State University in 2005 with a bachelor’s degree in Agricultural Communications and Journalism.

Before attending law school, Summer worked at the Kansas State University Foundation, fundraising for the College of Agriculture from 2005-2007. She then worked at the Manhattan Convention and Visitors Bureau as the Convention Sales Manager until 2010.

During law school, Summer clerked for the Honorable Steve Leben, Judge at the Kansas Court of Appeals as well as the Kansas Attorney General, Criminal Litigation Division. She was also licensed to practice law as a student in the Washburn University Law Clinic. She was awarded her Juris Doctor in 2012 from Washburn University School of Law.
Mitchell B. Christians was born and reared in Hays, the third of four sons of Robert and Bernita Christians. He graduated from Hays High School in 1980, Kansas State University with bachelor's degrees in history and economics, and Washburn University School of Law in 1986. He practiced in Goodland for ten years after graduating from law school and moved to Salina in January 1997. His practice is almost exclusively criminal and juvenile defense. His immediate family includes his two daughters Crystal and Ashley; a grandson, Carbon; and his loyal but very stubborn dog, Benson.

Angela Ferguson holds a Juris Doctor degree from the University of Kansas, conferred in 1986. She began her career working for Kansas Legal Services (KLS) in Topeka, working initially with victims of Domestic Violence and completing her work at KLS in the Wyandotte-Leavenworth Legal Services office working as an Elder Law Attorney. In 1989, Ms. Ferguson began working in the immigration field, first for the Howard Eisberg Law Firm and then, began her solo practice in 1991 in Kansas City, Kansas. In 1998, the firm of Austin & Ferguson, L.L.C. was established in Kansas City, Missouri. Throughout her career, Ms. Ferguson has been involved with the American Immigration Lawyers Association and local bar associations, providing legal education programs on various immigration issues. She has served on the Essential Worker Committee, the Family Law Committee, Conference Planning Committees and the Department of Labor Committees for AIKA National, and the Advocacy committee for the local Chapter. In 2008, she was given the National Advocacy Award by AIKA for work opposing the anti-immigrant rhetoric of the Minutemen and FAIR. Additionally, she taught Immigration law at Washburn Law School for several years and in 2009 helped establish an Immigration Law Clinic for the University of Kansas, focusing mainly on immigrant victims of domestic violence/crimes.

In 2014, when the surge of refugees started arriving on the U.S. Southern border, Ms. Ferguson volunteered as an Artesia Warrior, immigration lawyers who traveled to Artesia, N. M. to help defend the mothers and children against deportation. The team of AIKA lawyers worked around the clock to get the detention facility shut down and they succeeded in December 2015. However, our government established a new “family” jail in South Texas and the AIKA volunteer lawyers have continued the effort to provide competent free legal services to the women and children, who are seeking political asylum and protection from the drug cartels and violent gangs in Central America. Ms. Ferguson coordinated a trip to Dilley, Texas and worked with 21 volunteers from Kansas and Missouri in 2016, and those volunteers have continued working off-site throughout this year, providing pro bono legal services on Bond hearings and Asylum trials. Through her work as the Chair of the AIKA MO/KS Chapter, Ms. Ferguson has helped raise funds to send another team to Texas and the work will continue until mothers and babies are no longer jailed when they seek protection in the U.S.

Joni J. Franklin has dedicated over 14 years of service to the KBA and the KBF, making these organizations a central part of her professional career. She began her service in 2000 in the KBA Young Lawyers section serving on their board as representative to the KBF until 2002. After that, Joni served as the KBA Young Lawyers President and served on both the KBA Board of Governors and its executive committee from 2003-2004. Based upon this service she was awarded the KBA’s Young Lawyer of the Year in 2005. She has continued her service through the KBF serving in offices for almost the past decade culminating in President of the Board in 2012-2013. She was also awarded the KBA’s Pro Bono Service Award in 2013. She regularly appears on the Sedgwick County Protection from Abuse docket, where over the course of 19 years, she has represented hundreds of domestic violence victims in obtaining permanent restraining orders from their abusers.

Joni enjoys an active practice in Wichita including workers’ compensation, labor relations, and is also a Due Process Hearing Officer to the Kansas Board of Education. Her best achievement however, is of course her family. Joni has been married for 10 years to her lawyer husband, Aaron, and they have two fabulous kids, Gabe (9), and his little sister Lulu (7) – the family’s biggest adventure, when she adopted them in Vietnam 7 years ago.
Thomas C. "Tim" Owens  

is an Overland Park Attorney Emeritus and veteran state legislator. He served three and a half terms in the Kansas House of Representatives before being elected to a term in the Kansas Senate in 2008. Senator Owens chaired the Senate Judiciary Committee, Redistricting Committee and was a member of numerous other committees including Education and Federal and State Affairs. In 2010 Owens led the drive to reform health insurance to provide better coverage and services for Kansans with Disabilities and especially those on the autism spectrum. For his success he was among four nationwide legislators honored with the Easter Seals Outstanding Advocate Award. In 2011, he directed the effort to rewrite the statutes dealing with driving under the influence of alcohol or drugs. In June, 2011, The Kansas Bar Association honored Senator Owens with its award and resolution recognizing his “commitment, dedication and professionalism” in public service.

Senator Owens and his wife live in Overland Park and have two adult sons and four grandchildren. Senator Owens retired as a full colonel from the U.S. Army Reserves in 1994, having served three years of active duty including a tour in Vietnam, and 23 years of active Army Reserve. The Senator is a graduate of Kansas State University where he received a Bachelor of Arts degree in Political Science a graduate of Washburn University School of Law where he received a Juris Doctorate degree in 1974, and a graduate of the U.S. Army Command and General Staff College at Ft. Leavenworth, Kan.

Senator Owens is an Adjunct Professor of Political Science at Johnson County Community College in Overland Park and serves on numerous boards and committees in his retirement, including the Mainstream Coalition Board and the Friends Board of the Johnson County Developmental Services.

Samara N. Zaman  

is a partner at Felton and Zaman LLP. She practices Estate Planning and Family Immigration Law. Samara is licensed to practice in Missouri and Kansas. She was named Kansas City Business Journal’s Best of the Bar in 2014, and honored as a Rising Star Attorney in Missouri and Kansas on Super Lawyers for 2015. She is a member of the Association for Women Lawyers and the Missouri Bar Association. She is a member of the Kansas Bar Association and serves on the KBA Diversity Committee. She graduated with a J.D. from the University of Missouri - Kansas City School of Law. She earned her B.A. in religious studies and a B.S. in journalism, news and information emphasis from the University of Kansas.

Cheryl A. Pilate  

Since graduating from the University of Kansas School of Law in 1990, Cheryl Pilate has dedicated her law practice to the protection of individual rights and liberties. Cheryl's diverse practice includes the representation of criminal defendants and the representation of plaintiffs in federal civil rights cases. Cheryl believes that when constitutional rights are threatened or an individual's liberty is at stake, there is nothing more important than the dedication of a strong and effective advocate.

Cheryl is perhaps best known for her work on innocence cases, including obtaining the exoneration and release of persons convicted of crimes they did not commit. Over the years, she has worked thousands of hours for little or no compensation on behalf of innocent clients. Cheryl has also served for ten years on the board of the Midwest Innocence Project, an organization that advocates for and seeks the release of the wrongly convicted.

Cheryl's practice also includes representation in capital cases. With her co-counsel, Cheryl has obtained relief for several defendants sentenced to death; she has also obtained life or lesser sentences for capitally charged defendants at the trial stage. Extending her advocacy to a broader sphere, Cheryl also served a term on the board of the Kansas Coalition Against the Death Penalty.

Cheryl also represents defendants in a wide variety of criminal cases, many of them court-appointed. Alongside her criminal defense work, she also represents plaintiffs in federal civil rights cases, primarily focused on violations of the Fourth and Fourteenth Amendments.

Cheryl received her bachelor's degree from the University of Michigan. After graduating from the University of Kansas Law School, she served for two years as a law clerk to the late Honorable John R. Gibson of the U.S. Court of Appeals for the Eighth Circuit. Following 15 years at the firm of Wyrsch, Hobbs & Mirakian, P.C., Cheryl joined Melanie Morgan in 2007 and founded Morgan Pilate LLC in Kansas City.

Andrea Rothers-Boden  

graduated from Washburn University School of Law in May 2007. Shortly thereafter, she began working as a research attorney for the Kansas Court of Appeals. Andrea clerked for the Honorable Judge Stephen Hill for several years before joining Jurado-Graham Law Firm in 2014. Andrea practices primarily in the area of family immigration and removal defense.
The Law Offices of Barber Emerson, L.C. has committed itself as a firm to giving back to the community by helping those in need of pro bono representation. Attorneys from the firm assisted Kansas Legal Services at a legal outreach clinic concerning advance directives and tribal wills for Potawatomi Prairie Band Elders. Barber Emerson, L.C. associates have assisted with several complex contested custody matters, protection orders, child in need of care cases and arguments before the Kansas Court of Appeals. The firm has also provided representation to clients through the Kansas Bar Association’s Reduced Fee Program and Criminal Justice Act appointments for the Tenth Circuit.

Kansas Legal Services nominated Barber Emerson, L.C. for this recognition and stated that the firm’s attorneys “are dedicated to providing meaningful, quality assistance to Kansans, who otherwise would be unable to access the Court.”

Deena H. Bailey

is Senior Employment & Labor Counsel at Cargill Inc., and serves U.S. and international clients with a broad range of complex legal needs. Ms. Bailey provides advice and counsel on various topics, including employment law (ADAAA, FMLA, Title VII, ADEA, etc.), U.S. labor law (contract negotiation, union avoidance, grievance and arbitration), business ethics, employment-based agreements, immigration (compliance and business visas), wage and hour (including donning/doffing), Affirmative Action Plans, due diligence for M&A work, investigations, political and public relations strategies, and litigation management and strategy. She also served on the executive committee of the global Cargill Women’s Network. Ms. Bailey is a member of the Kansas Bar Association, including serving as CLE Committee President and Litigation Committee Chair. Ms. Bailey is an active member in the Kansas Women Attorneys Association, including as a past president and current board member. She is also past president of the Wichita Women Attorneys Association, and was honored this year with the Louise Mattax Attorney of Achievement Award. Ms. Bailey invests her non-profit volunteer and pro bono time in women’s issues and has served on the board of Catholic Charities Harbor House Women’s Crisis Center, Dress for Success Wichita, the Pregnancy Crisis Center, as well as serving as pro bono counsel on the Protection from Abuse Docket in the Eighteenth Judicial District in Kansas.
Christine C. Campbell graduated from Northwest Missouri State University in 2005 and Washburn University School of Law in 2008. She has served as an attorney with Kansas Legal Services for the last eight years practicing domestic and elder law, as well as general poverty law.

Campbell is a member of the Kansas Women Attorneys Association, Lindsborg Conference Program Committee, American Bar Association, Kansas Bar Association, Wichita Bar Association (WBA) and serves as President of the Wichita Women Attorney Association, where she has been an active member since 2011.

She serves on the following WBA committees: Family Law, Young Lawyers Society (President-Elect for 2016-17), Student Intern Committee, Bar Show and chorus and costume committee, and Wichita Bar Association 100th Anniversary Mini Bar Show. Campbell is also an associate representative of Wesley Brown Inn of Court in Wichita. She is also involved in community theater including the Wichita Shakespeare Company, Guild Hall Players, Wichita Signature Theater and the annual V-Day fundraiser for Wichita Area Sexual Assault Center.

Shawn P. Yancy is a 2011 graduate of Washburn University School of Law. During law school he served as a member of the student bar association and as a member of the ABA Law Student Division Board of Governors. Shawn also worked both at the Law Library at Washburn, and as a Law Clerk for the 3rd Judicial District Court while in law school. After graduation and passing the bar, Shawn began working as an unemployment insurance appeals referee with the Kansas Department of Labor. He continues to work for the Kansas Department of Labor as unemployment insurance performance and reporting manager.

Shawn’s law-related education activities include volunteering with the Topeka & Shawnee County Youth Court since 2008, including assisting with attorney training, and judging college mock trials since 2009. They also include working with the Kansas High School Mock Trial program since 2009. In that time, he has served as a judge for competition, assisted with running the program, and acted as state coordinator and mock trial chair for two years during which he organized regional and state competitions, drafted the case materials, and organized volunteers to judge at those competitions.

In 2015, Shawn was elected to the National High School Mock Trial Championship Board of Directors. Directors are entirely volunteers from around the country. In that role, he assists with running the national competition, drafting the National case, soliciting and vetting future national hosts, evaluating and updating competition rules, and managing the board’s social media accounts.
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By M. H. Hoeflich & Frank Siler
Virtually every lawyer takes for granted that one of the more basic duties inherent in the lawyer-client relationship is that the lawyer be competent to undertake the representation. Competence is the first ethical requirement listed in the Model Rules of Professional Conduct and, consequently, in the Kansas Rules of Professional Conduct:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

The first comment to Rule 1.1 expands upon this requirement:

In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.

While competence is a fundamental requirement for practicing law, as evidenced by Rule 1.1 and by the fact that the competence requirement comes first in the Rules, it appears that the duty of competence is often taken for granted. Even more significantly, we suggest that the meaning of lawyer competence should be considered a critical standard that evolves over time.

If one reads Rule 1.1 and the associated comments closely, it becomes clear that the focus of the Rule is upon a lawyer's knowledge of and experience in the law. Comment [1] to Rule 1.1 is, in fact, titled “Legal Knowledge and Skill.” Other comments speak of the need for an “analysis of the factual and legal elements of the problem” and the need to “keep abreast of changes in the law and practice.”

Today, however, we want to focus not on a lawyer's required competence in substantive and procedural law, but, rather, upon what level of competence in the use of technology is required by Rule 1.1.

It is not particularly strange that Rule 1.1 focuses upon competence in substantive and procedural law and not upon the technologies that make modern law practice more efficient at times and far more difficult at other times. The Competence requirement was first adopted into formal ethics rules with the adoption by states of ABA Model Code of Professional Responsibility DR 6-101(A) after 1970. Prior to this, the requirement of competence was more limited and generally thought to be subsumed under DR 6-101(A) (3) [prohibition against client neglect] and DR 6-101(A)(2) [lawyers must make adequate preparation]. Rule 1.1 has not changed significantly from its first adoption. Thus, the Rule is now forty-five years old.

The age of the competence required by Rule 1.1 is quite significant. When the Rule was promulgated in 1970, the practice of law had not changed substantially for 50 years. The digital age was not yet begun. Personal computing, the Internet, cell phones, even fax machines were not yet in general use. Electronic database search engines also were not in general use.

When one author began working for a large Wall Street law firm in 1978, lawyers did not have computers or cell phones. The firm did not use fax machines for everyday tasks. Legal research was done primarily in the library using books, although the firm did have a Lexis terminal used by librarians when approved by the partner in charge.

Today, a newly graduated lawyer will have access to all of these technologies and many, many more. Indeed, we would argue that a lawyer today cannot practice law effectively without the use of modern technologies.

To codify the technology aspect of maintaining competence, in March of 2014 the Kansas Supreme Court adopted a modification to the Competence rule's Comments. Comment [8] now states “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.”

Some law schools do not teach legal technology and its evolving applications to law students. Nevertheless, a number of court cases and opinions issued by advisory committees around the United States have made technical knowledge an issue of competence for lawyers, and it is more than likely that this trend will continue. The real question is how much technical knowledge is and will be required of lawyers sufficient to satisfy the ethical requirement of competence. Further, we must ask whether law schools have an obligation to revise their curricula if they have not already done so to teach legal technology to law students just as they now teach substantive and procedural law.

The Scope of Legal Technology

There is hardly any area of law practice today that has not been affected by the introduction of new technologies during the past several de-
New Technologies and Lawyer Competence

Lawyer Communications and Rule 1.6

Today, lawyers face a multitude of communications media unknown to previous generations. At the simplest, lawyers now can communicate with clients using cell phones, fax machines, and the Internet. On the Internet, lawyers have numerous choices, including email, Facebook, Twitter, and a host of other social media, increasing almost daily. But, while these various new methods of electronic communication make lawyer-client communications much easier and untether lawyers from their offices to an unparalleled extent, they also pose immense difficulties for lawyers trying to maintain the confidentiality required by Rule 1.6. The first words of Rule 1.6 make the absolute duty of confidentiality quite clear: “A lawyer shall not reveal information relating to a client unless...”

The Rule then goes on to enumerate the exceptions to the general requirement of confidentiality. Nowhere in the “black letter rule” exceptions is there one for a lawyer’s lack of knowledge about electronic and digital security; however, Comments [26] and [27] provide some analysis.

The annotation to Rule 1.6 in the ABA Annotated Rules makes this concern explicit:

Electronic communications—such as those made by phone...by fax, or over the Internet—pose unique problems related to maintaining client confidences because of the ease with which they may be intercepted by unauthorized and unknown persons...The lawyer’s duty of confidentiality requires that when communicating through electronic means...the lawyer should be cognizant of the risks, and, if necessary, take protective measures.

This is clearly a requirement that a lawyer have, at the very least, enough knowledge about a communications device to be able to assess the risk of interception and not only warn the client of this risk, but, if necessary, recommend and take measures to lessen this risk. A number of states now require that all lawyer-client email communications carry a warning to this effect. Both the ABA committee on Ethics and Professionalism and various state advisory committees have issued opinions on the confidentiality risks of lawyer-client electronic communications. It should be noted that the issue of communications security is not limited to electronic communications. The current climate of surveillance puts us at the point where our own postal service photographs the outside of every envelope passing through the mail.

We suggest that even these opinions may now be insufficient and out-of-date. Since no communication is completely safe from interception, one pragmatic question to ask is simply, “given the context and sensitivity of the information, how should we inform the client and act in their best interest in terms of data security?”

However, before addressing the issues of how best to secure communication, it behooves the legal profession to become acquainted with the reality of information security. In the past few years a number of massive breaches in the security of emails have become known, such as the alleged North Korean unauthorized seizure and public disclosure of Sony Corporation internal emails and Edward Snowden’s disclosures through Wikileaks of the extent to which the National Security Agency has been intercepting emails of United States citizens. Increasingly, the full extent of email insecurity is becoming a major issue for businesses and individuals, including law firms.

Recently, The New York Times ran a lead story on the concerns voiced by major money center banks that their law firms were not taking email security seriously enough and were exposing them to potential security breaches. The full extent of lawyer disciplinary liability—as well as malpractice liability—in the event of a major security breach and disclosure of client confidences is becoming frightening. No lawyer today can take computer security for granted. Notably, Sony Corporation, after its breach by North Korea, took many of its internal communications off email and the Internet completely. It has even been reported that Russia’s security services now limit senior government officials’ email communications to protect top secret information from hacking.

Another problem in communications security came to the general attention of the Bar with the publication of ABA Formal Opinion 06-442. In this opinion, the ABA Committee on Ethics and Professionalism considered a lawyer’s duty to control “metadata.” Metadata is “data about data”- file access times, history, redacted text, identities of computer operators and the like. Metadata is produced by operating systems and most applications, including word processing and email programs. Metadata may well contain information of a sensitive nature protected by Rule 1.6. Many lawyers were unaware of the existence of metadata in emails and other electronic texts prior to the ABA opinion. We suspect that a fair number of lawyers continue to be either unaware or not fully aware of metadata today. Formal Opinion 06-442 makes it clear that lawyers must be sensitive to releasing metadata to third parties and should consider “scrubbing” metadata from a wide range of documents, including emails, on a regular basis. Metadata also poses significant discovery issues which are analogous to the production of original documents (the “best evidence” rule).

One area in which the ABA has taken a weaker position on the intersection of electronic communications and Rules 1.1 and 1.6 is that of inadvertent disclosure of confidential information. The problem of the misdirected letter became more widespread with the increased use of fax machines to transmit legal materials and their common feature—speed-dialing. Speed-dialing [single digit dialing shortcuts for commonly used fax numbers] made the likelihood of inadvertently sending documents to the wrong recipient greater than using traditional mail.

A similar danger is presented by email programs that have
“reply” and “reply all” buttons placed next to each other. A slip of the finger could mean that confidential documents were sent to third parties or, worse, to adversaries. Finally, most modern email users auto-complete sendees in the recipient field, making it very easy to email a person in error. Query whether a lawyer’s duties as a fiduciary require the client to be informed when confidential materials are misdirected.

Initially, the ABA Committee on Ethics and Professionalism opined that lawyers receiving such documents could not read them, but withdrew this opinion and held only that lawyers receiving such documents should inform the sender of their receipt. The rule today in Kansas is that a lawyer who receives a “document or electronically stored information” related to the representation of a client and knows or should know that the document was inadvertently sent “shall promptly notify the sender.” K.R.P.C. 4.4(b) This situation could be prevented by following K.R.P.C. 1.6(c):

A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

This, of course, is not an absolute rule but, rather, leaves it to the disciplinary administrator and the courts to determine what “reasonable efforts” are. Still, one must consider, specifically, what would be reasonable in such a situation. Should lawyers, for instance, be held to have a duty to scrub metadata from documents being transmitted by a method in which inadvertent disclosure is a serious risk? What does it mean to “scrub” metadata, and how should lawyers approach asking for electronic discovery so that they receive the “right” amount of metadata?

Should law firms disable speed-dialing in their fax machines? Should lawyers not use email programs in which the “reply all” function is located next to the “reply” function or disable auto-complete features in the address fields? At the very least lawyers must be alert to these risks and be trained to minimize them to the extent possible. Notably, there are technologies available that have proven capable of filtering wrongly-addressed outbound communications; however, to the authors’ knowledge this is not readily available in a commercial form.17

Legal Research

One explicit factor of Rule 1.1’s first Comment is the preparation and study the lawyer is able to give the matter. 18 The Rule does not, however, specify what constitutes adequate legal research. Most lawyers today would say that simply doing research using hard copy texts, as opposed to online databases such as Lexis, Westlaw or Bloomberg Law would not be adequate in researching complex legal issues. Further, few lawyers have access to libraries sufficiently large to permit them to do complex research using only hard copy texts rather than online databases.

Indeed, many state bar associations, including Kansas, make online research services available to their members at little or no cost.19 But, once again, the online research landscape has changed radically in the past decade. Not very long ago the only serious online legal research providers were Westlaw and Lexis. Then a number of smaller competitive services, including Casemaker and Bloomberg, a massive news and information company, became available and entered the market.

Recent Developments in Legal Search

The explosion of the World Wide Web has been relatively slow to generate completely new forms of legal research, but a few contenders have emerged. Several years ago, Google expanded its Google Scholar search service to include legal materials and patents. Most recently, a startup out of Stanford, Ravel, also entered the legal research market. These engines, rather than being essentially hand-built indexes with commentaries and other reference materials, tend to be of a more automated nature.

There is a very interesting bridge between the worlds of Google-like search and traditionally prepared law indexes. That product comes from West in WestLawNext. It’s a powerful though expensive tool that seems to do extremely well for general legal searches. Based on the idea of a single search field, like most general search engines, it is designed to return results in a way that are conducive to speedy legal research. For example, entry of a statute number in the search blank will simply take the user to the statute, and entry of a case citation will take the user to the case. For keyword searches, the results are categorized into cases, statutes, regulations and so forth - and it is readily apparent from the results what the citations are. For users with a limited-scope WestLawNext subscription, this means that it is relatively easy to pull out of-scope materials from other sources, such as Google or a journal.

Problems with Multi-Source Search

The various legal search services are not all the same. When there were only two major online search providers, Lexis and Westlaw, most law firms chose one or the other. In terms of search algorithms both were very much the same. In terms of presenting results, Westlaw provided West’s trademarked key-numbered headnotes, but both search services presented results chronologically and by jurisdiction. Both also had fairly comparable datasets available for search.

Several years ago we did a series of test searches to see whether searches on Westlaw and Lexis returned the same results and found that, within a small margin of error, they did. With the introduction of plain language searching as an alternative to Boolean searching, both Lexis and Westlaw became relatively easy to use. Every law school in the United States trained law students to use both search services. WestLawNext is sufficiently different from these products that such comparison may not make much sense, but it might be useful to update such research to see how comparable their results are.

Today, lawyers have significantly more choices for online search. They can still use Westlaw or Lexis, but these services are not inexpensive. They can use other companies which charge for services, including some, like Casemaker, sponsored by bar associations. They can also go directly to court websites and do searches in individual court records. These searches are free. Finally, they can also go to Google Scholar or use Google Site Search, which is free.

The difficulty is that not all search services function the same as Lexis or Westlaw do. It is not at all clear that a lawyer
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doing a search in one out of a range of possible searches will necessarily retrieve all relevant cases—there may be differences in search algorithms, difficulty in using particular search engines or use of a limited dataset.

Let us give one example of some of the risks associated with online legal research. Google is probably the dominant web-based search service in the world. Several years ago it quietly entered the legal research market by extending Google Scholar to include cases, law review articles, patents and other legal materials. It is also absolutely free to users. The fact that this service is provided by Google and is free makes it a very attractive site for lawyers who cannot use commercial search services because of cost considerations.

On its face, Google Scholar seems to function quite like Westlaw or Lexis because it uses plain language search. However, Google Scholar does not search a proprietary dataset of cases or other materials as do Westlaw or Lexis. Instead, Google Scholar searches websites available on the Internet. It is what is technically called a “meta-search” engine. Further, Google Scholar uses a secret algorithm to conduct its searches. It is well known that the fundamental basis for Google’s general search is the “PageRank” algorithm, and this technology is also likely at the heart of Google Scholar.

The first result produced from a PageRank search is the website found containing the search terms that is the most “popular,” i.e. has the most links or hits. PageRank may therefore produce very different results, in terms of order and presentation, than do the more traditional search algorithms used by other legal search services. Another major issue: while Google Scholar lists many of the same citations that would appear in a citator, Google does not appear to replicate the analysis required to determine whether a case has been overturned, modified or otherwise deserves special attention from lawyers. A case in a particular jurisdiction that would be easily found in another legal search engine may be nonexistent or hard to find.

Finally, at least for its general search, Google uses other criteria in determining how to present results—and these criteria are secret and change regularly without warning. Most changes are made in order to slow the proliferation of “spam” and irrelevant results, but some are dramatic and have wide-ranging consequences both for search engine users and site maintainers. For instance, Google recently announced that it would give higher priority—and therefore an earlier presentation location—to websites that are “mobile friendly.”20 This is certainly not a consideration that lawyers will find useful in searching for the most relevant court decisions.

A major question, of course, is what constitutes research competence, particularly in online research. The context in which this question will arise is one where a lawyer has failed to discover relevant authority.21 If a court or disciplinary administrator were to adopt the same standard as that used in legal malpractice cases, i.e. a standard of care for competence in the jurisdiction,22 this could present serious problems for lawyers who have not kept up their research skills. We would be particularly concerned about more senior attorneys who have neither the time nor the inclination to stay up-to-date in online research techniques and do not have more competent assistants to do the research for them.

Another standard of competence in research that might be applied is the Principles and Standards for Legal Research published by the American Association of Law Libraries.23 Principle 11(b)(3) states:

“Knows how to appropriately use available resources to research and understands the relative advantages of different methods of finding information.

a. Differentiates among various available online search platforms to employ those that are best suited to the task at hand, and

b. Understands the operation of both free and subscription search platforms to skillfully craft appropriate search queries.”

Lawyers who do not meet this standard may well find themselves at risk of both disciplinary and malpractice actions.

There is a second, relatively unrecognized, risk in doing online legal research. This risk is doing online research on a non-secure computer, a computer that has been hacked and had malware installed that permits unauthorized third parties to track the sites to which the lawyer goes and may permit such third parties to acquire confidential client information by analyzing the lawyer’s search patterns. The software to do such analysis is readily available commercially, and the use of such tracking by companies on the web seeking to determine individual buying patterns has become common. Were such tracking and analysis to be used against law firms by unauthorized third parties, the resulting breach of confidentiality could be devastating.24

Electronic Discovery

Any lawyer who has been involved in complex litigation during the past decade knows that the discovery portion of a trial has undergone a massive transformation. A process that once involved countless hours of tedious sifting through reams of documents has now been changed by the introduction of computer programs that are able to examine electronically stored documents (“ESI”) rapidly and retrieve relevant information in minutes rather than weeks or months.

But, where manual discovery searches could be undertaken by relatively untrained personnel [when one of the authors was a junior associate at a large law firm, this was often the task assigned to the most junior lawyers supervised by more experienced paralegals], computerized e-discovery requires those who do the discovery to have “at a minimum, a basic understanding of, and facility with, issues relating to e-discovery…”25 Several years ago, the Standing Committee on Professional Responsibility and Conduct of California issued an advisory opinion outlining a lawyer’s ethical obligations in handling e-discovery.26 In the digest of this opinion the committee stated:

On a case-by-case basis, the duty of competence may require a higher level of technical knowledge and ability depending on the e-discovery issues involved and the nature of the ESI involved. Such competency require-
ments may render an otherwise highly experienced attorney not competent to handle certain litigation matters involving ESI. 27 [emphasis added]  

The message is, once again, quite clear. Technical knowledge, a different skill from that a lawyer ordinarily considers his or her stock in trade, may be required in the modern practice of law in order to comply with the requirements of Rule 1.1. Again, we must also ask what level of knowledge will be required. The California opinion leaves no doubt whatsoever that the required standard may, in some cases, be extremely high. One presumes the test would be whether the lawyer was able to use current e-discovery software in a reasonable manner. Since virtually every month sees the introduction of new e-discovery software, lawyers who find themselves in discovery and in need of using such software will have a significant burden placed upon them to acquire technical knowledge for which they may be ill-equipped.

The examples discussed here by no means exhaust all of the areas in law practice today that place significant technical demands on lawyers or create risks for lawyers using new technologies. The rise of social media in a culture of over-disclosure quite antithetical to traditional lawyer notions of confidentiality is just one more example where caution is advised. 28

Solutions

Now that we have pointed out some of the more serious issues involving Rule 1.1 and new technologies, we think that it is only fair to suggest some possible solutions. First, Rule 1.1, Comment [1] permits a lawyer to satisfy its requirements when he or she does not have the requisite competence to undertake a representation “to associate or consult with a lawyer of established competence in the field.” 29 Thus, when lawyers find themselves involved in a case that requires a sophisticated knowledge of e-discovery, they may bring on co-counsel with such knowledge.

In many cases such as the use of email or website security, however, a lawyer will not need to bring in co-counsel. Rather, the lawyer will need to hire a technical specialist to come in and audit the office technology, make what changes in that technology may be required and establish procedures designed to implement the new technology. If we may use an everyday analogy, many homeowners will hire a heating and cooling specialist to come in twice a year to examine, clean and maintain their HVAC systems simply because they lack the requisite knowledge to do the work themselves and because it is economically more efficient to outsource the work than to become competent in the field themselves. The same principles, we would suggest, apply to legal technologies. If a lawyer does not wish to acquire the requisite competence in a technology, a consultant with the knowledge to do whatever is necessary can be hired. What a lawyer cannot do is simply ignore the issues.

We suggest, therefore, that there is a range of skills which are inherently required of lawyers. These are “lifestyle” processes, much like other areas of ethics, and require continued training and diligence. These include the continuous and conscientious practice of competence in the following areas:

1. security practices and diligence (Rules 1.1, 1.4, 1.6)
2. study and research skills (Rule 1.1)
3. communications security (Rules 1.4, 1.6, 4.4(b))
4. document accessibility, accountability, search and review (Rules 1.1, 1.4, 1.6, 1.15)

In order to assist with these duties, lawyers should consider bringing on subject matter experts in the following areas:

1. periodic security audits (other industries, such as healthcare, require annual audits)
2. IT equipment and software: selection, maintenance and training
3. e-discovery

Summary

1. Rule 1.1 requires competence to undertake representation.
2. Competence evolves over time, and technology has now progressed to the point where basic technological awareness is required for most representations.
3. Legal research, electronic discovery and communications security are among the “weak links” for lawyers.
4. Rules 1.4, 1.6, 1.15 and 4.4(b) may also be impacted by technology.

About the Authors

M. H. Hoeflich holds degrees from Haverford College, Cambridge University, and Yale Law School. He taught at the University of Illinois from 1980-1988, was dean of the Syracuse University College of Law from 1988-1994, and was dean at the University of Kansas School of Law from 1994-2000. Hoeflich is the author or editor of 15 books and more than 115 articles. He is also a columnist for the Lawrence Journal-World. He is a fellow of the Royal Historical Society, a member of the American Antiquarian Society and the Kansas Correspondent of the Selden Society. He was awarded an honorary degree (LL.D) by Baker University in 2003.

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Frank Siler is a graduate of the University of Illinois at Urbana-Champaign and the University of Kansas. He holds degrees in computer science, accounting, and law, and has more than a decade of experience as an IT consultant. Frank has operated a solo law firm since 2012, but also consults as an information technology administrator for healthcare practices and is a programmer. In 2014, Frank co-founded Toto Labs, a consulting firm dedicated to education and security for law practices.

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Endnotes

1 K.R.P.C. 1.1, Kansas Supreme Court Rule 226.
2 K.R.P.C. 1.1, Comment [1].
3 K.R.P.C. 1.1, Comment [5].
4 K.R.P.C. 1.1, Comment [8].
6 Annotated Rules, 20.
7 For a study of traditional law practice technology, see, M. Hoeflich, “From Scriveners to Typewriters,” Green Bag, 2d. ser., vol. 16, 395 (2013).
8 Personal computers and fax machines, while first developed in the 1960s, were not widely adopted until the 1970s. The Internet and cell phones did not become widely used until the 1980s.
9 Lexis was made generally available in 1973.
10 K.R.P.C. 1.6(a). See also Comments [26] and [27].
11 Annotated Rules, 110.
12 See, for example, ABA Formal Op. 99-413; ABA Formal Op. 11-459.
15 ABA Formal Op. 06-442, often mis cited as 06-422.
18 K.R.P.C. 1.1, Comment [1].
19 Kansas Bar Association members have access to Casemaker. County law libraries often have Westlaw or Lexis subscriptions.
20 The New York Times, April 21, 2015, Sec. B1, at B5
21 In litigation contexts, this may well come in the form of an embarrassing disclosure of such authority by opposing counsel as required by K.R.P.C. 3.3(a)(2).
23 Available online at http://www.aallnet.org/mm/Advocacy/recommendedguidelines/policy-legalrescompetency.html.
26 Id.
27 Id.
28 The use of social media not only potentially poses ethical problems for lawyers but also for judges; see, ABA Formal Op. 462 (2013) [judges’ use of social media].
29 K.R.P.C. 1.1, Comment [1].
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**The Relevance of Civil Rights Encompassing the Daily Practice of Law Replay**
Wednesday, August 31, 2016
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Topeka, KS 66612

**The Relevance of Civil Rights Encompassing the Daily Practice of Law Replay**
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**KBA/KIOGA Annual Oil & Gas Law Conference**
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**Elder & REPT Conference**
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**ORIGINAL PROCEEDING IN DISCIPLINE**

**IN THE MATTER OF BENJAMIN N. CASAD**

**60 DAY SUSPENSION, STAYED UPON CONDITIONS**

**NO. 114,542—JUNE 10, 2016**

FACTS: A complaint was filed in June 2015 charging Casad with violating KRPC 1.1 (competence), 1.3 (diligence), 1.4(a) (communication), and 8.4(d) (engaging in conduct prejudicial to the administration of justice). The complaints arose after Casad was appointed to represent an elderly man in a criminal appeal. The state conceded that there were speedy trial issues that warranted a reversal of the client’s convictions. After submitting his appellate brief, Casad was notified by the court that he failed to comply with Supreme Court Rule 6.02(a)(4) by inadequately citing to the record on appeal. Casad was ordered to submit a corrected brief with adequate citations. Casad failed to comply, and the appeal was dismissed for failure to brief. Casad never informed his client of these events. Trial counsel learned of the dismissal and contacted Casad, who told him that he planned to file a motion that would remedy the dismissal. Casad eventually filed a motion to recall the mandate, which was denied.

HEARING PANEL: A hearing panel of the Kansas Board for Discipline of Attorneys conducted a hearing to consider the petition. The panel considered the relative lack of aggravating factors and the presence of mitigating factors including depression and anxiety and noted that Casad self-reported the misconduct and cooperated with the disciplinary process. The panel recommended published censure and also believed that Casad should be ordered to comply with terms of a KALAP monitoring agreement.

HELD: The evidence before the hearing panel clearly and convincingly established that the charged misconduct violated the KRPC. The court believed that the conditions suggested by the hearing panel were appropriate. But due to the nature of the misconduct, the court imposed a 60 day suspension of Casad’s license. The suspension is stayed upon Casad agreeing to certain conditions. A minority of the court would tie the conditions of the stay to the period of time that Casad is working with KALAP.

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**ORDER TERMINATING PROBATION**

**IN THE MATTER OF KEVIN E. DELLETT**

**NO. 110,452—MAY 31, 2016**

FACTS: On March 28, 2014, the Court placed Dellett on probation for 2 years with specific conditions. The Disciplinary Administrator filed with the Court a report verifying that Dellett fully complied with all probation conditions. The Disciplinary Administrator recommended that Dellett be discharged from probation.

HELD: The Court reviewed the files provided by the Disciplinary Administrator and found that Dellett should be discharged from probation. He is released from any further obligation.

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**PUBLISHED CENSURE**

**IN THE MATTER OF RICHARD HAITBRINK**

**NO. 114,829—JUNE 3, 2016**

FACTS: The Disciplinary Administrator filed a formal complaint against Haitbrink on June 21, 2015. It was alleged that Haitbrink violated KRPC 1.4(a) (communication); 1.8(h)(1) (making an agreement limiting the lawyer’s liability to a client for malpractice); 1.15(a) (safekeeping property); 1.16(d) (termination of representation); 2.1 (exercise of independent professional judgment); 8.3(a) (reporting professional misconduct); and Supreme Court Rule 207(c) (failure to report action). Haitbrink has a history of working with clients on renegotiating residential mortgage loans, and he has a prior history of discipline because of that work. The current case stems from his attempt to modify a loan for his clients. Despite not being able to secure a modification, Haitbrink did not refund fees as promised. Haitbrink also attempted to limit his malpractice liability by including a “hold harmless” provision in his contract.

HEARING PANEL: A hearing panel of the Kansas Board for Discipline of Attorneys conducted a hearing to consider the complaint filed by Haitbrink’s clients. The court believed that Haitbrink committed several violations of disciplinary rules, including failing to deposit fees into a trust account, failing to communicate with his clients, and failing to inform the Disciplinary Administrator about discipline in Washington state. The Disciplinary Administrator recommended that Haitbrink be suspended from the practice of law. The hearing panel believed that Haitbrink should be allowed to practice, but it wanted conditions attached to his continued practice, and it believed that Haitbrink should
be censured.  
Held: Given his continued efforts to make restitution to his former clients, the Disciplinary Administrator changed its position and recommended public censure. The court accepted that recommendation and imposed the discipline of published censure.

**INDEFINITE SUSPENSION**  
**IN THE MATTER OF KERRY DALE HOLYOAK**  
**NO. 114,836—JUNE 10, 2016**

FACTS: Disciplinary Administrator filed formal complaint against Holyoak on March 23, 2015. The alleged violations stem in part from Holyoak’s registering his nonlawyer wife as owner of the law practice formed as a limited liability company—a violation Holyoak voluntarily resolved—and by the law firm website’s misleading reference to mediation services the wife provides. Next, in regards to the attempt by Wilson County Holdings (WCH) to secure mineral rights within the city of Fredonia, Holyoak: (a) drafted a covenant not to sue that falsely claimed he represented 50 other landowners; (b) offered to destroy evidence that could be used by potential litigants against WCH; and (c) directed WCH to pay funds to Holyoak in an offshore account as a form of “asset protection.”

HEARING PANEL: With Holyoak present and represented by counsel, the hearing panel determined Holyoak violated KRPC 5.4(d) (professional independence of a lawyer, relating to ownership of the law office); 7.1(a) (communications concerning a lawyer’s services, relating to law practice website); 8.4(c) (engaging in conduct involving misrepresentation); and 8.4(g) (engaging in conduct adversely reflecting on lawyer’s fitness to practice law). Six month suspension recommended.

Held: Hearing panel’s conclusions were adopted, but a greater sanction than 6 month suspension was appropriate when Holyoak: (a) engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; (b) engaged in multiple acts of conduct that adversely reflected on his fitness to practice law; and (c) attempted to avoid paying taxes on money he hoped to get from WCH. Holyoak refused to acknowledge the wrongful nature of his conduct as pertaining to the covenant not to sue, which ultimately evolved into a scheme of bribery and extortion. Indefinite suspension ordered.

**ORIGINAL PROCEEDING IN DISCIPLINE**  
**IN THE MATTER OF STEPHEN M. STARK**  
**TWO YEAR SUSPENSION SUSPENDED, TWO YEAR PROBATION IMPOSED**  
**NO. 114,583—JUNE 10, 2016**

FACTS: A complaint was filed in February 2015 charging Stark with violating KRPC 1.3 (diligence), 1.4(a) (communication), and 8.4(d) (engaging in conduct prejudicial to the administration of justice). The complaint arose after Stark worked with a municipality to review a contract to purchase property. It was agreed that Stark would file a motion for summary judgment as soon as possible, but Stark delayed the filing for several months, and the motion failed to raise several key issues. Stark also failed to provide his client with a copy of the motion and, more importantly, failed to include an affidavit that was listed as an exhibit to the motion for summary judgment. Stark told the district court that the affidavit existed, even though it did not. When the motion for summary judgment was denied, Stark never told his client or showed him a copy of the ruling. He also failed to communicate a settlement offer. Once all of this was discovered, the client obtained new counsel. Stark self-reported his misconduct to the Office of the Disciplinary Administrator.

HEARING PANEL: A hearing panel of the Kansas Board for Discipline of Attorneys found that Stark committed various misconduct related to his lack of diligence and communication with his client. It also determined that Stark’s mentions of a non-existent affidavit to both opposing counsel and the trial court were prejudicial to the administration of justice. Although there were aggravating factors, the panel noted that Stark’s lengthy history of depression and anxiety, as well as his cooperation with the disciplinary process, warranted that Stark be placed on probation with an underlying suspension of two years. Stark asked for probation, but believed the period of suspension should only be 90 days.

Held: There was clear and convincing evidence of Stark’s misconduct, and the panel’s conclusions were adopted. A majority of the court accepted the Disciplinary Administrator’s recommendation that Stark be suspended for two years with a two-year term of probation. A minority of the court would have imposed a shorter term for the underlying suspension.

**CIVIL**

**DEBTORS AND CREDITORS—SECURED TRANSACTIONS**  
**BORN V. BORN**  
**SEDGWICK DISTRICT COURT—REVERSED COURT OF APPEALS—REVERSED AND REMANDED**  
**NO. 108,963—JUNE 10, 2016**

FACTS: Betty Born served as a trustee of the inter vivos, revocable trust created with her late husband, John. Betty brought this injunctive and declaratory judgment action against Sharon Born. Sharon held two installment promissory notes upon which Born Trust assets had been pledged as security. The notes were issued when the family business was restructured to allow John and a nephew to purchase a majority interest. John died before the first installment payment was due. When Betty attempted to make an annual payment on the note, Sharon refused to accept it. Sharon claimed that John’s death constituted a default and, consequently, accelerated the payment schedule so that the entire balance of the note was immediately due and payable. But when Betty attempted to pay the entire balance, Sharon refused to accept it. She instead wanted to have all of the collateral turned over to her at once. Betty responded by filing a declaratory judgment action claiming that Sharon breached the terms of the notes and violated provisions of the UCC. The district court found in Sharon’s favor, and the Court of Appeals affirmed that finding. The Kansas Supreme Court granted Betty’s petition for review.

Issue: (1) Whether Sharon’s strict foreclosure was allowable under both the terms of the trust and the UCC

Held: It is clear that the UCC applies to these transacc-
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Partitions. Article 9 of the UCC provides a secured party with several remedy options. When considering strict foreclosure, it is allowable only if the debtor consents. Betty did not consent to the strict foreclosure, and in fact she timely notified Sharon that she objected. The court of appeals was concerned that disallowing strict foreclosure left Sharon without a remedy. But the notes contained a severability provision that could have been used to remove any term that was unreasonable. Regardless, the notes gave Sharon remedies other than strict foreclosure. And she was not entitled to both accelerate the balance due while at the same time demanding than strict foreclosure. And she was not entitled to both

determination as to the balance due on the outstanding note.

The case is remanded to the district court for a

accelerate the balance due while at the same time demanding

that could have been used to remove any term that was un-

reasonable. Regardless, the notes gave Sharon remedies other

than strict foreclosure. And she was not entitled to both

the collateral. The case is remanded to the district court for a
determination as to the balance due on the outstanding note.

STATUTES: K.S.A. 2013 Supp. 84-1-201(b)(35); 84-9-109(a)(1), -601(a), -601(c), -602, -603(a), -620, -622, -623; 84-2-302(1); and K.S.A. 84-3-603(c)

Due Process—Habeas Corpus—Prisons

May V. Cline

Reno District Court—Court of Appeals is Reversed—District Court Affirmed

No. 110,095—June 17, 2016

Facts: While incarcerated, May was involved in an altercation with another inmate. May claimed that he was simply trying to defend himself from the other inmate’s attack, and the guard on the scene reported that the other inmate seemed to be the aggressor. Nevertheless, the hearing officer found there was no evidence to prove self-defense and found it to be more true than not that May was involved in a fight. May filed a K.S.A. 60-1501 petition challenging his disciplinary conviction. The district court granted the petition and reversed the hearing panel, finding that May had the right of self-defense unless the preponderance of the evidence showed that the other inmate was not the aggressor. Cline appealed to the court of appeals, which reversed the district court, holding that there was “some evidence” to support the hearing officer’s finding that May was fighting. May successfully petitioned for review to the Kansas Supreme Court.

Issue: When an inmate claims self-defense, who carries the burden of proof?

Held: Disciplinary decisions are generally not subject to judicial review; in order to obtain relief, an inmate must demonstrate a constitutional violation. May’s issue was properly construed as a due process challenge to the sufficiency of the evidence. In a disciplinary proceeding, due process is satisfied if there is any evidence in the record that could support the conclusion of the disciplinary authority. In this case, the outcome turns on what had to be shown to support May’s conviction for fighting, which in turn depends on who carried the burden to prove self-defense. Absence of self-defense is an element of fighting, which clearly establishes a burden on the disciplinary authority to prove that the behavior was not self-defense. In light of the record as a whole, there was no evidence that May did not act in self-defense. Because the disciplinary authority failed to prove one of the elements of the offense, May’s disciplinary conviction must be reversed.

Statutes: K.S.A. 2015 Supp. 21-5108(c), 77-603(c); K.S.A. 60-1501

Partition—Standards of Review—Written Instruments

In Re Estate of Einsel

Comanche District Court—Reversed and Remanded

Court of Appeals—Affirmed

No. 109,367—June 10, 2016

Facts: Carol Einsel filed a petition for partition in district court, naming her ex-husband Rodney as defendant. The disputed ownership interest involved the Einsel family ranch. In the petition, Carol claimed that she had an ownership interest in both surface rights and mineral interests on ranch property. She requested an order which clarified all parties’ ownership interests, directed partition, and awarded payment of oil and gas proceeds. Rodney responded by arguing that the divorce decree might have given Carol 40% of his remainder interest in an inheritance, but there was no real property interest involved in that inheritance. At the partition court, the dispute centered on whether the decree gave Carol an interest in a money judgment or an interest in real property. The partition court agreed with Rodney that Carol was given only a monetary judgment. The Court of Appeals overturned that decision, reading the divorce decree to give Carol an interest in real property. Rodney filed a petition for review, which was granted.

Issues: (1) What standard of review governs this appeal; (2) whether the divorce court awarded Carol a monetary judgment or an interest in real property; (3) what instructions should be given for a remand

Held: Although a district court has broad powers in partition proceedings, those powers are not absolute or beyond appellate review, and an abuse of discretion standard is appropriate. In this case, the outcome is controlled by the interpretation of the divorce decree. The interpretation of a journal entry presents a legal question over which the court exercises de novo review. Because this case turns on the journal entry’s meaning, the review of this case is governed by a de novo standard. The plain language of the divorce decree was sufficient to discern that court’s intent. That instrument, read in its entirety, clearly shows that the divorce court meant to give Carol an interest in real property. While Carol’s interest in real property is clear, the extent of that interest is less clear. Therefore, on remand, the partition court should determine the exact nature of Rodney’s property interest and Carol’s corresponding ownership in that property.

Statute: K.S.A. 60-1003(c), -1003(d), -2101(b), -2106(c)

Due Process—Habeas Corpus

Jamerson V. Heimgartner

Butler District Court—District Court—Appeal Is Moot Question on Review Is Answered

No. 110,977—June 17, 2016

Facts: Jamerson is serving a lengthy prison sentence, and his conviction and sentence have already been affirmed on appeal. In 2010, Jamerson was placed in administrative segregation after reports surfaced of gang violence and possible involvement in contraband trafficking. More than three years later, Jamerson filed a K.S.A. 60-1501 petition arguing that his 1,000+ days in administrative segregation violated his constitutional due process rights. The district court denied
Jamerson’s petition, finding that administrative segregation does not implicate due process and that penal officials are best suited to make classification and placement decisions. The court of appeals affirmed that ruling on appeal. The Kansas Supreme Court accepted Jamerson’s petition for review on the issue of whether the duration of administrative segregation implicates due process rights. The underlying question is moot, as Jamerson has been released from administrative segregation.

ISSUE: Whether the duration of a term of administrative segregation may implicate an inmate’s due process rights

HELD: Administrative segregation is nonpunitive. Courts give penal authorities great deference in the management of the prison system and inmates’ rights are greatly curtailed. Nevertheless, a protected liberty interest may arise when authorities impose an atypical restraint and a significant hardship on an inmate. The due process claims here must be addressed outside of a procedural due process or cruel and unusual punishment framework. Rather, the analysis should focus on several factors, including the duration of the segregation. While there is no liberty interest in the initial assignment to administrative segregation, the duration is a factor that courts must consider when determining whether an inmate has demonstrated a violation of a liberty interest. Because no actual controversy is addressed, this opinion is dicta.

STATUTE: K.S.A. 60-1501

EMINENT DOMAIN—JURISDICTION—WRITTEN INSTRUMENTS
WATER DISTRICT NO. 1 OF JOHNSON COUNTY V. PRAIRIE CENTER DEVELOPMENT, L.L.C.
JOHNSON DISTRICT COURT—AFFIRMED NO. 112,973—JUNE 10, 2016

FACTS: Water District No. 1 (WaterOne) filed an eminent domain petition in district court seeking to condemn 10 tracts of land, subject to existing easements. All of the tracts were owned in fee simple by Prairie Center Development, L.L.C. (Prairie Center). After the district court granted the petition, D.P. and Wanda Bonham and their trust (the Bonhams) – who were not parties to the condemnation proceeding – filed both an appeal of the condemnation order and a motion to void that order. The Bonhams owned an easement in one of the condemned tracts and they argued that WaterOne took their easement without complying with the Eminent Domain Procedure Act (EDPA), specifically by failing to name them in the condemnation petition or send them notice. The district court denied the motion to void and that decision was appealed.

ISSUES: (1) Whether the district court had jurisdiction to consider the Bonhams’ arguments, (2) whether WaterOne violated the Bonhams’ rights during the eminent domain process

HELD: The EDPA is the only avenue through which government can exercise its eminent domain power. There is nothing in the record which suggests that WaterOne failed to fully comply with the EDPA as to Prairie Center, the owner of the subject property, and Prairie Center did not appeal any aspect of the condemnation. The condemnation petition noted that all takings were subject to existing easements, which would include the Bonhams’ easement. Although the Bonhams were not named in the petition, the district court correctly addressed the narrow issue of whether WaterOne’s petition contained a statutory defect by failing to name the Bonhams. And the district court correctly determined that WaterOne’s petition was not statutorily defective, primarily because the petition clearly noted that there was no attempt to take the Bonhams’ existing easement. Because there was no attempt to take the easement, the Bonhams did not need to be named in the petition.

CONCURRENCE (Stegall, J.): Justice Stegall agreed with the conclusion that WaterOne did not condemn the Bonhams’ interest and so was not required to send them notice of the condemnation proceedings or name them in the petition. He believes, however, that the EDPA is drafted in such a way as to allow condemning authorities to employ “drafting gamesmanship” to avoid giving notice to landowners.


ADMINISTRATIVE LAW—TAXATION IN RE EQUALIZATION APPEAL OF WAGNER COURT OF TAX APPEALS—REVERSED COURT OF APPEALS—REVERSED NO. 109,783—JUNE 10, 2016

FACTS: Kristin Wagner appealed the court of appeals’ decision affirming the Court of Tax Appeals’ (COTA) $494,200 valuation of her home for the 2012 tax year. Wagner had previously waged a successful dispute of the 2011 valuation of her home, which resulted in it being assigned a 4.00 “good” quality rating rather than a 4.33 “good+” rating. Because the 2012 value of Wagner’s home was found to be 2.94 percent lower than the 2011 value, Wagner believed her home should be valued at $479,600. COTA disagreed with Wagner and set the 2012 value of her home the same as 2011’s final appraised value, finding that the final appraisal for the 2011 tax year constituted the best evidence of the home’s 2012 value. The Court of Appeals agreed with COTA, and the Kansas Supreme Court granted Wagner’s petition for review.

ISSUE: Whether the county was allowed to decrease the appraisal of Wagner’s property from 2011 to 2012

HELD: Principles of res judicata and collateral estoppel do not apply when different tax years are being disputed, since taxes are levied annually. As long as the county can meet its burden of proof, it can change the quality rating or value of a home from tax year to tax year. But in this case, the county conceded that the value of Wagner’s home was capped at $494,200 – the final value for 2011. The uncontested appraisals for 2012 showed that Wagner’s home suffered a 2.94 percent decrease in value between 2011 and 2012. Under that standard, Wagner’s calculation was correct and her home should be valued at $479,600 for the 2012 tax year.

CONCURRENCE (Johnson, J.): Concurs in the result.

STATUTE: K.S.A. 2012 Supp. 74-2426(c), 77-621(a)(1), -621(c), -621d), 79-1460, -1609
FACTS: Bernhardt was convicted of premeditated first-degree murder for killing victim by pulling her out of car to kick her head and torso multiple times, moving victim to trunk to avoid hearing victim’s labored breathing, and dumping victim on side of road after considering and rejecting thought of taking victim to hospital. On appeal he claimed that the district court erred by (1) adding language to PIK instruction defining premeditation, (2) giving two separate jury instructions on intentional second-degree murder and reckless second-degree murder instead of a single instruction covering both lesser included offenses, and (3) failing to instruct on voluntary manslaughter where his assault of victim began after argument culminated in victim slapping Bernhardt while he was driving. He also claimed that cumulative error denied him a fair trial. Finally, he claimed district judge erred by applying 2013 amendments to Kansas hard 50 sentencing scheme retroactively, and challenged the aggravating circumstances ultimately relied upon to support the hard 50 sentence.

ISSUES: (1) Premeditation instruction, (2) intentional second-degree murder and reckless second-degree murder instructions, (3) voluntary manslaughter, (4) cumulative error, (5) retroactive application of amended Hard 50 statute, (6) aggravating and mitigating circumstances.

HELD: There was no error in district court’s deviation from PIK to include additional language suggested by State. The challenged additional paragraphs did not communicate that premeditation could be instantaneous, only that it could occur over an initial altercation. Read as a whole, the instruction properly and fairly stated the law as applied to the facts of the case. Jury was correctly informed that Bernhardt did not have to premeditate victim’s murder before pulling her out of car and beginning to kick her.

There was no error in giving separate instructions on intentional and reckless second-degree murder. Both were factually appropriate as lesser included offenses of first-degree murder, but PIK’s second-degree murder section does not clearly call for district judge to use a single instruction for both intentional and reckless second-degree murder.

On facts of case, a voluntary manslaughter instruction was not factually appropriate.

There were no errors in this case to support application of the cumulative error doctrine.

On facts of this case, there was sufficient evidence that Bernhardt committed murder in an especially heinous, atrocious, or cruel manner and that this aggravating circumstance was not outweighed by any mitigating circumstances.

DISSENT (Johnson, J., joined by Luckert, J.): District court’s additions to PIK instruction defining premeditation were so contradictory and misleading that a lay juror could not have clearly understood premeditation. District court erred in denying Bernhardt’s request for instruction on lesser included offense of voluntary manslaughter, which was factually appropriate in this case where evidence to reasonably justify a conviction for a heat of passion killing was as or more credible than evidence of premeditation. These errors were not harmless, and cumulative impact denied Bernhardt a fair trial. Would reverse and remand for new trial.

STATUTES: K.S.A. 2015 Supp. 21-5109(b), -5109(b)(1), -5109(b)(2), -5403(b), -6620(e)(5), -6624(e), -6624(f), -6625(a)(1), -6625(a)(2), -6625(a)(6), 22-3414(3); K.S.A. 2014 Supp. 21-6620(e); K.S.A. 2013 Supp. 21-6620, -6620(c)

CRIMES AND PUNISHMENTS—STATUTES—STATE V. NGUYEN

SEDGWICK DISTRICT COURT—AFFIRMED

NO. 112,316—MAY 20, 2016

FACTS: Nguyen entered no contest plea to felony murder with kidnapping as an underlying felony. District court denied Nguyen’s motion for downward durational departure, stating it had no discretion to depart from life sentence for felony murder. Nguyen appealed her sentence, arguing State v. Gleason, 277 Kan. 624 (2004), implicitly acknowledged such discretion for departure.

ISSUE: Life sentence for felony murder

HELD: History and legislative intent of K.S.A. 2015 Supp. 21-6806(c) is examined. Nguyen’s argument for district court’s discretion was not supported by Gleason and was inconsistent with subsequent case law. District court did not err in concluding K.S.A. 2015 Supp. 21-6806(c) does not authorize a district court to depart from a life sentence for felony murder.


JURY INSTRUCTIONS—SENTENCING—SUFFICIENCY OF THE EVIDENCE—STATE V. POTTS

WYANDOTTE DISTRICT COURT—CONVICTIONS AFFIRMED, SENTENCES VACATED, CASE REMANDED WITH DIRECTIONS

NO. 113,302—JUNE 24, 2016

FACTS: While driving a vehicle that he had stolen earlier in the day, 15-year old Potts drove up behind a car. His three passengers fired weapons into the vehicle, killing one person. Potts was charged with felony murder, criminal discharge of a firearm at an occupied vehicle, and burglary. Potts admitted to police that he stole the car, but claimed that he had no idea the shooting was going to take place. Potts was certified
to stand trial as an adult and convicted as charged.

ISSUES: (1) Whether a defendant may be convicted of felony murder and criminal discharge of a firearm when the defendant did not fire any shots, (2) Whether a conviction for burglary will stand when the vehicle is stolen rather than property from inside the vehicle, (3) Whether the court may review the introduction of statements in the absence of a contemporaneous objection, (4) Whether the statutory definition of “intentional conduct” should have accompanied the aiding and abetting jury instruction, (5) Whether the district court’s certification of Potts as an adult violated Apprendi, (6) Whether an error in the sentencing journal entry could be fixed through a journal entry nunc pro tunc

HELD: If someone dies during the course of an inherently dangerous felony, all participants are equally guilty of the felony murder, regardless of who fired the fatal shot. Further, there was direct and circumstantial evidence that Potts intended to aid his companions with the shooting. Conviction for burglary required proving that Potts illegally entered the vehicle with the intent to commit a theft therein. The word “therein” includes completing the theft of the car itself. An appellate court will not review the admission of evidence that is not met with a contemporaneous objection. Further, the statements objected to by Potts included exculpatory evidence that was used by defense counsel. Since Potts did not request that the statutory definition of “intentional conduct” accompany the aiding and abetting jury instruction, its absence was evaluated by a clearly-erroneous standard. In this case, the jury instruction, as given, clearly conveyed to the jury that Potts must have intentionally aided in the commission of the crime. It was therefore not clearly erroneous. Apprendi’s requirement of a jury determination is not required for a juvenile to be tried as an adult. The journal entry of sentencing reflected the sentence announced by the district court; this sentence included lifetime post-release supervision for all of Potts’ convictions. Potts asked the appellate court to order a journal entry nunc pro tunc to reflect that his criminal discharge of a firearm and burglary convictions only carry 36 months of post-release supervision. The State conceded that the sentences were wrong. But because the journal entry accurately reflected the sentence announced from the bench, a journal entry nunc pro tunc is inappropriate. Rather, the case must be remanded for resentencing on the issue.


CRIMES AND PUNISHMENTS—CRIMINAL PROCEDURE—EVIDENCE
STATE V. ROSA
LEAVENWORTH DISTRICT COURT—AFFIRMED—COURT OF APPEALS—AFFIRMED
NO. 108,807—MAY 27, 2016

FACTS: Rosa was convicted of possession of methamphetamine found during search of residence that Rosa owned and occupied with friends. On appeal Rosa claimed: (1) evidence was insufficient to show his knowledge and intent to possess
drugs found in another's bedroom; (2) district court erred by admitting evidence of Rosa's prior drug use in violation of K.S.A. 2014 Supp. 60-455; and (3) prosecutor erred by arguing that the home lab showed that Rosa was bringing methamphetamine into a neighborhood of families and children. Court of appeals affirmed in unpublished opinion, finding in part harmless prosecutorial error.

ISSUES: (1) Sufficiency of the evidence, (2) Admission of prior drug use, (3) Prosecutorial misconduct

HELD: Evidence viewed in light most favorable to State was sufficient to prove Rosa owned the premises, exercised lawful and factual control over all areas of the house, and knew there was methamphetamine present in the house with a methamphetamine bedroom cook operation.

Rosa's knowledge of methamphetamine in the bedroom was a material fact in dispute. District court properly admitted evidence of Rosa's prior acquaintance with methamphetamine as relevant to prove material fact. State did not cross-petition for review of appellate panel's finding of prosecutorial error. Considering factors bearing on ultimate prejudice in context of prosecutorial misconduct, appellate panel's finding of harmless error was affirmed.

STATUTES: K.S.A. 2015 Supp. 60-2103(b); K.S.A. 2014 Supp. 60-455, -455(b); K.S.A. 2010 Supp. 21-3601(q), -36a06(a)

CONSTITUTIONAL LAW—CRIMES AND PUNISHMENTS—EVIDENCE—JURY INSTRUCTIONS
STATE V. TAFOYA
SEDGWICK DISTRICT COURT—AFFIRMED
NO. 107,684—JUNE 17, 2016

FACTS: Tafoya was convicted in 2008 of one count of DUI. Based on three DUI convictions in 1990s, the sentence imposed for fourth DUI included 180-day jail sentence, 12-month post-release supervision, and mandatory fine. In unpublished opinion (Tafoya I), court of appeals vacated sentence and remanded for resentencing because district court failed to make necessary findings concerning Tafoya's finances or consider community service in lieu of fine. Before remand hearing in 2012, legislature amended DUI lookback provisions to encompass convictions occurring only on or after July 1, 2001. Citing remand jurisdiction only to consider method of fine payment, district court rejected Tafoya's request for application of the more limited lookback period. Tafoya appealed, arguing for retroactive application of K.S.A. 2011 Supp. 8-1567(j)(3). Court of appeals affirmed in unpublished opinion (Tafoya II), but Kansas Supreme Court vacated and remanded the appeal to the panel for reconsideration in light of State v. Reese, 48 Kan.App.2d 87 (2012), rev'd 300 Kan. 650 (2014). Court of appeals again affirmed sentence for fourth DUI conviction, finding Tafoya was neither sentenced nor resentenced in the 2012 remand hearing. Tafoya petitioned for review.

ISSUE: Appellate mandate

HELD: Under facts of case and authorities cited concerning remand for reconsideration of amount of fine or method of payment, substantive effect of Tafoya I correctly limited mandate to vacating fine and instructing district court to reconsider method of payment. Tafoya was never resentenced, thus his claim for benefit of the 2011 lookback period necessarily fails.


STATE V. WALKER
SEDGWICK DISTRICT COURT—AFFIRMED
NO. 110,712—MAY 27, 2016

FACTS: Walker was convicted of first-degree premeditated murder. Citing Walker’s prior conviction for a similar killing, district court imposed hard 50 sentence. On appeal Walker claimed: (1) district court failed to instruct jury on lesser included crime of second-degree intentional murder; (2) prosecutor’s statements during closing argument about leaving victims’ bodies like trash without dignity inflamed passions of jury or explained evidence in a repugnant manner; (3) district court should have suppressed statements Walker made during interrogation because Walker was mentally impaired by alcohol consumption and repeatedly invoked right to remain silent; (4) cumulative error denied Walker a fair trial; and (5) his hard 50 sentence was unconstitutional under Alleyne v. United States, 570 U.S. ___ (2013).

ISSUES: (1) Jury instruction on lesser included crime, (2) prosecutor's closing argument, (3) suppression of evidence, (4) cumulative error, (5) Hard 50 sentence

HELD: State’s argument for invited error is rejected. As in State v. Soto, 301 Kan. 969 (2015), Walker merely acquired district court’s ruling that a second-degree murder instruction was inappropriate. The instruction would have been legally appropriate, but no need to address whether it would have been appropriate under facts of case because there was no reasonable possibility the error affected the verdict.

Prosecutor’s statements were distinguished from repugnant imagery condemned in State v. McCaslin, 291 Kan. 697 (2011). Under facts in case, statements were well within wide latitude afforded prosecutors when discussing the evidence. Substantial competent evidence supported district court’s finding that Walker’s mental condition was not impaired, and that statements were voluntary. One instance was identified as an unambiguous invocation of right to remain silent. District court erred in denying motion to suppress, but error was harmless in this case. Assumed error in failing to instruct jury on second-degree murder, and error in admitting evidence obtained in violation of Fifth Amendment, were both harmless. There was no reasonable probability that cumulative errors affected the verdict or denied Walker a fair trial.

Trial court did not engage in unconstitutional fact-finding by using aggravating factor of a prior conviction to impose hard 50 sentence in this case. When a defendant’s hard 50 sentence is based solely on fact of a prior conviction and no mitigating circumstances were presented, the sentence does not violate defendant’s right to jury determination of guilt pursuant to Alleyne.

STATUTE: K.S.A. 21-4636(a)
COURT OF APPEALS

CIVIL

ADMINISTRATIVE LAW—DRIVERS LICENSE—STATUTORY INTERPRETATION
CULLISON V. DEPARTMENT OF REVENUE
SEWARD DISTRICT COURT—REVERSED
NO. 114,170—MAY 13, 2016

FACTS: A law enforcement officer observed Cullison sitting on a running motorcycle. As the officer approached, Cullison manually reversed the motorcycle then began to move forward with the headlight on and the clutch engaged. The officer smelled alcohol and noticed Cullison’s slurred speech and glassy eyes, which prompted him to administer field sobriety tests. After Cullison failed to perform adequately on those tests and after he failed the preliminary breath test, he was taken to jail. A breath test revealed that Cullison’s breath alcohol level was well over the legal limit. The Kansas Department of Revenue (KDR) suspended Cullison’s driver’s license as a result of the incident. Cullison’s appeal to the KDR was rejected. He then appealed to the district court, arguing that he was not operating his motorcycle at the time he was stopped because while it ran, the motorcycle was not driveable due to mechanical issues. The district court affirmed the suspension, finding that Cullison was operating or attempting to operate a motorcycle. Cullison appealed that finding to the court of appeals.

ISSUE: Whether a driver attempting to operate a motor vehicle may have a driver’s license suspended after a failed breath alcohol test

HELD: Under the plain language of the statute, KDR is authorized to suspend a driver’s license only if the driver fails the breath test and the officer certifies that there were reasonable grounds to believe that the driver was “operating a vehicle” while under the influence. This is different from a situation where a driver refuses a breath test; under that scenario, the officer can certify that the driver was operating or attempting to operate a motor vehicle. In this case, the officer certified that Cullison was operating the vehicle. In the absence of sufficient evidence of operation, and given the clear statutory language, the district court erred when it upheld the suspension of Cullison’s driving privileges.


WORDS AND PHRASES—WORKERS COMPENSATION
GRABER V. DILLON COMPANIES
WORKERS COMPENSATION BOARD—REVERSED
AND REMANDED WITH DIRECTIONS
NO. 113,412—JUNE 24, 2016

FACTS: Graber worked for Dillon Companies. After undergoing a kidney transplant, Graber developed diabetes and high blood pressure. Graber managed his conditions with medication and had never had any issues or complications. In 2011, Graber attended a mandatory safety meeting which was held outside of his normal work hours. During the day-long meeting, he ate the food that was provided by the company. After the meeting ended, Graber suffered an episode and fell down some stairs. The fall caused a traumatic brain injury and a fractured neck. The injuries left Graber unable to work, and his employment was terminated. During the evaluation process, the experts were split as to whether Graber’s injuries were solely caused by his fall or whether there was a contributing pre-existing condition. The administrative law judge (ALJ) found that Graber’s fall was the prevailing cause. The Board reversed, finding that Graber’s injury was due to an “idiopathic,” unexplained fall. Since unexplained accidents fall within the idiopathic cause exclusion of the amendments to the Kansas Workers Compensation Act (KWCA), the Board found that Graber’s injuries were noncompensable. Graber appealed.

ISSUE: What does the word “idiopathic” mean as it is used in K.S.A. 2015 Supp. 44-508(f)(3)(A)(iv)?

HELD: The 2011 amendments to the KWCA exclude from coverage accidents or injuries which arise out of a neutral risk with no particular employment or personal character and those that arise directly or indirectly from an idiopathic cause. The statute does not define “idiopathic”. The overwhelming authority shows that “idiopathic”, within the context of the KWCA, is defined as “personal or innate to the claimant.” In this case, the Board incorrectly defined the term and erred by denying Graber compensation. However, there remains an outstanding question of fact as to whether Graber’s accident arose out of and in the course of his employment. The matter must be remanded for further findings of fact.


CONTRACT INTERPRETATION—INSURANCE—SUMMARY JUDGMENT
ARNOLD V. FOREMOST INSURANCE COMPANY
SEDGWICK DISTRICT COURT—AFFIRMED
NO. 114,210—JUNE 24, 2016

FACTS: It is undisputed that Arnold applied for and received an insurance policy covering a vacant home that he owned. A copy of the policy was sent to the address Arnold provided on the application. The policy included a provision notifying Arnold that notice of cancellation would be mailed to the address shown in the policy. Arnold’s policy was cancelled in December 2012. Notice of cancellation and a premium refund check were sent to Arnold at the mailing address that Arnold had previously provided to Foremost. Arnold claimed he never received notice of the cancellation, and it is undisputed that the check has never been cashed. In May 2013, the insured house was damaged by hail. When Arnold tried to make a claim to repair the damage, he...
learned of the cancellation. Arnold sued Foremost for breach of contract, claiming not only that Foremost gave improper notice of the cancellation but also that Foremost had a duty to ask Arnold why he did not cash the refund check. The district court granted Foremost’s motion for summary judgment, holding that the company had no duty to provide actual notice of the cancellation and had no duty to follow up on why the check was never presented for payment. Arnold appealed.

ISSUES: (1) Does Kansas law require actual notice of the cancellation of an insurance policy, (2) Does an insurance company have a duty to inquire as to why a check has not been presented for payment

HELD: Clear statutory language and Kansas Supreme Court precedent establish that actual receipt of a cancellation notice is not required for an automobile policy. Although there is no specific statute that broadens this policy to include property casualty insurance, there is no meaningful difference between motor vehicle liability insurance and property casualty insurance. Moreover, the policy language used by Foremost was clear and unambiguous and Arnold cannot show that this contract is void as against public policy. There is no policy language that required Foremost to follow up with Arnold after the refund check was issued, and there is nothing in public policy or the common law that would create the duty to make such an inquiry.

STATUTES: K.S.A. 2015 Supp. 60-256(c)(2); K.S.A. 40-435, -1015, -3118(b)

MANDAMUS—WORKERS COMPENSATION CINCINNATI INSURANCE CO. V. KARNS SHAWNEE DISTRICT COURT—AFFIRMED NO. 114,605—JUNE 24, 2016

FACTS: Young sustained an on-the-job injury. While his workers compensation claim was pending, Cincinnati Insurance Company (Cincinnati) made temporary total disability payments to Young. After Young’s final award was determined, Cincinnati realized that it had overpaid Young by almost $30,000. After realizing its mistake, Cincinnati asked the Director of Workers Compensation (Director) to order the Workers Compensation Fund to reimburse Cincinnati in the amount of the overpayment. The Director denied the request, finding that there was nothing in the workers compensation statutes that authorized the repayment. Cincinnati sought judicial review of the decision, but the district court refused to enter a ruling after finding that it lacked subject matter jurisdiction. Cincinnati appealed that dismissal to the court of appeals.

ISSUE: Did the district court, and by extension the appellate court, have subject matter jurisdiction to consider an appeal from the Director’s decision

HELD: The Kansas Workers Compensation Act is comprehensive and has its own provisions that cover appeals. Consequently, the Kansas Judicial Review Act does not provide for the right to appeal this decision from the Director. Since there is no right of appeal in the district court, Cincinnati’s only relief lies through a writ of mandamus.

STATUTE: K.S.A. 2015 Supp. 44-534a(b),-536(b), -549, -551(1)(1), -555c(a), -556(a), -556(d), -556(e), 77-603, -603(a)

CRIMINAL

CRIMES AND PUNISHMENTS—EVIDENCE—JURY INSTRUCTIONS STATE V. ALLEN SEWARD DISTRICT COURT - AFFIRMED NO. 112,780 - MAY 6, 2016

FACTS: Following a traffic stop and the discovery of drug evidence in a car, Allen was convicted of offenses including possession of methamphetamine. Allen appealed, arguing evidence of residue of methamphetamine on scale and inside a pipe was insufficient to prove he possessed the drug. He also argued the reasonable doubt instruction, PIK Crim. 4th 51.010, given to the jury erroneously precluded the possibility of jury nullification.

ISSUES: (1) Sufficiency of the evidence, (2) Burden of proof instruction

HELD: Sufficient evidence supported Allen’s conviction for possession of methamphetamine. Residue visible to naked eye existed on scale and in pipe residue, and these items were found in Allen’s vehicle.

Criminal defendants are not entitled to have jury instructed on its inherent power of nullification. Unlike “must,” “shall,” and “will,” the word “should” does not express a mandatory, unyielding duty or obligation; instead, it merely denotes the proper course of action and encourages following the advised path. Accordingly, the reasonable doubt instruction in PIK Crim. 4th 51.010, which states that if the jury has no reasonable doubt as to the truth of each of the claims asserted by the State, it “should find the defendant guilty,” does not usurp jury’s inherent power of nullification. Unpublished court of appeals’ cases in accord were cited.

STATUTE: K.S.A. 2015 Supp. 21-5202(i), -5701(q), -5706(a)

JURISDICTION—SENTENCING—STATUTORY INTERPRETATION STATE V. BUELL SHAWNEE DISTRICT COURT – AFFIRMED NO. 113,881—JUNE 24, 2016

FACTS: Buell pled guilty to robbery and attempted kidnapping. Buell’s criminal history included two 2002 Florida juvenile adjudications, one labeled as burglary of a dwelling and one labeled as burglary of a dwelling while armed. At sentencing, Buell objected to the classification of the adjudication for burglary of a dwelling while armed as a person felony, claiming there was no comparable Kansas offense because of the differences in the intent elements of the Florida and Kansas burglary statutes. The district court overruled the objection and sentenced Buell with a criminal history score of A. Buell appealed.

ISSUES: Whether the district court improperly made findings of fact when categorizing a Florida burglary adjudication as a person felony for criminal history purposes

HELD: A legal challenge to the classification of a prior burglary adjudication can be raised for the first time on appeal. Even if a defendant waives a jury trial, the defendant maintains the right to require each fact used to enhance a sentence to be proven to a jury beyond a reasonable doubt.
CRIMES AND PUNISHMENTS—DIVORCE—PROTECTION FROM ABUSE ACT—STATUTES
STATE V. HENDRICKS
REVERSED AND REMANDED
NO. 113,597 - MAY 6, 2016

FACTS: Hendricks’ divorce decree was entered in 2006. Ongoing child-custody disputes resulted in a 2013 order that Hendricks have no contact with ex-wife or the two minor children. Hendricks was arrested when ex-wife reported two phone messages he left in 2014 about picking up the kids. State charged and convicted him of violating a protection order, K.S.A. 2013 Supp. 21-5924, entered under K.S.A. 2013 Supp. 23-2707. Hendricks appealed, arguing in part that K.S.A. 2013 Supp. 23-2707 authorizes temporary orders only before the final judgment, not several years after the divorce decree.

ISSUE: Violation of protection orders and K.S.A. 2013 Supp. 23-2707

HELD: Entry of decree of divorce constitutes the final judgment in that case, notwithstanding district court’s retained jurisdiction over child-custody matters. A no-contact order entered after the divorce decree cannot serve as basis for a criminal charge under K.S.A. 2013 Supp. 21-5924 because the order was not entered under authority of K.S.A. 2013 Supp. 23-2707, or under facts of this case, any other statute listed in K.S.A. 2013 Supp. 21-5924. District court had authority to enforce the 2013 no-contact order through contempt powers or otherwise, but Hendricks’ violation of the order was not a crime under K.S.A. 2013 Supp. 21-5924. Reversed and remanded to set aside Hendricks’ conviction and to dismiss the criminal complaint.

STATUTES: K.S.A. 2013 Supp. 21-5103(a), -5924, 23-2707, -2707(a), -3001, -3005, -3218, -3219, -3221, 60-254(b), -260; K.S.A. 60-3105, -3106, -3107, -31a05, -31a06

CRIMINAL PROCEDURE—PROBATION
STATE V. LLOYD
RENO DISTRICT COURT—VACATED AND REMANDED
NO. 114,389—JUNE 17, 2016

FACTS: Lloyd was convicted in 2013 and sentenced to 24-month probation with underlying 32-month prison term. In 2014 district court granted State’s motion to revoke Lloyd’s probation based on Lloyd’s being bound over for arraignment on a new kidnapping charge. Lloyd’s defense counsel stipulated to the pending criminal action and to standard at the preliminary hearing being higher than for probation violation. Lloyd appealed.

ISSUE: Revocation of probation

HELD: District court erred in revoking probation based solely on probable cause finding made in the kidnapping case. State did not present any evidence of probation violation other than its own statements regarding the new kidnapping charge. State’s claim of invited error was rejected because defense counsel did not stipulate to Lloyd’s violating probation, and no party can properly stipulate to an incorrect application of the law. District court’s probation revocation order and imposition of sentence was vacated. Case was remanded for new probation violation hearing.

STATUTES: K.S.A. 2015 Supp. 22-2902(3), -3716(b)(2)

SENTENCING—STATUTORY CONSTRUCTION
STATE V. MOORE
SEDGWICK DISTRICT COURT—AFFIRMED
NO. 113,545—JUNE 24, 2016

FACTS: Moore pled guilty to aggravated indecent liberties with a child. At sentencing, the district court classified Moore’s 1984 Oregon conviction for burglary of a dwelling as a person offense and he was sentenced with the criminal history score of “A.” In 2014, Moore moved to correct an illegal sentence, claiming the classification was incorrect. The district court denied the motion, finding that the Kansas Supreme Court’s decision in State v. Murdock did not apply. Moore appealed.

ISSUE: Whether Moore’s Oregon conviction for burglary of a dwelling should have been classified as a person offense

HELD: An appellate court may correct an illegal sentence at any time. When assigning a criminal history score to an out-of-state conviction, the court first determines whether the conviction was a misdemeanor or a felony based on the law of the state where the defendant was convicted. Next, the court determines whether the prior conviction is a person or nonperson offense by comparing the prior-conviction statute to the comparable offense in effect in Kansas on the date the current crime was committed. If there is no comparable Kansas crime, the prior conviction must be classified as a nonperson crime. When evaluating a burglary conviction, if the prior burglary conviction involved burglary of a dwelling, it is classified as a person crime. In Moore’s case, it was undisputed that the prior crime was a felony in Oregon. And even though the intent requirement of the Oregon statute differed slightly from the relevant Kansas statute, the prior conviction was still properly categorized as a person felony.

STATUTES: K.S.A. 2015 Supp. 21-5111(k), -5807(c), -6804(a), -6805(a), -6809, -6810, -6811(d), -6811(e); K.S.A. 2004 Supp. 21-4704(j); K.S.A. 22-3504
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As our readers are aware, the KBA Board of Editors recently revised our Journal’s publication policies. Several of our Board members took on the responsibility of researching and creating proposed guidelines for the Board’s consideration and subsequent approval. The Board thanks Julene Miller, Teresa Schreffler, Lisa Jones, and Nathalie Yoza for their hard work.

Well done!
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