2016 Legislative Review
by Joseph N. Molina III
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The Journal Board of Editors is responsible for the selection and editing of all substantive legal articles that appear in The Journal of the Kansas Bar Association. The board reviews all article submissions during its quarterly meetings (January, April, July, and October). If an attorney would like to submit an article for consideration, please send a draft or outline to Jennifer Salva, Journal Editor at jsalva@ksbar.org.

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Let your VOICE be Heard!

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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.
2017-18 KBA Officers & Board of Governors Elections

It's not too early to start thinking about KBA leadership positions for the 2017-18 leadership year.

The KBA Nominating Committee, chaired by Natalie Haag of Topeka, is seeking individuals who are interested in serving in the positions of Vice President, Secretary-Treasurer, and KBA Delegate to the ABA House of Delegates.

Officers

- **President**: Steve Six, 2016-17, Greg Goheen 2017-18
- **President-elect**: Greg Goheen, 2016-17, Bruce W. Kent 2017-18
- **Vice President**: OPEN
- **Secretary-Treasurer**: OPEN
- **KBA Delegate to the ABA House of Delegates**: Rachael K. Pirner is eligible for re-election
- **Young Lawyer Delegate to the ABA**: OPEN

Interested candidates should send detailed information to Jordan Yochim, KBA Executive Director, at 1200 SW Harrison St., Topeka, KS 66612-1806, or at jeyochim@ksbar.org by **Friday, October 28, 2016**, for distribution to the Nominating Committee. Candidates seeking an officer position may be nominated by petition bearing 50 signatures of regular members of the KBA, with at least one signature from each governor district. Petitions are due **Friday, November 18, 2016**.

Board of Governors

Candidates seeking a position on the Board of Governors must file a nominating petition, signed by at least 25 KBA members from that district, with Jordan Yochim by **Friday, November 18, 2016**. If no one files a petition, the Nominating Committee will reconvene and nominate one or more candidates for open positions. The seven KBA districts with seats up for election in 2016 are:

- **District 1**: Mark Dupree is eligible for re-election, Johnson County.
- **District 3**: OPEN-Eric Rosenblad is not eligible for re-election, Allen, Anderson, Bourbon, Cherokee, Crawford, Labette, Linn, Montgomery, Neosho, Wilson, Woodson counties.
- **District 5**: OPEN-Terri Savely is not eligible for re-election, Shawnee County.
- **District 7**: Gary Ayers is eligible for re-election, Sedgwick County.
- **District 8**: OPEN-John Swearer is not eligible for re-election, Barber, Barton, Harper, Harvey, Kingman, Pratt, Reno, Rice, and Stafford counties.
- **District 11**: OPEN-Nancy Gonzales is not eligible for re-election, Wyandotte County.
- **District 12**: OPEN-William Quick is not eligible for re-election, Out-of-state.

To obtain a petition for the Board of Governors, please contact Jordan Yochim at the KBA office at (785) 234-5696 or via email at jeyochim@ksbar.org. If you have any questions about the KBA nominating or election process or about serving as an officer or member of the Board of Governors, please contact Natalie Haag via email at nhaag@capfed.com, or Jordan Yochim at (785) 234-5696 or via email at jeyochim@ksbar.org.
How Can Lawyers Be Better Team Leaders?

Being a lawyer is often a solitary experience—many late nights drafting documents at your computer. Lawyers are pretty good at working by themselves. Other times a team approach is required. Many great leaders have shared their philosophy on performance. Bill Gates’ mantra was: “I will always choose a lazy person to do a difficult job because a lazy person will find an easy way to do it.” Bill Self’s philosophy, which sounds specific, but which he applies to any situation: “Desire outweighs footwork when it comes to crashing the glass.”

Our world is more connected, lawyers are more connected, and we work together more on collaborative projects than ever before. The skills that make a traditionally great lawyer don’t always translate to being a great team leader. Maybe that is why some young lawyers or staff members on the team find the practice unsatisfying. Writing this president’s column was assigned to a lazy person, so I am borrowing heavily from a recent New York Times article on what makes a great team.

The Google Campus in Mountain View, Calif., is a magical place. I was fortunate enough to visit it several years ago. In order not to ruin your day and make your office seem a Dicksen dystopia I will spare you a description—let’s just say if your dream coffee break involves riding a bike across campus to the onsite yoga studio followed by a couple of games of Minecraft while you enjoy a venti decaf soy caramel macchiato, you would be at the right spot. Google scientifically studied teams. It put together random people, high achievers, extroverts, introverts, and lazy people and then studied how the teams performed. Google wanted to find out how to make its employees faster, better, more productive. In today’s workplace an employee’s entire day can be spent collaborating with others. Research shows teams tend to innovate faster, see mistakes more quickly, and find better solutions to problems—and more importantly people working in teams report more job satisfaction.

So what did Google’s “People Operations” department discover? Google found that putting all introverts or big personality members together did not matter. All the smart people together versus a mix of intelligence did not make a difference. Should you allow everyone to talk as much as they want or limit input? Open disagreement or reduce conflicts? A few traits rose to the top. The best managers communicate well (no surprise here) and avoid micromanaging. What Google found is that “group norms” were the biggest influence on whether a team succeeded. Group norms are the unwritten rules or team culture of group behavior. Does the group interrupt each other or take turns presenting, chat socially and then get down to business or start right away on work? Research found that what mattered was how teammates treated each other. On high performing teams, people spoke in roughly the same proportion and engaged in conversational turn-taking. In some groups everyone spoke on each topic, in others speaking leadership shifted throughout the group and by the end of the meeting everyone had contributed roughly equally. As long as everyone provided input, the team did well. Conversely if only one person or a small group dominated the talk, the team did not perform as well. Second, the good teams had members with high “average social sensitivity.” They were skilled in seeing how others felt based on body language, voice tone, and non-verbal cues. The team could tell when someone was left out. Weaker teams were not receptve to colleagues’ feelings.

To build a high achieving team, let all team members participate, be sensitive to team members’ personalities, take time to share socially by taking an interest in members’ personal lives—it builds a feeling of “psychological safety”—creating shared team beliefs and an atmosphere where the team is a safe place to express your thoughts without being put down or embarrassed. The single factor great teams all shared was creating this atmosphere of “psychological safety.” Show enthusiasm for members’ contributions. Create a fun space where people feel energized and relaxed and free to share personal details about their lives. Google’s research showed that whether it is your law office, your board, or your book club, the best groups listen to each other and show sensitivity to feelings and needs. If this is your law office atmosphere, great—now for the other 99 percent of you—maybe some of the tips here will help you create better and more productive teams.

ENDNOTES
1. Quote is variously attributed to Bill Gates, Walter Chrysler, and others.
2. This column borrows heavily if not entirely from: What Google Learned From Its Quest to Build the Perfect Team, New York Times, July 20, 2016

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.

ssix@ksbar.org
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Welcome all the Lawyers

In my summer KBA column, entitled “Kill all the Lawyers,” I emphasized the importance of lawyers participating in the legislature, county commissions, city councils, and non-profit boards as an extension of our responsibility to improve the law and our profession. It is easy to imagine the leaders we hope will serve and model those phantasms after past leaders who have inspired. Yet while we consider serving and encouraging others to serve, we should not overlook the individuals who are already doing their part.

This year’s YLS board started its work during the KBA Annual Meeting in Wichita. The new team traveled from around the state so we could discuss the issues facing new lawyers and plan how we can best serve the attorneys who are trying to shape their new professions into careers. Like any service opportunity, the new team gave their time, resources, and energy to participate.

In addition to recognizing their efforts, I want to introduce the YLS board to the bar as a whole. If you encounter these individuals, it is worth your time to know them and to encourage them to continue giving their time to the profession and their respective communities. It is worth it not only because it’s important to thank those who serve but also because these individuals are defying trends in engagement by contributing significantly and at an early stage in their careers.

Last year, The Economist analyzed a study on disengagement. The author highlighted how Millennials are neither voting nor running for office. This lack of political engagement does not mean younger Americans have ceased in civic-mindedness. It just means the service is taking place outside of the political arena.

And while participation in the KBA is not elected office, it is hard to be a part of the bar and miss the importance of both voting and supporting good people who are willing to run for office. Engagement here is the first step in serving beyond a community of one, and I am pleased to serve alongside these individuals:

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The author of an article in *The Economist* commented that “[n]o democracy thrives on apathy.” As the 2016-17 YLS Board begins its year of service, I am optimistic that our profession has lawyers who will embrace the responsibility that comes with being an engaged lawyer and a good citizen, and I am honored to have the opportunity to work alongside so many of them.

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**Endnotes**


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**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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One day in 1998 Topeka renamed itself ToPikachu to celebrate the U.S. debut of Nintendo’s hit video game, Pokémon, and its mascot, Pikachu. Pokémon would continue its meteoric rise, becoming one of the most successful video game franchises in history with almost $280 million in total sales. That success exploded anew in the general public’s consciousness in July 2016 with the mobile game and cultural event called Pokémon Go.

The mechanics of Pokémon Go are simple. The app is GPS-connected and your onscreen avatar moves on a Google map as you walk the streets of your city, burg, or village searching for Pokémon (a Romanized contraction of the Japanese word for “pocket monsters”). A tracker vaguely points to nearby Pokémon requiring you to walk and explore until the monsters finally pop up onscreen. Catch the Pokémon with a tap and a swipe to land a red, white, and black Poké ball on the Pokémon’s head. If your aim is true, the Pokémon is captured in the ball and added to your collection.

The onscreen playfield also highlights Poké stops throughout your area. These correspond to physical sites of interest in the real world. Visiting a Poké stop results in rewards like more Poké balls. For example, the plaque commemorating the Women’s Attorney Association of Topeka on the Kansas Supreme Court grounds is a Poké stop. Players may also find eggs at Poké stops that hatch into Pokémon when the player walks two, five, or ten kilometers. Team play is encouraged at “gyms” where Pokémon can train and battle to allow the three teams of Valor (red), Mystic (blue), and Instinct (yellow) to claim territory. The south steps of the capitol are one of Topeka’s hotly contested gyms.

A Runaway Hit
Pokémon Go is the biggest mobile game release in U.S. history, attracting more users than Twitter within just three days of its release on July 6 of this year. Virtually every national and local news outlet ran stories about the game as groups of players wandered around neighborhoods, parks, and historical sites. Even an attorney conference in western Kansas held a Pokémon Safari for players to hunt and battle the virtual monsters. The financial impact of the free game has been stunning, generating revenues of $35 million from optional in-game purchases and inciting a rally that doubled Nintendo’s stock price. The success trickled down with many restaurants, museums, and even garage sales taking advantage of player traffic at Poké stops or gyms.

A Property Question
It’s not all cute, cuddly little monsters for Pokémon Go. Any run away cultural phenomenon triggers backlash, and so there has been considerable media time devoted to dangers both real and imagined. Yes, a handful of the 21 million players have wandered into danger with their faces buried in their phone screen. No, there have been no cases of ISIS using Pokémon Go to target churches with Pokémon gyms in the parking lot. We will wait to verify Oliver Stone’s claim that it is the beginning of a dystopian new “robot society.” (Note that Pokémon Go is built on the same game engine and mechanics of a prior game called Ingress which has been running for two years.)

Trickier than the odd-ball cases of dangerous distraction are genuine legal questions lurking in the game. Most interesting are some thorny conflicts from the intersection of real property and virtual property. The vast library of Poké stops in the game represents real places — some of them memorials, businesses, and even residences that did not ask to participate and do not want the traffic. The memorial to fallen law enforcement officers on the capitol grounds is also the site of a virtual Pokémon gym. It is a completely virtual gym existing only as
a data point in the game and in no way alters the landscape of the memorial. It does, however, increase traffic to the site and some of that traffic is there only to battle virtual monsters and not to consider the purpose of the memorial.

Poké stop and gym traffic near sites also creates risks of trespass, vandalism, or disturbance from groups of players arriving to play. While some sites welcome the traffic, those that do not are not yet successful in “unhooking” their site from the game—nor is it clear they should be. Is the company that places a Poké gym near your property responsible for the actions of the company’s customers while around your property? Are the real property owners responsible for harm that befalls players arriving to play in the virtual world? Incidentally, these issues have been brewing since the first GPS navigation systems arrived, but the pomp and circumstance of 21 million new players may make Pikachu the mascot for the legal issues arising when the owner of a virtual world plops their game on top of the real property of another. It is a conflict that has been brewing, but Pokémon Go may be a tipping point forcing us to find some resolution (while hunting for cute little monsters).

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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Storytelling and the Numbered Paragraph

Don’t Let the Form Detract from the Substance

I’ve written before in this space about the importance of a good, factual narrative in legal writing. The use of storytelling conventions in your fact statement results in a document that is more easily understood and, just as important, more persuasive to the reader.

Most legal writers will find that the use of storytelling concepts is relatively easy to execute in a document such as an appellate brief, where an entire section of the brief is devoted to the “statement of the case” (in federal practice), or the “statement of the facts” (in Kansas state practice). Because these sections impose relatively few restrictions on structure and content, they provide a welcoming canvas on which the writer can exercise his or her persuasive storytelling techniques.

When it comes to persuasive writing at the trial court level, however, the legal writer is sometimes confronted with a formidable obstacle to persuasion: the numbered paragraph. Something about the need to place factual statements in numbered paragraphs causes a dissonance in many writer’s minds. Instead of a fact section that forms a compelling, flowing, and easily understandable narrative, the numbered fact section becomes a rat’s nest of repetitive, unconnected factual statements without any coherent pattern.

This does not have to be. You, as a legal writer, can avoid the problems connected with the numbered paragraph, and write clear, concise, and, dare I say, persuasive, factual statements in your motions and pleadings at the trial court level.

At the outset, one thing to consider is whether, in fact, your fact section needs to be in numbered paragraphs at all. While Fed. R. Civ. P. 10(b) requires that “[a] party must state its claims or defenses in numbered paragraphs,” and K.S.A. 60-210(b) requires the same, there is a question whether this applies to documents such as memoranda of law. Technically, Fed R. Civ. P. 7(b)(2) and K.S.A. 60-207(b)(2) both state that “the sections of this article governing . . . matters of form in pleadings apply to motions and other papers.” However, a number of federal courts have ruled that the rules regarding numbered paragraphs do not apply to those motions that are really memoranda of law to the courts. One court has even gone so far as to state that because “[a] motion to dismiss is a legal memorandum to the court, and it should be written as a legal memorandum” it “would be inappropriate to submit a motion to dismiss in numbered paragraphs.”

Certainly, there are some factual statements and claims that must be submitted in numbered paragraphs, such as those contained in a complaint or answer, or where numbered paragraphs are advisable, such as the statement of uncontroverted facts in a motion for summary judgment. However, when the numbered paragraph is not required by rule, local rule, or judicial preference, counsel should think very seriously about not using numbers.

If, however, numbers are the order of the day for the fact section, you as a legal writer need to understand one important thing: the rules for writing fact statements in a numbered paragraph statement of facts and an unnumbered statement of facts are not different! It is still incumbent upon the writer to present the facts of the case to the court in a clear and concise manner that can be easily understood, and that advances his or her client’s case. In fact, the need to do so is heightened in situations when the numbered paragraph must be used, because the use of the numbers for each is inherently distracting to the reader. Thus, the legal writer using numbered paragraphs must overcome the distraction through writing with enhanced clarity and persuasion.

One of the best tools for doing so is the use of the narrative. Because humans are hard-wired to think in terms of the narrative, they understand, retain, and are persuaded by material presented in a narrative form better than any other. The use of a numbered paragraph should not be allowed to get in the way of the narrative structure.

So, here are some steps to take when writing facts in numbered paragraphs to emphasize the narrative. As I mentioned above, these are still the same sort of things to take into account when writing any statement of facts, numbered or not. They just become especially important when the distraction of the numbered format is involved.

First, figure out what the purpose of the story you are telling in your motion or pleading is. While this may seem blatantly obvious, it helps to keep in mind that a motion or pleading has a specific purpose, and that your factual narrative should advance that purpose, not merely fill up the bare requirements of the rules. For example, the statement of facts in a complaint or petition should do more than just meet the requirements of a “short and plain statement of the claim showing that the pleader is entitled to relief.” A good complaint should convey to the reader in no uncertain terms that “a wrong has been committed, and that something should be done about it.” Other types of pleadings and motions have different objectives.

Second, figure out what facts are essential to accomplish this objective. In doing so, you will be guided by the legal elements of the pleading or motion that you are writing, but you should also consider the narrative that you are constructing. Ask yourself not only what facts are necessary to prove the legal elements necessary, but also what facts you most want the court to know in considering your motion, and what other supporting facts are necessary for the essential facts to make sense to the court.

Third, construct the narrative. Arrange the facts in the manner that you would ideally want to present them if you were telling the story of your case or motion. Many times, this will be chronologically, because a chronological order is easier to understand. However, other times some other order, such as a topical one, will tell the story better. The key is to pick the organization that tells the story as you want the court to understand it. (Often it is helpful to try to explain the case to someone else. After all, you have spent so much time with the case that you instinctively know things about it and may not recognize that you need to spell them out.)
When constructing the narrative, the facts that you have identified as essential should be in the thesis sentence for your paragraphs. Further, the other statements in the paragraph should relate to the thesis sentence. Basically, each thesis sentence should be a statement of an essential fact. The sentences after it should be supporting facts that help explain it. Be careful to keep every fact that you've identified as essential as a thesis sentence. This may mean that you are writing shorter paragraphs than you are used to, but it will serve you better through the other statements in the paragraph. Do they tell a complete story, including all of the essential facts you want the court to know? If so, then you have done it correctly.

Finally, you add the numbers to each of your paragraphs. By waiting until this step to introduce the numbers, you will allow the reader to easily understand your case and what you are trying to accomplish.

Fourth, check to see if you've told your story. The easy way to do this is to read your thesis sentences, one after the other. Do they tell a complete story, including all of the essential facts you want the court to know? If so, then you've done it correctly.

Endnotes
2. Id. at 12-13.
5. For instance, Kan. Sup. Ct. R. 6.02(a)(4) requires only that the statement be “concise but complete,” and “without argument.” Similarly, Fed. R. App. P. 28(a) requires only that the statement be “concise.”
7. Jarzynka, at 1265.
8. See Fed. R. Civ. P 10(b); K.S.A. 60-210(b).
9. See Fed. R. Civ. P 56; K.S.A. 60-256. The statement of uncontroverted facts in a motion for summary judgment is an art form all its own, and deserves its own treatment, which I will endeavor to provide in an upcoming issue.

About the Author
Jeffrey D. Jackson is a professor of law at Washburn University School of Law, where he teaches Legal Analyses, Research and Writing, Constitutional Law, Constitutional History, and Comparative Constitutional Law. He received his B.B.A. in economics from Washburn University in 1989, his J.D. from Washburn Law in 1992, and his LL.M. in constitutional law from Georgetown University Law Center in 2003. While at Washburn, Jackson was assistant editor for the Washburn Law Journal and currently serves on the Kansas Judicial Council Death Penalty Advisory Committee.
jeffrey.jackson@washburn.edu
During the summer the Kansas Bar Foundation launched a new project. The Foundation created and placed online a new educational website regarding the Kansas court system. The website provides educational information about the history of the court system, how the court system works, how judges are selected, and even has results of recent judicial evaluations ("Judge the Judges"). It also provides a list of links to a variety of judicial and law-related websites, and has constitutional and statutory language regarding the courts and judicial administration. If you haven’t already visited the site, please go to ourkansascourts.org, take a look around, and let us know what you think of the website.

At this juncture, the Foundation has just dipped its toes in the water. The Foundation intends to maintain this site for years to come, making ongoing enhancements. The goal is to provide information about the court system to all citizens, and over time to make the website especially helpful to schools for use in civics instruction.

The site has a modern appearance, and we think it provides a user-friendly browsing experience, but we welcome suggestions for improving the look and feel of the site.

As we update and upgrade the site over the coming weeks and months, we need your assistance in doing so. The Foundation will appreciate it if you will identify additional information and resources to be added to the site; provide comments about how the site can be made more relevant to you, your clients, and other Kansas citizens; offer editing suggestions; and by sending a contribution to the Foundation to help address the economic costs of maintaining a site.

The recent launch of this site is the result of volunteer work and encouragement by many, but those deserving special mention are Judge Evelyn Wilson, Rich Hayse, Ed Nazar, Scott Hill, Sarah Warner, and Laura Ice. Also worthy of note is that the Board of Trustees of the Foundation voted unanimously to create this website—but only after a very vigorous debate about the scope and goals of the project.

We hope you enjoy the new site. Don’t forget to keep checking back in as we update the site with new content, and if you have feedback or questions about the website, please send me an email.

And as I will ask you each time, please join us by making a pledge to be a Fellow of the Kansas Bar Foundation. It requires only a pledge of $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.

todd.thompson@trqlaw.com
My Ties are at the Bar
A KBA fundraiser for Pro Bono Programs at KLS

It is that time of year and instead of Jeans for Justice, the KBA is hosting My Ties for Justice. Each year, the KBA dedicates time and resources to do a fund raising campaign for pro bono programs at Kansas Legal Services. The past couple of years the campaign provided individuals and law firms an opportunity to show their support by paying $5 to wear jeans to work. The response from KBA members has been quite good. This year, the theme is My Ties at the Bar and members can wear a tie or scarf to show their support.

In October each year, the ABA promotes Celebrate Pro Bono Week during the last part of October. The color for this celebration is orange. The KBA centers its KLS fundraising campaign around Celebrate Pro Bono Week. Help show your support by paying $5 to wear an orange tie or scarf.

Win an Amazon Gift Card

Have some fun with this. The KBA would like you to consider hosting a day for your firm to wear your ties and scarves and send us photos. You may even win the individual or group photo contest!

Visit www.ksbar.org/MyTiesForJustice to download a flier to promote this event in your office. Submit your photo for the photo contest to Anne Woods awoods@ksbar.org by November 4, 2016.

Donate your Gently Used Tie or Scarf

During this campaign, the KBA will also be gathering gently used ties or scarves (of any color or design) to donate to local organizations that provide accessories for those in need who may need to attend a job interview or special event. You can drop off your items at the KBA or at any KLS office.

All proceeds will support programs at Kansas Legal Services.
IOLTA Snapshot: SAFEHOME

Legal Advocacy Program Provides Onsite Attorney for Domestic Violence Survivors

In 2015, SAFEHOME, Inc. received a grant in the amount of $5,000 from the Kansas Bar Foundation’s class action residual grant fund. The grant was used to fund legal representation through their Legal Advocacy Program. SAFEHOME’s mission is to break the cycle of domestic violence and partner abuse for victims and their children by providing shelter, advocacy, counseling and prevention education.

With the exception of protection orders, clients are requested to first apply to Kansas Legal Services (KLS) for assistance. If KLS is not able to assist the client, SAFEHOME’s staff attorney takes the case. Individuals served by SAFEHOME literally have no other resource for legal assistance. SAFEHOME provides this population with the opportunity to meet with an attorney to discuss options and representation in matters involving civil court proceedings.

Susanna Coxe is an attorney working in The Legal Advocacy Program. She is the only staff attorney in Kansas providing legal representation and advocacy to a record number of survivors of domestic violence both in SAFEHOME’s shelter and in the community.

Here is a glance at the services she provided for

35 survivors taking refuge in SAFEHOME’s shelter and
182 residing in the community, for a total of
217 clients residing in Johnson, Miami and Wyandotte counties.

These individuals served by SAFEHOME were:

97% female
66% Caucasian
21% Hispanic
7% African American
6% Other/Multi-Racial

9% ages 18-24
88% ages 25-59
3% 60 and over

A total of 327.25 hours of legal advocacy were provided in person. An additional 122.5 hours were provided over the phone.

Protection from Abuse orders or Protection from Stalking orders were provided to 102 clients.

SAFEHOME, Inc. is the only domestic violence agency in the Kansas City metro area with a full-time, in-house staff attorney. The demand for SAFEHOME’s Legal Advocacy Program and support for survivors of domestic violence is growing. If you would like to be placed on a list of attorneys willing to do pro bono work for SAFEHOME, Inc., contact Susanna Coxe at scoxe@safehome-ks.org or (913) 432-9300 Ext 140. In addition, non-law-related volunteering is also an option. Contact Susan Lebovitz, Volunteer Manager, at slebovitz@safehome-ks.org or (913) 432-9300 Ext. 118. Other opportunities to give can be found at http://www.safehome-ks.org/give-help.
Resources available for Constitution Day Presentations

Each fall, K-12 teachers contact the KBA to find out if resources are available to help them with lesson plans on the U.S. Constitution. Part of this stems from the 2013 law establishing “Celebrate Freedom Week” which requires students in grades K-8 to receive lessons in the history of our country’s founding, the U.S. Constitution, and the Declaration of Independence. The week of September 17 was selected as “Celebrate Freedom Week” because September 17 is Constitution Day. This happens to be a great fit for the resources available by the KBA. In addition, the KBA will help arrange speakers for the week, or anytime throughout the year. Information is available by calling and requesting a packet to be mailed to you, stopping by the KBA and picking one up, or accessing several of our resources online. If you are uncertain about which resources would be helpful for a classroom presentation, please call the KBA and ask to speak with Anne Woods, Public Services Director, or at awoods@ksbar.org.

The following is a brief description of resources for the classroom:

You be the Judge Scripts
Over 100 pages of scripts and teaching materials are included in the packet. This information can also be sent electronically. The information includes scripts from Hon. G. Joseph Pierron on cases involving the Fourth Amendment, the First Amendment and several special topics. For example, Whren v. United States, and a Kansas case, Board of County Commissioners of Wabaunsee County v. Umbehr are included. In addition, Hon. Karen Arnold-Burger provided scripts for U.S. Constitution presentations to grades three through four, and six through eight. Tips on presenting to elementary students and several handouts including the Bill of Rights, a word-find puzzle, and symbols of America coloring sheets are also included.

There are also videos of KBA members who have made presentations. The videos are for KBA members only, and are intended to provide you with ideas and to get a feel for the types of questions you may be asked during a presentation.

Law Wise
If you have not signed up for this free electronic newsletter, you can do so at www.ksbar.org/lawwise. Law Wise is a fun and informative resource for teachers and students. The information is especially helpful for teachers looking for information and resources on current issues in law and education. It is published six times during the school year. Each issue includes a lesson plan and a calendar of law-related events.

For the Record and On Your Own Booklets

For the Record
Written primarily for middle school students, the information in this pamphlet addresses issues such as: divorce and child custody, marriage, emancipation, drugs and drug treatment, juvenile offenders, Child in Need of Care (CINC), your rights if you get arrested, curfews, drinking and driving, vehicle and vehicle safety laws, texting and driving, working/child labor laws, medical treatment without parental consent, tattoos and body piercing, owning a gun, social media, bullying, rights at school, free speech and student publications, laws about attending school, dress codes, discipline at school, drug searches at school, and praying at school.

On Your Own
Written primarily for high school students, the information in this pamphlet addresses issues surrounding: drinking, drinking and driving, buying a vehicle, maintaining a vehicle, vehicle accidents, vehicle insurance, speeding, seat belts, finding work, marriage, domestic violence, divorce, child custody and support, annulment, medical treatment, birth control, abortion, landlord-tenant issues, purchasing power, credit rights, credit cards, shopping/comparing products/warranties, online purchasing, telephone sales, identity theft, health and exercise clubs, consumer complaints, when to see a lawyer, voting, and breaking the law.

Both booklets are also available in Spanish. In 2015 the KBA received requests for 1,800 For the Record booklets and 2,700 On Your Own booklets.

Bookmarks
The KBA has bookmarks that you can give students and teachers. The bookmarks include information on law related educational resources provided by the KBA.

Emporia State University Resource Center
The Law Related Education Committee in partnership with the Emporia State University Teacher Resource Center established a law-related education center that provides teachers with current resources to use in the classroom. The collection includes books, DVDs, and games. The list of resources is searchable online at http://www.ksbar.org/?lre_resource.

Visit http://www.ksbar.org/page/educator_resources for links to many of these resources.

About the Author
Anne Woods serves as the public services director at the Kansas Bar Association in Topeka. She manages the daily administrative needs of the KBF, in addition to administering projects such as the IOLTA program, pro bono programs, and the KBA’s law-related education efforts.

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High Anxiety—Not the Movie

Once an anxious lawyer in her office did dwell.  
Her worries were great and her thoughts ran pell-mell.  
Though her work she’d not shirk  
Yet her fears they did lurk.  
Her resolve dissolved and her practice went all to hell.

There’s a lot of anxious lawyers out there and they inspired the above limerick, because the fact that lawyers suffer from anxiety at a highly elevated rate makes me anxious. I fear their practice will go all to hell. And if their practice doesn’t, sometimes their health or personal life is what goes. Stress, depression and anxiety all afflict lawyers and we might be inclined to lump them together, but there are differences.

Some people are diagnosed with the clinical condition of anxiety. But all of us experience symptoms of anxiety at various times. So, like many other things, there’s a spectrum or continuum along the lines of mild, moderate, acute. And we can examine that to figure out where garden variety stress fits in.

Getting real simple, one of the core feelings of depression is sadness, whereas with anxiety, it is fear. Stress is a specific response by the body to an outside stimulus, such as fear or pain, that upsets our equilibrium. Stress can go hand in hand with anxiety by definition, but it is a distinct reaction rather than an on-going condition.

Again, practically speaking, lawyers, along with other human beings, experience stress, sadness, and fear at various times and probably the key here is to focus on the prevention and/or treatment rather than getting hung up on semantic distinctions. But it may help to at least look more closely at anxiety as it manifests in the legal profession.

... all anxiety disorders have one thing in common: persistent, excessive fear or worry in situations that are not threatening. People can experience one or more of the following symptoms:

Emotional symptoms:
- Feelings of apprehension or dread
- Feeling tense and jumpy
- Restlessness or irritability
- Anticipating the worst and being watchful for signs of danger

Physical symptoms:
- Pounding or racing heart and shortness of breath
- Upset stomach and sweating
- Tremors, twitches and headaches
- Fatigue and insomnia
- Upset stomach, frequent urination or diarrhea

See more at nami.org.

So maybe the difference between stress and anxiety is that anxiety occurs without the experience of an actual threatening situation. It is more diffused and permeates our whole day, and our whole outlook. And our whole night too, since one symptom is insomnia. And we all know how hard it is to be at our competitive best when we haven’t had adequate restful sleep. Like any repeated behavior, it turns into a habit and without even intending to, the lawyer is ensnared in a malicious routine.

So, let’s turn to talk of antidotes and solutions. Happily, there are lots of them! Two that are in the forefront are cognitive behavioral therapy (CBT) and mindfulness and/or meditation. And many have success with aversion therapy as well.

Most professionals in the mental health field that I know recommend a combination of therapy and medication. Being typical modern people, most of us want a quick fix with a pill. But the medication doesn’t help someone understand the whys and the how-to that can provide a deeper and more long lasting remedy. So individual therapy to help figure out where that fear comes from and then learn how to manage it is vital. Anxiety springs from distortions in the way we view our situation and the world, which then fuels negative emotions. We’ve probably all heard the statement: “Change your thoughts, change your world.” This idea has been attributed to Norman Vincent Peale and Wayne W. Dyer, among others.

One example of this that I’ve seen is about an invitation to a party. Jane likes socializing and feels happy. Jerry worries...
about how to act at parties and feels unhappy. Joey can take parties or leave them and feels neutral. The invitation and the party are the same, but each of the individuals has a different reaction, based on his or her perceptions. So cognitive therapy helps the person identify perceptions and the sometimes unhealthy behaviors that result from them. We all need to realize that our thoughts are not always 100 percent aligned with reality.

Mindfulness and meditation can also be key in successfully managing anxiety, because both require us to be in the present moment. Both encourage us to just focus on our breathing and to just be. It is ironic that spending ten, or even thirty, minutes “doing nothing” helps us to then be much more productive when we do something because our mind is clearer and we have broken the chains of anxiety. There are numerous books and apps out there that can help us get started with a mindfulness/meditation practice. One that is getting a lot of attention at the moment is The Anxious Lawyer, by Jeena Cho, who also has a website. There are also downloadable apps, such as MindBell, that simply chime periodically throughout the day to serve as a reminder to be in the moment and to breathe.

Along with therapy and mindfulness, exercise, nutrition, and social interaction will also help any person, including a lawyer, successfully manage anxiety.

There once was an anxious attorney Who became mindful of his life’s journey He learned to meditate And let his fears abate, And now he’s for calm no longer yearning.

About the Author

Anne McDonald was appointed to the Lawyers Assistance Program Commission at its inception in 2001 and has served as the Executive Director of KALAP since 2009. She graduated from the University of Kansas School of Law in 1982.

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KBA Member Publishes Civil War Novel, "The Wastage"

"If he makes a stand at Winchester, moving neither North or South, I would fight him there, on the idea that if we can not beat him when he bears the wastage of coming to us, we never can when we bear the wastage of going to him."

Abraham Lincoln, 1862

Ron Smith’s second book—and first novel—was published in February of this year, and is available for purchase at Amazon.com and Barnes and Noble bookstores.

The title, “The Wastage,” comes from a message that President Abraham Lincoln sent to Union General George B. McClellan during the Civil War; Lincoln argued that the Union troops should not be too cautious in fighting the Confederates, as the Confederate General Robert E. Lee also fears mass casualties, referred to as “the wastage.”

The novel follows many of the historical figures of the time, but especially Henry Villard, a newspaper reporter who wrote for Horace Greeley’s New York Tribune. Although Villard was an actual reporter during the civil war, Smith took license with his character and dialogue to move across the battlefield, and see what transpires through Villard’s eyes.

“Villard seemed logical,” Smith said, “You need somebody who weaves the story, and I’m using him.”

“The Wastage” chronicles the Battle of Fredericksburg, which was the Union’s Potomac army’s Valley Forge. They had to survive that carnage or the army would drift away and the civil war would have been lost,” Smith said.

Afterward, several of Lincoln’s cabinet and the Republicans in the U.S. Senate—Lincoln’s own party—conspired to wrestle the commander in chief position away from the President of the United States, and run the rest of the war as a committee. “Can you imagine running World War II with a congressional committee commanding our armed forces?” Smith said.

How Lincoln handles this historical attempt at a cabal is the highlight of the novel.

Smith began writing “The Wastage,” in the late 90s, and worked on it simultaneously with his non-fiction book about Civil War General Thomas Ewing Jr. He writes novels under the pen name “Dean Halliday Smith,” a combination of his name and his wife’s maiden name, in order to distinguish from many other authors named “Ron Smith.”

Smith is a partner at Smith and Burnett, LLC, in Larned, Kan. He previously served on Governor John Carlin’s staff from 1979-80, and as general counsel of the Kansas Bar Association from 1985-99. He served in the U.S. Navy as a photojournalist during the Vietnam War.

Smith says his interest in the Civil War stems from his own family’s service. Two great-great-grandfathers and five great-great-uncles served in four different Ohio and Iowa regiments in the Union Army.

Smith’s grandfather was born in 1896 and lived without indoor running water for nearly all of his life, Smith said. “When grandpa died, my Dad and I went up to clean his apartment, and we ran across three little pocket-sized, leather-bound notebooks, and they were diaries from the Civil War from his grandfather,” Smith said.

That discovery spurred Smith to begin writing about the Civil War in 1980.
A hard-hitting no-holds barred novel of the war that created the United States, and the two days in December 1862 when it almost came undone and the Confederacy had its last great opportunity to win the Civil War.

Although Smith’s dedication to his legal practice doesn’t allow him to write as fast as he would like, he already has plans for his next book.

Smith has started work on his next historical novel, “A Touch of Elbows,” about a murder trial in Larned, Kan., that took place in 1888. Just 25 years after the Civil War, a former Union officer defends a former Confederate Colonel who is accused of the murder of a black soldier.

That title comes from a 1904 brigade reunion folder in Ohio and refers to the camaraderie of infantry soldiers who serve together, that “touch of elbows” when advancing in a line of battle. “It’s a closeness of the infantry that develops nowhere else but in a war,” Smith said.

For more information on Ron Smith and “The Wastage,” visit www.ronsmithbooks.com.

About the Author

Jennifer H. Salva, journal editor, has a BS in journalism and a BA in film & media studies from The University of Kansas, and is a 1L at Washburn University School of Law. She is passionate about creating meaningful opportunities for those with developmental disabilities and fishing with her dad.

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What Happens in Vegas can Sometimes Make a Column

A couple years ago I made a change in my personal outlook and committed to never let negativity enter my daily thoughts. My routine now begins every morning when I wake up, I say a short prayer and remind myself of all to be thankful for. If Lori is up, we do this together. And then I head out and deflect bad thoughts.

But lately I’ve felt negativity knocking on my door. Some days it kicks it in. And when it arrives, I have another routine—I think of my grade-school principal at St. Pats—Sister Mary Rose (SMR)—a Dominican sister whose residence was in the convent across the street from my parents’ home in Great Bend. She lived a full life to age 95 and passed away four years ago, and so I ask her for her help—‘don’t let me go there.’ And she is there for me. But of all the Debbie Downers that come at us, largely from the national news, what happened to me last week was completely unexpected. I had the misfortune of being on a Southwest flight when their reservation system crashed. Some 1600 flights were cancelled. One was mine.

When you get off your plane and walk to the terminals to check on your connection, it’s a moment when your immediate future is suspended. For those moments, you hope your connecting flight is at the gate, with a full crew not at risk for clocking out, without blinking lights requiring a mechanical call, paperwork problems, ATC ground stops, or plumbing issues. You gather around other hopeful travelers who, like you, are about to learn their fate in seconds. Everyone is scanning down across a dreadful list of cities. Each one reminds you of a trip, typically for business, where you longed for home. Albany, Cincinnati, Fresno, Houston, Fort Lauderdale, Jacksonville…

The anticipation mounts. And when my eyes came to Kansas City, at 9 p.m. Pacific Standard Time (PST), the monitor in small font spoke loudly. Cancelled.

Bad news like this needs a soft let down. You need someone to greet you and say, “Okay yeah that stinks but we will get you a hotel and find a fun bar. I know its 11 p.m. Central Standard time, but maybe there is something on cable. Like a soccer game in Turkey.”

You get none of that. You are lugging two bags, have chronic halitosis thanks to that Subway sandwich with extra peppers you inhaled back at John Wayne airport. You have other issues—B.O., bad stubble coming in, bracket creep, and that’s when I heard something that darkened my mood. A ding-ding-ding of slot machines. I was in Las Vegas.

Snake eyes.

Airports are downers. Vegas airport is the low of lows. Correction: Vegas itself is a downer, especially when it’s 106 degrees at night. Throw in people desperate to forget all their mistakes of the preceding 48 hours.

If misery loves company, on this night it was having a field day. The last time I was this depressed was a KU football pep rally. They held it in a phone booth, which is saying a lot since Charlie Weiss was speaking.

There was no channeling SMR. She was sound asleep on a cushion of clouds. I went full boar negative.

It was now midnight, Kansas City time. My phone was blowing up with Lori texting “What? No options?” This was an epic meltdown by an airline I happen to love. I called Southwest. After all I was A List Preferred, TSA pre … I was somebody. “Sorry pal, check with your gate agent,” the Southwest guy told me. By now the gate agent had a line resembling the Arrowhead men’s room after a four hour tailgate. I waited.

Be nice. Be calm. Think SMR.

At this point there are a couple sure things. One is that the line moves at a reasonable pace and then one person clogs it. Bingo. This night, I couldn’t hear the conversation. I didn’t need to. There was a lady pleading with the agent. The agent was listening, shaking her head and punching some keys. Everyone knew the answer that was coming, expressed in polite terms: you are screwed. Move on so I can say the same thing to the next guy.

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Lunch and Learn: Frequently Asked Ethics Questions

September 8, 2016

Kansas Bar Association, Topeka
Noon- 12:50 PM

Lunch is included with registration
Pending CLE Credit in Kansas and Missouri
HELP ME SMR.
Eventually it was my turn. The options are always one of three:
1 “Well, everything is sold out for tomorrow, Friday. I can get you on a flight on Tuesday. Along with a voucher to the Bed Bug Motel. They have a shuttle that picks up every hour.”
2 “There is a flight out in the morning but it makes stops at Cleveland, Baltimore and Houston. You arrive in KC at midnight.”
3 “There is one flight available but you bought a discounted ticket. It’s an additional 500 dollars and it’s non-refundable. But with that money you fly on the wing.”
She told me option one. Saturday morning, maybe, with a possibility of flying standby on the 5:40 flight Friday morning. “You need to arrive two hours early to get a spot.”
The negativity dam broke. I was drowning in ickiness.
All this time, I was on hold with my employer’s after hours travel number. Just then, someone answered the line. “There is a 12:50 a.m. flight direct to Kansas City on a budget airline.”
I looked at the gate agent and asked if that airline was in fact located at this airport, and not some county airport.
“Yes,” she said, “it’s at the far end of the terminal.”
“Book it.” I told the agent on the phone.
If Vegas airport is depressing, the budget terminal is like a clinical trial for extra strength Prozac. Words can’t capture the setting. Think Star Wars bar scene, episode one.
There were other issues. This budget airline charges for extras. Like carry-on bags, seat belts, and oxygen. But do you want to get home in the month of July? Bring it baby.
Our 12:41 departure rolled into 1:41, and then 2:15, PST. We boarded. “We are waiting on a crew member.” Turns out it was the other pilot. He was late. Everyone got off the plane. I was standing down the hall from the gate, and an hour later I saw a man walk by in a captain’s suit. “Are you the pilot?”
“Yes.”
SMR was back in action.
We landed at 7 a.m. Friday morning. Dorothy is right. There is no place like home.

About the Author

Matthew Keenan has practiced with Shook, Hardy & Bacon LLP, Kansas City, Mo., since 1985.
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Dear Dad: Don't Reinforce the Glass Ceiling, I'm Still Beneath it

“GUilty.” “So say all of you?” “Yes.” The moment we received a guilty verdict on Count II, the victim in my case cried. We had secured a domestic violence conviction on a man that had grabbed her, hit her, and strangled her. Upon informing my father that we had received a guilty verdict at trial that day, his response was something to the effect of, “you should show more humility.” My expression of pride in obtaining a guilty verdict, to him, translated into gloating about my success. I couldn’t help but think about how if my brother had been in my position, he may have been congratulated instead of chastised.

Dad’s gendered attitude may not have been intended to offend, but it certainly did make me consider how gender bias in the legal field has not quite been removed from societal perceptions of women in professional occupations. As a young attorney, I’m aware that this is still the case, though I conceptually do not understand it. Women have been graduating from law school in increased numbers for over thirty years.1 Doesn’t it make sense that as more women graduate from law school and enter the legal profession, so should the number of women in leadership roles, as supervising attorneys and partners? Maybe it’s because I’m a millennial, but it is frustrating to me that the numbers don’t match up: Women have not been able to reach the higher rungs of the corporate or private practice ladders like their male counterparts. According to the American Bar Association, women make up only 24 percent of general counsel at Fortune 500 companies, and only 19 percent of general counsel at Fortune 501-1000 companies.2 With respect to women in practice, only 21.5 percent of women are partners, 18 percent of which are equity partners. 3

Female litigators, like myself, have been subjected to implicit biases in the courtroom, demonstrated by the American Bar Association Commission on Women in the Profession.4 Senior attorneys overwhelmingly choose male attorneys as their co-chairs. Often, there is an assumption that a female attorney will be overly-emotional during trial, despite the fact that a male attorney, when displaying the same level of emotion in the courtroom, is considered “deeply passionate.” In the alternative, when a female litigator raises her voice in order to drive home a point or argue in a forceful fashion, she may be viewed as overly aggressive; her male co-chair, however, is generally perceived as zealously arguing his point.5

The absence of women in leadership positions in the legal profession is certainly not attributed to the lack of talent or ability, when compared to male members of the Bar. Women can be strong courtroom advocates and highly respected officers of the court. In fact, female attorneys representing the government have better odds of appearing as lead counsel, even though only a minority of attorneys that appear in criminal cases are women. Women who do appear in court on criminal cases, however, almost always file their appearances as lead counsel at the same ratio as men.6 Across all types of law practice areas, female attorneys practicing in the public sector in criminal matters have a substantially greater opportunity of serving in a lead counsel role than women working in the private sector on civil cases.7

The conclusion of the ABA’s Commission on Women in the Profession: “Fostering the success of women litigators re-ounds to the benefit of clients, who obtain top-notch representation in their cases; to law firms, which have made a substantial investment in hiring and training their women litigators; and to women lawyers themselves, who are able to realize their full potential and advance in their careers…it is imperative for all concerned that women are encouraged and supported in their pursuit of a career in the courtroom and the role of lead counsel in trial” (emphasis added).8 So, Dad, if you’re still reading this, my humility will always follow me, especially into the courtroom, but I will never apologize for my spirited closing argument, or my satisfaction after my favorite six-letter word is uttered from the foreman’s mouth—especially when I’m first chair.

ENDNOTES

1. See Statistics from the American Bar Association statistics demonstrate that women accounted for approximately 40% of first year law students in 1985, and that this percentage increased in subsequent years. http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf
3. Id.
5. Id., at 14.
6. Id.
7. Id.
8. Id., at 17.

About the Author

Katherine Lee Goyette is a 2010 graduate of Washburn Law (J.D) and a 2012 graduate of the University of Kansas School of Law (2012). She resides in southern Colorado with her active-duty Army husband. Katherine has been a member of the KBA’s Diversity Committee since 2011, and served as co-chair of the Diversity Committee from 2015-2016.

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Members in the News

Changing Positions

Christopher J. Anderson has joined Dysart Taylor et al. as Of Counsel, Kansas City, Mo.
Andrea G. Bough has been promoted to member at Lewis Rice LLC, Kansas City, Mo.
Jordan Hess, Hannah Woofter and Francis Schneider have joined Martin, Pringle, Oliver, Wallace & Bauer LLP as summer clerks, Wichita.

Changing Locations

Joshua & Courtney Boehm have opened a new law office, Cottonwood Law Group, LC, 107 E. Grand Ave., PO Box 237, Hillsboro, KS, 67063.

Miscellaneous

Thomas J. Bath Jr. was named by Chambers USA as one of Kansas’ top litigators in white-collar crime and government investigations.
Michelle Wade of the aviation law firm Jackson & Wade, L.L.C. had the article, Practical Tips for Regulatory Compliance with a Company Jet published in the July 2016 edition of Business Law Today.
The Wichita Bar Association has named its officers and board members for 2016-17: Marcia A. Wood, President; David G. Seely, President-elect; John E. Rapp, Vice President; Rebecca Mann, Secretary-Treasurer; Board of Governor members are: Adam R. Burrus, Moji Fanimokun, Jason W. Hart, C. Edward Watson II, Michelle Moe Witte, and William S. Woolley.

Obituaries

Evan Harper Ice

Evan Harper Ice, age 52, Lawrence, Kansas, passed away on August 5, 2016 after a heroic fight with ALS, also known as Lou Gehrig's disease. Evan was born on November 5, 1963 in Newton, Kan., to Ted and Sue Harper Ice. He graduated from Newton High School in 1982, and attended the University of Kansas where he received his Bachelor of Science in Mechanical Engineering in 1986. At KU, Evan was a member of the Phi Delta Theta fraternity—a fraternity that supports the ALS Association as its national charity.
Evan worked for four years for Boeing in Kansas and in Maryland, and in 1988, Evan married his wife of 27 years, Jill Redfern Ice. He returned to law school at the University of Kansas and earned his Juris Doctor in 1993, becoming a fourth-generation lawyer. In law school, Evan served as editor of the Kansas Law Review, and earned membership in the Order of the Coif.
After law school, Evan joined the Lawrence law firm of Stevens, Brand, Winter, Lungstrum & Golden (now known as Stevens & Brand) and remained in practice at the firm for his entire career. He was active in the Kansas Bar Association, serving on the Board of Editors of the Journal of the Kansas Bar Association for nine years. Evan served for 15 years as the Douglas County Counselor, and he was a past President of the Board of County Counselors Association of Kansas, past President of Health Care Access and past President of the Douglas County Estate Planning Council. He also served on the Douglas County United Way, the Lawrence Schools Foundation, Lawrence Rotary Club, and many other organizations. Evan and Jill and their three daughters, Erin, Allix and Emily are members of the First United Methodist Church in Lawrence.

Evan was an athlete, competing in many triathlons and several marathons. More than anything else, Evan enjoyed his family, being a husband to Jill and a Dad to Erin, Allix and Emily. He loved attending the performances and other milestone events of his three daughters.
Evan began to realize that something was wrong during a run and later learned of the devastating diagnosis of ALS. He faced this disease with absolute grace and strength and was an inspiration to his friends and family. In 2014, the ALS Association's Mid-America Chapter awarded Evan with its Tom Watson Courage Award; in 2015, the Kansas Bar Association presented Evan with its Courageous Attorney Award.
Evan did not face this disease alone. Many friends have provided numerous hours of support and comfort through these past few years. They have provided weekly lawn care, meals, overnight care, massages, reading time and helping with household chores. Evan's law firm partners and staff were of particular support, assisting Evan so that he could continue to practice law as long as it was possible.
Evan is survived by his wife Jill; his three daughters Erin, Allix, and Emily; his mother Sue Ice of Newton; his in-laws Lowell and Glorene Redfern of El Dorado; his sisters Laura Ice and Nancy (Ken) Schlup; and several nieces and nephews. His father, Ted Ice, predeceased him.
2016
Legislative Review

By Joseph N. Molina III
The 2016 legislative session was marred by budget woes, school funding issues and election year antics. The budget saw missed estimates nearly every month which required midyear budget cuts, transfers and other accounting gimmicks to balance. By the end of the year major payments to schools were delayed to avoid further cuts. Budget-wise, 2017 doesn’t look much better. There was a push to repeal a portion of the 2012 tax cuts, even though the governor publicly stated he was against such a proposal. The bill died in the House with a coalition of conservatives and moderates voting against the measure for very different reasons.

Funding estimates were revised downward in April, but state revenue continued to miss the mark, rolling up a more than $100 million deficit. The governor used money from KDOT and Higher Education to fill most of the hole. He also cut some children’s programs. Finding a long term solution to the funding problem will be an election hot potato with some members calling for more cuts while others call for a full repeal of the 2012 tax cut.

School funding was brought to the foreground when the Kansas Supreme Court found the “fix” unconstitutional. The fix, Senate Sub. for HB 2655, altered supplemental general state aid and capital outlay state aid for FY 2017. The goal was to equalize state funding so each student has a substantially similar education for a substantially similar tax effort. The major sticking point was a “hold harmless” provision that provided funds to school districts if that school district would have lost funding under the new formula. The Kansas Supreme Court had a significant issue with this provision and found the entire bill unconstitutional.

With the funding formula for schools being unconstitutional, there existed no way to fund schools for the upcoming year and the court ordered that schools be closed should a suitable resolution not be found by July 1. Therefore, the governor called a special session to deal with a potential constitutional crisis. The legislature reconvened on June 23 to hash out a new school funding formula. The initial proposal would see an overall cut to K-12 and reallocating those funds to other districts. This idea fell through almost immediately and a coalition of moderates, some leadership members and democrats crafted Senate Sub for HB 2655. This bill would use funds from the sale of the Kansas Bioscience Authority and current extraordinary needs fund to close the $38 million equity gap. The plaintiffs in the school finance case agreed that this would fix the equity portion on the case and the court agreed before the July 1 deadline.

This ends one chapter of the school funding issue but opens the next more expensive part of the book—adequacy! The Kansas Supreme Court bifurcated the school finance case into two parts: (1) Equity (Does each student have the same opportunity for an education) and (2) Adequacy (Does the state providing enough funding). The adequacy issue will be up for hearing on September 21, thus keeping school finance on the minds of voters and candidates as they enter prime campaign season.

The state budget and school funding dominated most of the 2016 session, but several other issues were debated. Some failed to gain any traction, others will be used for campaign fodder and still others were passed into law becoming effective on July 1, 2016.

Some of the major pieces of legislation that have a direct impact on the practice of law will be summarized below. The full summaries can be found at http://www.kslegresearch.org/KLRD-web/Policy.html.

**Court Issues**

**Courts and Filling Judicial Vacancies; House Sub. for SB 128**

House Sub. for SB 128 amends statutes governing municipal courts and filling judicial vacancies.

**Municipal Courts**

The bill amends the statutes governing expungement for convictions of city ordinances or state laws, as well as arrests, to provide that when an expungement is ordered for a case appealed from a municipal court, the district court clerk must send a certified copy of the expungement order to the municipal court, which shall order the case expunged once the copy of the order is received. Similarly, the bill amends the statute governing appeals from municipal courts to require the district court to send notice of dismissal, conviction, or acquittal to the municipal court clerk at the end of the case.

**Judicial Vacancies**

The bill also amends and enacts laws related to the filling of judicial vacancies, including the method used to select the lawyer members of the Supreme Court Nominating Commission and district judicial nominating commissions, the applicability of the Kansas Open Meetings Act (KOMA) and Kansas Open Records Act (KORA) to nominating commissions, and the number of nominees a district judicial nominating commission will be required to nominate.

**Selection of Lawyer Members of Nominating Commissions**

The bill requires applicants for admission to practice law to provide the following information: name, place of residence, date of birth, sex,
and the last four digits of the person’s social security number or the person’s full driver’s license or non-driver identification card number. A pending applicant must notify the Clerk of the Supreme Court in writing of any change in name or address within ten days of such change. The bill requires any person whose application is pending as of the effective date of the bill to provide the correct information required above to the Clerk within 60 days of the effective date of the bill and requires the Clerk to send notice of this requirement within 30 days of the effective date.

A new section requires the Clerk to maintain a roster of attorneys licensed to practice law in Kansas, including the information required above and the congressional and judicial districts of residence for each person. Similar to requirements for pending applicants, the bill requires any Kansas licensed attorney to notify the Clerk of any change in name or residential address within ten days of such change.

To be eligible to nominate or receive and cast ballots for the lawyer members of the Supreme Court Nominating Commission, the bill requires attorneys to be licensed and residing in Kansas (and, for Commission members, the appropriate congressional district) on or before the February 15 prior to the selection of such positions. The same requirement applies with regard to elections of lawyer members of district judicial nominating commissions, except the relevant date is November 15.

On or before the February 20 preceding the selection of the chairperson or members of the Supreme Court Nominating Commission, the Clerk must transmit a certified copy of the roster of Kansas licensed attorneys to the Secretary of State, containing the voter information set forth above for those residing in Kansas (or within the relevant congressional district for a member election) as of February 15, in a format prescribed by the Secretary of State, who then will append the unique voter identification number for each person listed on the roster having such a number. The same procedure is required on or before the November 20 preceding the election of a lawyer member of a district judicial nominating commission, with the same voter information required for each person residing within the judicial district as of November 15.

The bill amends the statute governing voting procedures to select members of the Supreme Court Nominating Commission to require that the Clerk use the certified roster of attorneys as provided to the Secretary of State and to preserve qualification certificates for five years and then destroy the certificates. Within 14 days after a selection is certified, the Clerk must create a list containing the position and year of the selection and the names and residential addresses of all persons who returned a ballot with a signed certificate. The Clerk then will transmit a certified copy of this list to the Secretary of State, in a format prescribed by the Secretary of State.

The bill provides the names, residential addresses, dates of birth, unique voter identification numbers, and dates of license to practice law in Kansas of all persons on the certified rosters; the qualification certificates; and the lists of persons returning a ballot are subject to a KORA request. These provisions apply to all selections of a chairperson or members of the Supreme Court Nominating Commission that have not been canvassed, regardless of whether the selections are scheduled, upcoming, or pending as of the effective date of the bill.

**Applicability of KORA and KOMA**

The bill deems the Supreme Court Nominating Commission and district judicial nominating commissions to be public bodies subject to KOMA. Further, the bill prohibits the Supreme Court Nominating Commission and district judicial nominating commissions from recessing for any closed or executive meeting except for the purpose of discussing sensitive financial information contained within the personal financial records or official background check of a judicial nomination candidate. These provisions do not supersede a nominating commission’s discretion to close a record or portion of a record pursuant to any applicable KORA exception.

The bill includes the Secretary of State and the Attorney General, or their designees, as the canvassers for any election of the chairperson or members of the Supreme Court Nominating Commission or any election of lawyer members of a district judicial nominating commission, instead of two or more members of the bar residing in Kansas designated by the Chief Justice. The Clerk remains a canvasser.

For elections of lawyer members of a district judicial nominating commission, the bill requires the Clerk to use the certified roster to ascertain eligibility for ballots or membership on the district judicial nominating commission. In such elections, a ballot not accompanied by the signed certificate of the voter will not be counted. The Clerk is required to preserve the ballots for six months after the results are certified and to preserve the certificates for five years. The bill permits inspection of the ballots only upon order by the supreme court and requires the Clerk to destroy the ballots and certificates at the end of the preservation periods. As with the Supreme Court Nominating Commission elections, for such elections, the Clerk must provide the same list of persons returning a ballot with a signed certificate to the Secretary of State, and such lists and certificates are subject to KORA requests.

The bill amends the statute governing the appointment of judges of the court of appeals to require the governor (or the chief justice, if making an appointment because the governor failed to make an appointment) to make each applicant’s name and city of residence available to the public once applications are no longer accepted, but not less than ten days before making the appointment.

**Number of Nominees**

Finally, the bill requires the Supreme Court Nominating Commission to make nominations of three persons to fill a vacancy in the supreme court and certify the names of the nominees to the governor. For district judicial nominating commissions, the bill changes the number of nominees for each vacancy from two or three to three, four, or five and amends the section governing what occurs if there are not at least two qualified attorneys willing to accept a nomination, to change two to three.

**Court Budget**

**Court Docket Fees; Electronic Filing and Management Fund; House Sub. for SB 255**

House Sub. for SB 255 creates new law and amends, revives and amends, or repeals various statutes related to Kansas court
docket fees.

The bill creates the Electronic Filing and Management Fund. All expenditures from the fund shall be for the purposes of creating, implementing, and managing an electronic filing and centralized case management system for the state court system.

A statute regarding the remitting of moneys by the clerk of the supreme court is revived and amended to redirect remittances previously made to the state general fund to the judicial branch docket fee fund instead.

Statutes regarding the dispute resolution fund, the access to justice fund, the protection from abuse fund, the crime victims assistance fund, and the Kansas juvenile delinquency prevention trust fund are revived and amended to remove references to disposition of docket fee statutes. The statute regarding the Kansas Juvenile Delinquency Prevention Trust Fund also is amended to update references to the Secretary of Corrections.

A statute establishing the indigents’ defense services fund was revived and amended to remove a provision directing the charge of a 50 cent fee in various cases to be credited to that fund.

A statute regarding expungement is amended to resolve a conflict with other versions of the statute regarding the sunset date for the judicial branch surcharge.

Finally, the bill repeals several additional statutes, including those regarding:

- Disposition of docket fees (previously repealed in 2014 Senate Sub. for HB 2338);
- The electronic filing and management fund (as created in 2014 Senate Sub. for HB 2338); and
- Conflicting versions of docket fee and expungement statutes (previously repealed in 2014 Senate Sub. for HB 2338).

There were two other judicial budget fixes (SB 440 and SB 454) introduced by Sen. Jeff King. Both of those proposals failed to gain any momentum and an agreement was made to further study these ideas. Both bills were referred to the Kansas Judicial Council for further study.

Judicial Branch Non-Severability Repeal; HB 2449

HB 2449 repeals the non-severability provisions of 2015 HB 2005 and enacts a severability clause declaring that, if any provision of HB 2005 is held invalid or unconstitutional, then the remainder of the provisions of HB 2005 shall remain in effect.

Judicial Selection

Merit selection was a factor throughout the session and into the special session. The Kansas House failed to pass HCR 5005 on a vote of 68-54. That vote failed to meet constitutional requirements and HCR 5005 was killed.

None of the proposed changes to merit selection are viable during the special session and would need to be reintroduced.

These proposals could be reintroduced in 2017:

HCR 5004: A proposition for the direct partisan election of supreme court justices and court of appeals judges, abolish the supreme court nominating commission

HCR 5006: Constitutional amendment revising article 3, relating to the judiciary; allowing the governor to appoint supreme court justices and court of appeals judges, subject to senate confirmation; lifetime appointment, subject to removal for cause; retaining the supreme court nominating commission, membership amended

HCR 5012: Constitutional amendment; abolishing the supreme court nominating commission; supreme court justices appointed by governor from nominees submitted by House judiciary committee, subject to Senate confirmation

HCR 5013: Constitutional amendment revising article 3, relating to the judiciary; placing the court of appeals into the constitution; changing the membership of the supreme court nominating commission.

During the special session, Rep. Craig McPherson (R-Olathe) introduced HB 2002 which would create the Superior Court. This court would be the final court of appellate review in cases under its jurisdiction. HB 2002 did not set any jurisdictional bounds on the superior court but left that to future statutory enactments. One could assume that HB 2002 was an attempt to strip the Kansas Supreme Court of specific cases, like school finance. This bill did not get a hearing during the special session but it is likely to be introduced in 2017.

There was also a large push to increase the ways judges and justices can be impeached. The Kansas Senate did consider and pass SB 439 which creates new law stating that justices of the Supreme Court may be removed from office by impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. Similarly, the bill would state that the governor and all other officers under the Kansas Constitution shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. The bill was passed by the Senate on a 21-19 vote. The Kansas House did not take up the issue nor did any conference committee. SB 439 was proposed by Sen. Mitch Holmes (R-St. John) who is not seeking re-election and supported by Sen. Greg Smith (R-Olathe) who is seeking another four-year term.

Civil Matters

Uniform Commercial Code; Sub. for HB 2062

Sub. for HB 2062 amends provisions of the Uniform Commercial Code (UCC) concerning remittance transfers as defined in the federal Electronic Fund Transfer Act (EFTA). The bill provides that state law applies to a remittance transfer unless it is an electronic fund transfer, as defined in the EFTA. In a funds transfer where state law applies, the EFTA governs in the event of an inconsistency. The bill also makes technical amendments to the UCC.

The bill takes effect upon publication in the Kansas Register.
The bill amends and recodifies the Kansas Business Combinations with Interested Shareholders Act, defining key terms and prohibiting corporations from engaging in any business combination with any interested stockholder for three years following the time such stockholder became an interested stockholder, except as described in the bill.

The bill also adds new sections to the Kansas General Corporation Code (the Code) as follows:

- Governing civil actions to interpret, apply, enforce, or determine the validity of certain corporate documents;
- Governing provisions in a corporation’s bylaws concerning proxies;
- Defining “nonstock corporations” as any corporation organized under the code that is not authorized to issue capital stock; explaining that generally the code applies to such corporations; listing which sections of the code do not apply to nonstock corporations; defining “nonprofit nonstock corporations” as a nonstock corporation that does not have membership interests; and explaining how the code applies to such corporations;
- Allowing bylaws to require all internal claims to be brought in Kansas courts and prohibiting bylaws from barring such claims from being brought in Kansas courts;
- Outlining the required contents of notice provided to persons having a claim against a corporation that has been dissolved; publication requirements; the date by which such claims must be brought when a claimant was given actual notice; requirements related to persons with contractual claims contingent upon the occurrence or nonoccurrence of future events; requirements related to such claims; and how this new language applies to nonstock corporations and nonstock nonprofit corporations; and:
- Describing the process required to ratify one or more defective corporate acts and remedies available by persons substantially and adversely affected by such ratification.

Throughout the Code, the bill updates references to the Business Entity Standard Treatment (BEST) Act, which was enacted in 2014; adds provisions specific to nonstock corporations in accordance with the new section discussed above; adds language specific to uncertificated stock; and makes other technical and non-substantive changes.
• In any civil case and all other matters, notice of the disputed validity has been served on the attorney general by the party disputing validity or by the court, and that the attorney general has been given an opportunity to appear and be heard on the question of validity.

Criminal Law
Minor in Possession of Alcohol—Immunity from Liability for Seeking Medical Assistance; SB 133

SB 133 amends the crime of possessing, consuming, obtaining, purchasing, or attempting to obtain or purchase alcohol by a person under 21 to include immunity from prosecution for a person and, if applicable, one or two other persons acting in concert with such person, who initiated contact with law enforcement or emergency medical services; requested medical assistance on such person’s behalf because such person reasonably believed he or she was in need of medical assistance; and cooperated with emergency medical services personnel and law enforcement officers in providing medical assistance.

Juvenile Justice System; SB 367

SB 367 creates and amends law related to the Kansas juvenile justice system including detention length and limits, responses for technical violations, reintegration plans; immediate intervention, alternative means of adjudication, youth residential facilities, and the Kansas juvenile justice oversight committee. These are just a few of the laws created or revised. SB 367 was a comprehensive revision of the entire juvenile justice code.

Sentencing and Crimes; HB 2463

HB 2463 amends statutes concerning sentencing and crimes.

Specifically, the bill amends statutes governing the determination of criminal history to add non-grid felonies, non-drug severity level 5 felonies, and any drug severity level 1 through 4 felonies committed by an adult to the list of juvenile adjudications that will decay if the current crime of conviction is committed after the offender reaches age 25.

The bill also allows a court to continue or modify conditions of release for a parolee who absconds from supervision, without having to first impose a 2- or 3-day jail sanction.

Finally, the bill makes a violation or an aggravated violation of the Kansas Offender Registration Act (Act) a person offense if the underlying crime (for which registration is required) is a person crime. If the underlying crime is a nonperson crime, the registration offense is a nonperson crime. If there are multiple underlying crimes, which include both a nonperson crime and a person crime that require compliance with the Act, the registration offense is a person crime. Previously, a violation or aggravated violation of the Kansas Offender Registration Act was a person crime regardless of the designation of the underlying crime.

Creating Crimes Regarding Visual Depiction of a Child; Amending Crimes of Breach of Privacy and Blackmail; Amending the Definition of a Crime Committed with an Electronic Monitoring Device; HB 2501

HB 2501 creates crimes of unlawful transmission of a visual depiction of a child, aggravated unlawful transmission of a visual depiction of a child, and unlawful possession of a visual depiction of a child. The bill also amends the crimes of breach of privacy and blackmail. Finally, the bill amends the definition of a crime committed with an electronic monitoring device.

Unlawful transmission or possession of a visual depiction of a child is defined as knowingly transmitting a visual depiction of a child at least 12 years of age but less than 18 years of age in a state of nudity when the offender is less than 19 years of age. Aggravated transmission of a visual depiction of a child requires the same elements and adds the requirement that the transmitting occur with the intent to harass, embarrass, intimidate, defame, or otherwise inflict emotional, psychological, or physical harm. There is a rebuttable presumption the offender had this intent if the offender transmitted such visual depiction to more than one person. It also constitutes aggravated transmission if the transmission was made for pecuniary or tangible gain or with the intent to exhibit or transmit the depiction to more than one person.

Disclosure of Affidavits or Sworn Testimony Supporting Warrants; HB 2545

HB 2545 amends statutory provisions governing the disclosure of affidavits or sworn testimony supporting arrest warrants and search warrants to provide that, if such affidavits or sworn testimony are disclosed pursuant to the existing provisions, then the disclosed information becomes part of the court record and will be accessible to the public. Any requests for disclosure of the affidavits or sworn testimony will become part of the court record and will be accessible to the public, regardless of whether the affidavits and sworn testimony are disclosed or sealed.

The bill also amends the procedure for disclosure to require the prosecutor to notify any victim of an alleged crime that resulted in the issuance of the warrant (or the victim’s family if the victim is deceased) of the request for disclosure. The bill clarifies the existing justification for redacting or sealing affidavits or sworn testimony that jeopardizes the safety or well-being of a victim, witness, confidential source, or undercover agent, includes the physical, mental, or emotional safety of such person.

The bill adds provisions allowing a magistrate to redact affidavits and sworn testimony to prevent the disclosure of information that constitutes a clearly unwarranted invasion of personal privacy, as defined by the bill.

Family Law
Host Families Act; Family Law Code—Domestic Violence Offender Assessment and Certified Batterer Intervention Program; Medicating of a Child; Access to Child in Need of Care Files; Human Trafficking; Sexual Exploitation of a Child; Children in Need of Care; Juvenile Offenders; SB 418

SB 418 establishes the Host Families Act, amends the Family Law Code with regard to use of a domestic violence of
fender assessment and certified batterer intervention program; amends law related to the medicating of a child and access to files in child in need of care proceedings; and creates and amends law related to human trafficking, sexual exploitation of a child, children in need of care, and juvenile offenders.

Host Family Act
The bill establishes the “Host Families Act”. The Act allows a child placement agency or other Kansas charitable organization working under an agreement with an agency to establish a program in which it coordinates with private organizations to provide temporary care of children by placing a child with a host family. Such programs must include screening and background checks for potential host families that are the same as those required by the Secretary for Children and Families for family foster home licensing, and a host family will not receive payment other than reimbursement for actual expenses of providing the temporary care. The bill requires that the placement of a child into such a program be voluntary and establishes that such placement shall not be considered an out-of-home placement by the State, shall not supersede any order under the Code for Care of Children (CINC Code) or any other court order, and shall not preclude any investigation of suspected abuse or neglect.

Domestic Violence Offender Assessment and Certified Batterer Intervention Program
The bill amends the Family Law Code governing factors considered in determination of child custody, residency, and parenting time to allow the court to order a parent to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and to order the parent to follow all recommendations made by such program.

Medicating of a Child
The bill amends the CINC Code to specify that nothing in the Code shall be construed to compel a parent to medicate a child if the parent is acting in accordance with a physician’s medical advice. A parent’s actions in these circumstances shall not constitute a basis for determination that a child is a child in need of care, for the removal of custody of a child, or for the termination of parental rights without a specific showing of a causal relation between the actions and harm to the child. “Physician” is defined as a person licensed to practice medicine and surgery by the state board of healing Arts or by an equivalent licensing board or entity in any state.

Human Trafficking, Sexual Exploitation of a Child, Children in Need of Care, and Juvenile Offenders
The bill enacts new law in the CINC Code requiring the Secretary for Children and Families to report to law enforcement agencies of jurisdiction information that a child has been identified as a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, immediately after receiving such information and in no case later than 24 hours after receiving such information. Similarly, immediately after receiving information that a child in the custody of the secretary is missing, and in no case later than 24 hours after receiving such information, the secretary must report such information to the National Center for Missing and Exploited Children and the law enforcement agency in the jurisdiction from where the child is missing. The law enforcement agency must enter such information into the National Crime Information Center and Kansas Bureau of Investigation missing person systems in accordance with other statutory provisions.

Probate Law
Probate—Filing Requirements; SB 321
SB 321 removes from the statute allowing the filing of certain wills in court requirements that the decedent’s probate estate contain no known real or personal property or that the value of the property be less than the total of all known demands. The requirements for the affidavit filed with the will are amended accordingly.

HB 2651 clarifies the transfer of ownership in property when the grantor issues a transfer of death deed naming two or more beneficiaries. The bill is designed as an anti-lapse provision allowing the property to vest in the beneficiary’s surviving heirs should the beneficiary die prior to the record owner grantor. This is the fourth version of the proposal, and it is very likely that House Judiciary Chairman John Barker will assign this issue to Kansas Judicial Council for an interim study.

Special Notice
While it may be difficult to think about the 2017 Legislative Session when the 2016 Legislature has just completed its work, perseverance is necessary. Individual members, local bar associations, committees, and sections may all submit proposals. Each proposal will be reviewed by the appropriate section or committee before consideration. Therefore, it is imperative that you begin drafting your proposal now and submit it to the appropriate section.

The KBA Legislative Committee will meet this November to consider all legislative proposals for the 2017 session. All proposals should be mailed to:

Kansas Bar Association
1200 SW Harrison Street
Topeka, KS 66612

or emailed to
Joseph N. Molina III
jmolina@ksbar.org

About the Author

Joseph N. Molina III currently serves as the legislative services director for the Kansas Bar Association. He previously served as chief legal counsel for the Topeka Metropolitan Transit Authority and assistant Kansas attorney general. Molina earned his J.D. from Washburn University School of Law.

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ATTORNEY DISCIPLINE

ONE-YEAR SUSPENSION
IN THE MATTER OF LYLE LOUIS ODO
NO. 114,863—JULY 15, 2016

FACTS: Odo is a Kansas-licensed attorney with a primary place of business in Missouri. In November 2015, a hearing panel of the Kansas Board for Discipline of Attorneys determined that Odo violated Kansas Rules of Professional Conduct 1.7(a)(2) (conflict of interest), 1.8(a) (conflict of interest), 1.8(e) (providing financial assistance to client), 1.9(a) (duties to former clients), 1.15(d) (preserving client funds), and 8.4(d) (engaging in conduct prejudicial to the administration of justice). The disciplinary investigation arose after Odo represented two individuals who had been injured in the same car accident. When one of the clients experienced financial difficulties, Odo steered him to a lending operation of which Odo was president. Although Odo is not technically the owner, he derives benefit from profits earned by the company. Odo did not advise his client that he had the right to seek independent counsel on the loan terms, and the lines were blurred between Odo’s representation of his client in the personal injury case and Odo’s representation of his company. Odo’s license to practice law in Missouri has been indefinitely suspended.

HEARING PANEL: The hearing panel determined that Odo’s actions violated the KRPC because his concurrent conflicts between client and business kept him from adequately representing either client. After weighing the aggravating and mitigating factors, the panel recommended that Odo be indefinitely suspended.

HELD: The court accepted the recommendation of the disciplinary administrator that Odo be suspended for one year. He must appear for a reinstatement hearing before being allowed to practice law in Kansas.

CIVIL

KANSAS CONSTITUTION—SCHOOL FINANCE
GANNON V. STATE
SHAWNEE DISTRICT COURT—ORDER AFFIRMING
COMPLIANCE
NO. 113,267—JUNE 28, 2016

FACTS: In May 2016, the Kansas Supreme Court held that the legislature had not cured the inequities in the local option budget (LOB) and supplemental general state aid that had previously been found to exist. In response to that decision, the governor called the legislature into special session for the purposes of addressing the holding. After the legislature passed and the governor signed a new funding formula, the parties filed a Joint Stipulation of Constitutionally Equitable Compliance. The parties jointly asked the court to acknowledge that the legislature satisfied the court’s orders regarding the equity of school finance, and that there was no judicial remedy needed.

ISSUE: Whether H.B. 2001 satisfies the court’s prior rulings regarding equitable school funding in Kansas

HELD: H.B. 2001’s revival of the prior School District Finance and Quality Performance Act, plus full funding, means that the school finance formula for fiscal year 2017 is in compliance with the equity component of Article 6, § 6 of the Kansas Constitution. The court retained jurisdiction to address the adequacy portion of the school finance litigation.

CRIMINAL

CONSTITUTIONAL LAW—CRIMINAL PROCEDURE—
DEATH PENALTY—JURY - STATUTES
STATE V. CHEEVER
GREENWOOD DISTRICT COURT—AFFIRMED
NO. 99988—JULY 22, 2016

GUILT PHASE: Cheever was convicted of killing sheriff; death sentence was imposed. Regarding guilt phase of trial, Kansas Supreme Court reversed, finding Cheever did not waive Fifth Amendment privilege against self-incrimination by presenting voluntary intoxication defense to capital murder charges, thus state’s rebuttal expert witness (Welner) should not have been allowed to testify. U. S. Supreme Court disagreed, holding Welner’s expert opinion testimony was admissible. State v. Cheever, 295 Kan. 229 (2012), vacated and remanded 134 S.Ct. 596 (2013). Scope of Welner’s rebuttal testimony was considered on remand, as well as impact of subsequent legislative amendment stating that felony murder was not a lesser included offense of capital murder.

ISSUES: (1) Proper rebuttal testimony, (2) Felony-murder instruction

HELD: Admission of Welner’s testimony, which revolved around Welner’s statement that Cheever emulated an outlaw lifestyle, and alleged implication that Cheever had antisocial personality disorder, was within trial court’s broad discre-
ISSUES: (1) mitigating circumstances instruction, (2) constitutionality of K.S.A. 21-3439(a)(5), (3) challenges for cause, (4) orientation remarks, (5) age at time of crime, (6) constitutionality of K.S.A. 21-4624(c), (7) prosecutorial misconduct, (8) cumulative error

HELD: Cheever waived state law argument by not presenting it in original appellate brief, and a motion cannot be used to raise a new issue, but under unique circumstances of death penalty case the issue is considered for first time on appeal. Relief under Eighth Amendment on mitigating circumstances instruction is foreclosed by Carr. Greater protection afforded in K.S.A. 21-4624(e) to a death-eligible defendant is matter of state law. Burden-of-proof instruction argued for on appeal was legally and factually appropriate. District court erred under state law in not instructing jury that mitigating circumstances need not be proven beyond a reasonable doubt. Under facts of case, however, Cheever failed to show clear and reversible error.

Cheever lacked standing to challenge constitutionality of K.S.A. 21-3439(a)(5) on ground asserted because it was undisputed the victim was engaged in performance of duties as law enforcement officer when killed.

There was ample support in record for trial court’s denial of Cheever’s challenge for cause of first venire member. There was no error in granting State’s challenge for cause of second venire member.

Trial judges should not mention appellate review to juries, but the brief and factual mention to panels in this case, prior to voir dire and selection of jurors, was not reversible error.

There was no evidence in record that could rationally lead jury to find Cheever was under age 18 at time of the offense. Any error in failing to have jury find Cheever’s age was harmless.

Cheever’s Sixth and Eighth Amendment challenges to K.S.A. 21-4624(c) was defeated by State v. Kleypas, 272 Kan. 894 (2001), and State v. Scott, 286 Kan. 54 (2008), which are not reconsidered. Cheever lacked standing to challenge statute under Confrontation Clause.

Under standard of review of prosecutorial misconduct during penalty phase, as explained in Kleypas, prosecutor’s improper remark in this case was harmless error.

Guided by Kleypas, when considering claim that cumulative error infected the penalty-phase proceeding, test is whether the total cumulative effect of errors, viewed in light of record as a whole, had little, if any, likelihood to change jury’s ultimate conclusion regarding weight of aggravating and mitigating circumstances. Less precise standard articulated in State v. Robinson, 303 Kan. 11 (2015), is disapproved. Individual penalty-phase errors in this case are identified, but total effect of the errors had little, if any, likelihood to change jury’s ultimate conclusion that death was appropriate sentence.

DISSENT (Johnson, J.): Disagreed with majority’s decision to uphold death penalty in this case. Reasserted belief that death penalty violates prohibition against cruel or unusual punishment in Kansas Constitution Bill of Rights. Agreed that district court failed to comply with state-law needs re-examination. Eighth, cumulative error deprived him a fair penalty-phase proceeding.
rule on instructing death-penalty juries about mitigating circumstances. He maintained this instruction error warranted a new sentencing proceeding, and that majority erred in reviewing the record to reweigh aggravating factors against mitigating circumstances. Majority also erred in applying the clearly erroneous provision of K.S.A. 22-3414(3) in this death penalty case that is governed by K.S.A. 2015 Supp. 21-6619(b), which authorizes Kansas Supreme Court to notice unassigned errors in the record if it would serve ends of justice.

STATUTES: K.S.A. 2015 Supp. 21-6619, -6619(b), -6619(c), -6619(d); K.S.A. 2013 Supp. 21-5402(d); K.S.A. 2012 Supp. 21-5402; and K.S.A. 21-3439(a)(5), -4622, -4624, -4624(b), -4624(c), -4624(e), -4627(a), 22-3410(2(i), -3414(3), 43-156

DUE PROCESS—MISTRIAL—PROSECUTORIAL MISCONDUCT
FRANKLIN DISTRICT COURT—COURT OF APPEALS IS AFFIRMED DISTRICT COURT IS AFFIRMED
NO. 110,149—JULY 1, 2016

FACTS: In 2000, a 16-year-old girl was abducted. Her assailant drove her to a nearby parking lot, fondled her breasts, and masturbated. The assailant threatened to harm the girl if she called the police. She did so anyway, and during the investigation the police were able to obtain partial DNA profiles from various evidence left in her car. The at-the-time unknown DNA profile was entered into an FBI database, but it was not matched to Corey until 2011, who was at that time in federal custody. Corey categorically denied committing the crime. Corey was charged with aggravated kidnapping, attempted rape, criminal threat, and two counts of aggravated sexual battery. He was convicted as charged, but the district court granted an unopposed motion for new trial after it was discovered that a juror had used a cell phone during deliberations to pull up evidence about the case. At the second trial, the victim was unable to identify Corey as her attacker. Corey attacked the reliability of the DNA evidence and noted inconsistencies in the victim’s testimony. The court of appeals affirmed Corey’s convictions, and the supreme court accepted his petition for review.

ISSUES: (1) Whether juror misconduct warranted a second trial (2) Whether the prosecutor misstated either the evidence or the law, requiring a reversal (3) Whether there was error in ex parte communication with the jury or a lack of clear record about Corey’s presence at certain portions of the trial

HELD: At trial, the jury discussed the fact that this was Corey’s second trial. It was unclear whether the jury knew that the previous trial resulted in a conviction, and it was agreed that trying to determine the depth of the jury’s knowledge would likely cause more harm. Corey requested a mistrial or, in the alternative, a curative jury instruction. The district court denied the motion for mistrial but agreed to give a curative jury instruction. When determining whether a fundamental failure made it impossible to proceed without injustice, a court must assess whether the failure affected a party’s rights by altering the outcome of the trial. Any error must be evaluated under the constitutional harmless error
standard. Under that standard, any error created by juror misconduct in this case was harmless. The prosecutor misstated the evidence by telling the jury that Corey’s DNA was found on the victim’s body. But the error was not gross or flagrant or the product of ill will, and there was a significant amount of evidence to support the inference that the DNA was Corey’s. And the prosecutor’s comments on why the rape was not completed were an accurate statement of the law. The other trial errors alleged by Corey were harmless, primarily in light of the weight of the evidence against Corey.

STATUTES: K.S.A. 2015 Supp. 60-261; K.S.A. 1999 Supp. 21-3301(a); and K.S.A. 20-3018(b), 22-3423(1)(c), -3504(1), 60-261, -2101(b), -2105

EVIDENCE—STATUTORY INTERPRETATION
STATE V. DARROW
JOHNSON DISTRICT COURT—COURT OF APPEALS IS AFFIRMED DISTRICT COURT IS AFFIRMED NO. 109,397—JULY 1, 2016

FACTS: Darrow was charged with DUI, third offense, after an officer found her passed out behind the wheel of a running vehicle. Darrow failed field sobriety tests and showed other markers of impairment. Darrow agreed to a bench trial on stipulated facts. The state stipulated that Darrow did not drive to the location where she was found, and Darrow stipulated that she was under the influence to the degree that she was not capable of safely operating a motor vehicle. The agreement ended, though, at the question of whether Darrow’s act of “fumbling with the gear shift” constituted “operating or attempting to operate a motor vehicle.” At that bench trial, the district court judge made inquiries beyond the written stipulation of facts that were presented. Unfortunately, due to an equipment malfunction, the transcript of the bench trial was unavailable. The parties prepared and filed an agreed-upon statement of facts as to the substance of the bench trial hearing. Based on the stipulation at district court, Darrow was found guilty. She appealed to the court of appeals, which found that, under the totality of the evidence, Darrow was guilty when she “fumbled with” the car’s gear shift. Darrow’s petition for review was accepted.

ISSUE: Does “fumbling with” a vehicle gear shift constitute operating or attempting to operate a motor vehicle?

HELD: As used in the DUI statutes, “operate” means “driving” and “attempting to operate” means “attempting to drive.” Therefore, Darrow could be convicted only if some evidence—direct or circumstantial—showed that Darrow was attempting to drive the vehicle. And in this case, the circumstantial evidence, when viewed in the light most favorable to the state, provided sufficient evidence to find Darrow guilty.


SENTENCING—STATUTORY INTERPRETATION
STATE V. JEFFRIES
JOHNSON DISTRICT COURT—AFFIRMED NO. 113,116—JULY 1, 2016

FACTS: In 1987, prior to the enactment of the Kansas Sentencing Guidelines Act (KSGA), Jeffries pled no contest or guilty to multiple counts, including felony murder. He received a controlling prison term of life without the possibility of parole for 30 years. In 2014, Jeffries filed a motion to correct an illegal sentence in which he claimed that the Kansas Supreme Court’s decision in State v. Murdock required his sentence to be converted to a guidelines sentence. Because of the severity level of his crimes, Jeffries had previously been told that his sentences did not qualify for conversion. The district court denied Jeffries’ motion to correct an illegal sentence, finding that Murdock applied only to out-of-state convictions, and all of Jeffries’ relevant criminal history occurred in Kansas. Jeffries appealed.

ISSUE: Whether Murdock allows for the conversion of an indeterminate sentence that is otherwise not convertible

HELD: Murdock is not directly applicable to Jeffries because it applies only to out-of-state convictions, not to mention the fact that it was overruled by the Kansas Supreme Court’s holding in State v. Keel. Further, the retroactive application portion of the KSGA does not contain the same ambiguity that was addressed in Murdock. Because Jeffries’ sentence remains ineligible for retroactive application of the KSGA it is not illegal, and the district court correctly denied Jeffries’ motion to correct an illegal sentence.

STATUTES: K.S.A. 21-4711(e); and K.S.A. 21-3427, -4724(a), -4724(b), -4724(c)(1), -4724(c)(4) (Furse 1995)

APPEALS—CRIMINAL PROCEDURE
STATE V. NORTHERN
WYANDOTTE DISTRICT COURT—AFFIRMED NO. 112,955—JULY 22, 2016

FACTS: Northern pled guilty to first-degree murder. Hard 25-year sentence imposed in October 2011, with restitution left open. Restitution order entered the next month. Three and a half years later, Northern filed motion for leave to file appeal out of time. District court denied the motion, noting Northern candidly admitted he had been notified of right to appeal, but could not recall specific conversation or wording of asking attorney to file an appeal. District court also found that no exception under State v. Ortiz, 230 Kan. 733 (1982), applied. Northern appealed, arguing, his sentence never became final for purposes of appeal because restitution was never pronounced from bench in open court. He also claimed the first and third Ortiz exceptions were satisfied.

ISSUE: Out of time appeal

HELD: District court’s denial of motion for leave to file appeal out of time was affirmed. Facts of case closely resemble State v. Frierson, 298 Kan. 1005 (2014), and State v. Moncla, 301 Kan. 549 (2015). Strict requirements from State v. Hall, 298 Kan. 978 (2014), are not applied retroactively to pre-Frierson sentences, and there is no need to alter holdings in Frierson and Moncla. No remand to district court for development of record to support Northern’s claim regarding Ortiz exceptions.

STATUTES: None

CRIMINAL PROCEDURE—SPEEDY TRIAL—STATUTES
STATE V. SPEENCER GIFTS, LLC
JOHNSON DISTRICT COURT—AFFIRMED COURT OF APPEALS—AFFIRMED NO. 111,398—JULY 8, 2016

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FACTS: Powell, Brewer, and Reddick were law partners. When two of the three wanted to leave the partnership, they could not agree on how to wind up the business. Powell filed a petition for judicial supervision of dissolution. As part of the process, the district court asked all three to propose their own wind-up plan. The district court chose Reddick’s proposal, which was supported by Brewer. Powell disagreed with the terms of the proposal and appealed.

ISSUE: Whether the district court erred by choosing Reddick’s partnership wind-up plan

HELD: When a court supervises the dissolution of a partnership, it acts as a court of equity. As such, the district court has the discretion to determine what is fair and equitable under the circumstances, which allows a great deal of latitude. The district court was required to follow the partnership agreement and, in the event that the agreement was silent on a particular issue, to apply the Kansas Revised Uniform Partnership Act (KRUPA). The district court correctly determined that the partnership agreement did not cover dissolution or wind-up. In that absence, the KRUPA governs. Because the firm’s practice was to use firm money to advance client expenses, despite a partnership agreement term to the contrary, Powell cannot require adherence to the agreement’s terms only after dissolution. Because Powell added to the balance of the bank loan without consulting the other partners, the district court did not abuse its discretion by requiring Powell to personally pay the loan balance.

STATUTES: K.S.A. 2015 Supp. 22-3402(b), -3402(b), -3402(g), -3602(e); K.S.A. 22-3402, -3402(2); K.S.A. 22-3402(1), -3402(2) (Ensley 1995); and K.S.A. 21-3813(1), -3813(2), -22-3402(2) (Ensley 1981)
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