How Letters of Credit Operate in International Commercial Transactions:
An Introduction to the UCP
Let Your Voice be Heard!

### KBA Officers and Board of Governors

**President:**
Linda S. Parks  
(316) 265-7741  
parks@hitefanning.com  
Wichita

**President-elect:**
Thomas E. Wright  
(785) 271-3166  
t.wright@kcc.ks.gov  
Topeka

**Vice President:**
Timothy M. O’Brien  
(816) 474-6550  
tobrien@shb.com  
Kansas City, Mo.

**Secretary-Treasurer:**
Hon. Benjamin L. Burgess  
(316) 660-5607  
bburgess@dc18.org  
Wichita

**Executive Director:**
Jeffrey J. Alderman  
(785) 234-5696  
jalderman@ksbar.org  
Topeka

**Immediate Past President:**
David J. Rebein  
(620) 227-8126  
drebein@rebeinbangerter.com  
Dodge City

**KBA Delegates to ABA:**
Sara S. Beezley  
(620) 724-4111  
beezleylaw@ckt.net  
Girard

Hon. David J. Waxse  
(913) 551-5434  
judge_waxse@ksd.uscourts.gov  
Ks. City, Kan.

**Kansas Delegate to ABA:**
Thomas A. Hamill  
(913) 491-5500  
tahamill@martinpringle-kc.com  
Overland Park

**ABA Delegate at Large:**
Hon. Christel E. Marquardt  
(785) 296-6146  
marquardt@kscourts.org  
Topeka

**Young Lawyers Section President:**
Amy Fellows Cline  
(316) 630-8100  
amycline@twgfirm.com  
Wichita

**KDJA Representative:**
Hon. Daniel L. Love  
(620) 227-4620  
dlove16thdistrict.net  
Dodge City

**District 1:**
Eric G. Kraft  
(913) 498-3536  
ekraft@kcc-dsdlaw.com  
Overland Park

Kip A. Kubin  
(816) 531-8188  
kak@kc-lawyers.com  
Kansas City, Mo.

Lee M. Smithyman  
(913) 661-9800  
smithyman@smizak-law.com  
Overland Park

**District 2:**
Gerald R. Kuckelman  
(913) 367-2008  
aca@journey.com  
Archer

Paul T. Davis  
(785) 843-7674  
pauldavis@sunflower.com  
Lawrence

**District 3:**
Dennis D. Depew  
(620) 325-2626  
dennis@depewlaw.biz  
Neodesha

**District 4:**
William E. Muret  
(620) 221-7200  
murett@winfeldattorneys.com  
Winfield

**District 5:**
Martha J. Coffman  
(785) 271-3105  
m.coffman@kcc.state.ks.gov  
Topeka

**District 6:**
Gabrielle M. Thompson  
(785) 539-3336  
gabrielle7000@sbcglobal.net  
Manhattan

**District 7:**
Laura L. Ice  
(316) 660-1258  
lice@cfc.textron.com  
Wichita

Rachael K. Pirner  
(316) 630-8100  
kpiner@twgfirm.com  
Wichita

Mary Kathryn “Kathy” Webb  
(316) 263-5851  
kwebb@mtsqh.com  
Wichita

**District 8:**
Gerald L. Green  
(620) 662-0537  
jerry@gh-hutch.com  
Hutchinson

**District 9:**
Hon. Kim R. Schroeder  
(620) 428-6500  
judge263@pld.com  
Hugoton

**District 10:**
Glenn R. Braun  
(785) 625-6919  
grbraun@haysamerica.com  
Hays

**District 11:**
Vacant

**District 12:**
Christopher J. Masoner  
(816) 983-8264  
cmasoner@blackwellsanders.com  
Kansas City, Mo.

Let Your Voice be Heard!
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.

The Journal of the Kansas Bar Association
March 2008 • Volume 77 • No. 3

ITEMS OF INTEREST
7 New KBA Speakers Bureau to Showcase Profession

REGULAR FEATURES
4 President’s Message
5 Young Lawyers Section News
8 A Nostalgic Touch of Humor
9 Law Students’ Corner
10 Members in the News
10 Dan’s Cartoon
11 Obituaries
12 Law Practice Management Tips & Tricks
28 Appellate Decisions
29 Appellate Practice Reminders
38 Classifieds
39 CLE Docket

Celebrating Our Past, Present, and Future
Annual Meeting 2008

Meet your colleagues and friends in Topeka, to celebrate the Kansas Bar Association at the 2008 Annual Meeting.

June 19-21 at the Capitol Plaza Hotel

Make your hotel reservations now for only $92 per night. For reservations call (785) 431-7200.

Hear political satirist and musician Kinky Friedman, outrageous and irreverent, but nearly always thought provoking. His talk will include politics, social issues, and lessons learned from running for Texas governor.

The Journal Board of Editors
DIRECTOR OF BAR SERVICES: Susan McKaskle

<table>
<thead>
<tr>
<th>Terri Savely Bezek, Chair</th>
<th>Michelle Reinert Mahieu</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anne L. Baker</td>
<td>Dodge City</td>
</tr>
<tr>
<td>Hon. Monti L. Belot</td>
<td>Topeka</td>
</tr>
<tr>
<td>Boyd Byers</td>
<td>Topeka</td>
</tr>
<tr>
<td>Hon. Jerry Elliott</td>
<td>Wichita</td>
</tr>
<tr>
<td>J. Lyn Entrikin Goering</td>
<td>Wichita</td>
</tr>
<tr>
<td>Connie Hamilton</td>
<td>Topeka</td>
</tr>
<tr>
<td>Mark D. Hinderks</td>
<td>Topeka</td>
</tr>
<tr>
<td>Evan Ice</td>
<td>Overland Park</td>
</tr>
<tr>
<td>Katharine J. Jackson</td>
<td>Lawrence</td>
</tr>
<tr>
<td>Michael T. Ilka</td>
<td>Manhattan</td>
</tr>
<tr>
<td>Casey Law</td>
<td>Topeka</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Richard D. Ralls</td>
<td>Kansas City, Mo.</td>
</tr>
<tr>
<td>Hon. Lawton R. Nuss</td>
<td>Topeka</td>
</tr>
<tr>
<td>Hon. James P’O’Hara</td>
<td>Overland Park</td>
</tr>
<tr>
<td>Professor John Peck</td>
<td>Lake Quivira</td>
</tr>
<tr>
<td>Richard H. Seaton</td>
<td>Manhattan</td>
</tr>
<tr>
<td>Marty M. Snyder</td>
<td>Topeka</td>
</tr>
<tr>
<td>Catherine A. Walter</td>
<td>Topeka</td>
</tr>
<tr>
<td>Diane S. Worth</td>
<td>Wichita</td>
</tr>
</tbody>
</table>
| Terri Bezek, Board of Editors chairperson, bezekt@kcourt.org
Susan McKaskle, director of bar services, smckaskle@ksbar.org

COPYRIGHT 2008 Kansas Bar Association, Topeka, Kan.
Those of you who know me are well aware that I could not let this year of presidency slip away without one president’s column focusing on the issues of women in the law. Those of you who know me well are surprised it took this long. But many attorneys do not believe there is anything to discuss. We’ve come a long way baby … right? Maybe we have. But it is nothing compared to how far we have to go.

I graduated from law school in 1983. (I was 5 years old). At that time, women comprised more than 40 percent of law students. Over the next few years the numbers rose to almost 50 percent. So we thought that all the disparities in partnership levels and salaries that existed then would be diminished — if not eradicated — by the filling of the pipeline and the passage of time. Big fallacy.

According to the 2007 ABA Commission on Women’s Goal IX Report, women currently comprise only 17.9 percent of the partners in law firms. Only 15.7 percent of the Fortune 1000 general counsel are women. We number 24 percent of the federal district court judges. As for women judges in Sedgwick County … forget it. We have one out of 26, less than 4 percent.

The statistics on salaries are just as telling. According to the Bureau of Labor Statistics, the median weekly earnings for full-time wage and salaried attorneys was $1,891 for men and $1,333 for women. According to a recent survey by the National Association of Women Lawyers, nonequity law firm partners who are male earn about $27,000 more than women partners. Male equity partners earn $90,000 more than women equity partners.

Certainly, some of the disparity could be explained on a case-by-case basis. And some of it can be explained because the attrition rate for women lawyers is higher than it is for male lawyers. So the questions arise. Why? Who cares? What can we do about it?

Of course the primary explanation for the higher attrition rates in women attorneys is the “Mommy Factor.” As stated in the Equity Commission MIT Workplace Center Report, “The loss of women to leadership in the law follows directly from a failure in the profession to respond imaginatively to a dual need for time: time for work and time for families.” The report concludes, “[B]uilding time for families into law firm practice is not a general institutional norm. The availability of flexible arrangements for family care is indeterminate and unpredictable. Finding a way to combine law firm practice and care for families is at present an individual responsibility, and it generally carries professional penalties. Change in these practices is essential if women are to advance to leadership in the legal profession.”

Should we care? Yes. Estimates show that the cost of losing one associate after three years of training ranges from $250,000 to $500,000. Maybe it is less in Kansas. And maybe you don’t care about statistics. But another consideration that cannot be denied is that clients are insisting on diversity in law firms. Major corporations demand it. And often times the “contacts” at those major corporations are women.

So what can we do about it? The possibilities are legion. Of course, it requires change … and you know how we lawyers hate change. But here are some ideas:

- Let go of the assumption that women who work less than 1,800 or 2,000 hours per year are “less committed” than the rest of us. Be willing to measure performance by the quality of work and the areas of expertise.
- Analyze the factors that you use at your firm or office for attorneys to succeed. Look at work assignments, evaluation processes, speaking engagements, client assignments, client meetings, and committee assignments. Consider whether the playing field is level in all matters — from the beginning.
- Be a mentor. Be a mentor. Be a mentor.
- Make accommodations. That includes allowing women to work from the home. Not all the time. Just sometimes. With today’s technology it is easy. In addition, be flexible in what constitutes a work week. Flextime is a good thing. And also overcome the fear that we all seem to have of the dreaded “part-time partner.” It can be done.

I love the practice of law. I think lawyers are great people. I believe we are forward thinking and, for the most part, respectful of others. We are “can do” people. We are problem solvers. So if we just put our minds to it, we can make our companies and firms friendlier to women lawyers and women partners. And for that, we will all be better off.
KRPC 1.17 and Free Legal Advice — Be Prepared

By Amy Fellows Cline, Triplett, Woolf & Garretson LLC, Wichita, KBA Young Lawyers Section president

ew attorneys — and sometimes, law students! — are often faced with requests for free legal advice from family members, friends, or even people with whom we have less of a personal connection. At times, these requests are made in the least appropriate of settings or involve issues outside of the attorney’s practice area.

Almost immediately after graduating from law school, I began receiving requests for a “quick legal opinion” at many a cocktail party, family gathering, church activity, or the like. In fact, while squinting in an effort to read the smallest line on the eye exam chart at a recent optometrist appointment — to avoid having to admit my prescription may need tweaking — my optometrist pestered me with questions about a possible workers’ compensation claim his son may have, which just happens to be an area of law in which I have no expertise. Luckily, I was able to head off much of the discussion with a quick referral to my husband’s firm. However, not all such situations are so easily handled. They involve more than dodging “shop talk” on your recreational time. Some of these requests may pan out into actual, profitable relationships, while others will “fall limp” into the discard bin.

In light of the new ethics rule, KRPC 1.17, and the frequency with which attorneys are faced with requests for off-the-cuff legal opinions — sometimes, when the attorney may be less-than-sober at one of the aforementioned cocktail parties — new attorneys should be prepared to swiftly address this situation.

KRPC 1.17 protects a “prospective client,” defined as “a person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship.” To avoid disqualification — of you or another member of your firm — how can you make it clear to the basketball coach or veterinarian that he or she does not fit into this category? You can turn the conversation to another topic before too many details, especially any information that could be “significantly harmful” to the person who approached you, are revealed. If you are interested in helping the person, for a fee or pro bono, you could gather names of potential parties, so you can perform a conflict check, and suggest meeting at another time, which allows you to better focus on this person’s issues.

Now, I don’t mean to dissuade you from offering free or discounted legal advice or assistance — it can be a great marketing tool. It can also yield unexpected gifts of gratitude from the “clients” you help. An attorney I know has received champagne (Dom Perignon, no less!), purses, roses, and jewelry to thank her for free legal assistance she provided friends and family. My point is, you should try to control who can qualify as your prospective client. And, remember, the disciplinary administrator will see anyone you assist as your client, whether he or she pays you in fees or in goodwill.

Some requests for discounted legal assistance can involve misunderstandings about the scope of the attorney-client relationship apart from the ethical implications addressed above. An attorney I know was asked to lunch by a long-term client to discuss the client’s legal questions about a new matter. The client picked up the lunch tab. Later, the attorney billed the client for their discussion time as well as time spent on follow-up research to completely answer the client’s questions. The client was irate when he received the bill — he thought if a client picked up the lunch tab, the attorney wouldn’t bill for his time.

Other requests for free legal advice can be just downright funny. Two days after passing the bar, an attorney friend received a call at 3 a.m. from someone with whom she hadn’t spoken in more than 10 years. He was at a DUI checkpoint and wanted to know if he should consent to a breathalyzer test. He’d even called her mother, also around 3 a.m., to get her telephone number! Another attorney received a call from someone who had, for a short time 25 years earlier, dated his older sister when she was 15 years old. The attorney had been 9 years old at the time. Apparently, the former beau was in a legal pinch and felt this relationship may entitle him to a discount.

Whether you provide free or discounted legal assistance in similar situations is up to you and, most likely, the circumstances presented. If we accept that such requests are inevitable, and prepare ourselves beforehand to address them, we can ensure we have more control over the outcome and avoid any unwanted consequences imposed by KRPC 1.17. We can also be thankful we don’t work in the medical profession and have to face questions about unwelcome physical symptoms, which can include unpleasant visuals!
Melissa Taylor Standridge Appointed to Kansas Court of Appeals

By Beth Warrington, KBA publications & sections administrator

Long-time chambers counsel to the Hon. David Waxse, Melissa Taylor Standridge, Kansas City, Kan., has been appointed to the Kansas Court of Appeals in its newly created 13th position.

Gov. Kathleen Sebelius said Standridge’s years of experience with the judiciary and her work in private practice will be beneficial to the court.

“With strong ties to her community and a breadth of legal experience, I am confident Melissa will serve the people of Kansas well,” said Sebelius.

Standridge’s reasoning for getting into law was wanting to right the wrongs experienced by the more vulnerable members of the community.

“It felt like I didn’t have the adequate tools to achieve my goal,” she said.

Standridge earned her Juris Doctor with distinction from the University of Missouri-Kansas City School of Law (UMKC) in 1993. While at law school she was a member of the Law Review, serving as editor-in-chief from 1992-1993. She was also chief justice of the Appellate Advocacy Program; participated in the Ellison Moot Court Competition; Law School Faculty Hiring Committee, serving as the sole student representative; and was a research assistant for Professor Ellen Suni. She earned her Bachelor of Science degree in 1984 from the University of Kansas.

In 1995 Standridge joined Shook, Hardy & Bacon LLP where she represented plaintiffs and defendants in more than 100 state and federal cases relating to employment discrimination cases with reference to race, sex, age, disability, and national origin as well as retaliation cases, sexual harassment, breach of contract, dissolution of marriage, child custody matters, and adoptions. She was active with the firm’s Pro Bono and Search committees and its Diversity Subcommittee, where she was chair for two years.

Standridge took her position as chambers counsel to Waxse in 1999 and has been with him until her appointment to the bench. Standridge was responsible for 50 percent of Waxse’s caseload, which consists of about 200 cases per year on average. During her tenure, Standridge wrote more than 300 proposed opinions, of which more than 100 were ultimately selected for publication.

“I think she will make a wonderful judge with her great ability to understand complex problems and to write clear legal solutions to those problems,” said Waxse. “In addition, she has more compassion for people than anyone I know.”

Standridge’s decision to apply for the Court of Appeals position came from her being “committed to public service since becoming a lawyer.” She believes this was the next step in that commitment.

“The selection process was a very positive experience for me,” she said, “both this time and on previous occasions when I applied.”

As with the Kansas Supreme Court justices, the Court of Appeals judges are selected through merit selection known as the Supreme Court Nominating Commission — a commission of lawyers and nonlawyers who recruit, investigate, and evaluate applicants. The commission then submits the names of three candidates to the governor for final selection.

With her selection by the governor, Standridge said that she hopes to bring to the bench her breadth of experience in all types of civil and criminal law, significant writing experience, dedication to the rule of law, varied life experiences, and ability to effectively collaborate with others.

To Standridge, her greatest contribution to the legal community has been her involvement as a lawyer in the community. This includes her pro bono work at Shook Hardy, advocacy on behalf of foster children and foster parents/grandparents in Kansas and Missouri, and the Kansas Bar Association’s Student Legal Internship Program.

In addition to her work with families with foster care and adoptive opportunities, Standridge herself has been a foster mother since 2000 and is an adoptive mother to three children — Sergio, Clinton, and Anna.

“In my capacity as a professional foster mother, I am a full-time parent,” she said, “a behavior management specialist, a mentor, a guide, a protector, a team member, an advocate, a teacher, a caregiver, and a mentor to children and birth families.”

Her tireless efforts both professionally and in the community has garnered her recognition, including Angel in Adoption (2007) from the Congressional Coalition on Adoption Institute, selected as the sole recipient by Rep. Dennis Moore in the Third Congressional District for outstanding commitment to improving the lives of children in need of permanent homes; Kansas City Legal Leaders of the Year Award (2006) from The Daily Record; Tierra Farrow Community Leadership Award (2005) from the UMKC Women Law Students; Public Service Award (2005) from the Law Foundation at UMKC School of Law; Outstanding Service Award (2001) from the KBA; and the Sandra Day O’Connor Award for Professional Service (2004) from the American Inns of Court.

Her past and present community and professional affiliations include the Missouri Department of Social Services Alternative Care Grievance Board, Midwest Foster Care and Adoption Association, Habitat for Humanity, the Myasthenia Gravis Association, the KBA’s Board of Governors and Diversity Committee, Earl E. O’Connor American Inns of Court, Lawyers Association of Kansas City, and the Kansas City Metropolitan and Wyandotte County bar associations.
New KBA Speakers Bureau to Showcase Profession

The phone rings, “Hello, this is Mrs. Smith from the ABC Middle School. We are studying the legal system and would like to have a lawyer speak to our class.” This is a common occurrence at the KBA.

However, it is not just limited to schools. We often receive requests like this from community centers, retirement facilities, clubs, and other civic organizations from across the state.

We receive calls from groups that are interested in Medicaid/Medicare changes, planning for the elderly and the disabled, civil rights, sexual harassment, municipal law, law as a career, and other areas of the law. With so many topics of interest, matching attorneys to speaking engagements would be a great way to fill these needs while showcasing the profession to the community.

With the increase of interest from communities statewide, the KBA is organizing a Lawyer Speakers Bureau. We believe this would be a wonderful public service and valuable educational resource. Through the Speakers Bureau, volunteer bar members would be provided an opportunity to help the general public gain a better understanding of the law and our judicial system.

Most recently, the KBA was asked by two different television stations to assist them with a legal call-in program. One program is a 30-minute call-in topic driven discussion. For instance, let's say the topic is elder law; two attorneys would then take prescreened calls during the half-hour broadcast and answer questions on-air.

This would be great way to promote the KBA's Lawyer Referral Service (LRS) as well. For those callers unable to get through due to busy lines, the LRS toll-free number will appear at the bottom of the screen. The other television program is run during the local evening news with a phone bank of attorneys taking calls on varying topics.

Talk radio continues to be very popular and many communities have locally produced talk radio programming. As various legal issues make their way into the spotlight, we often receive calls from talk radio producers looking for experienced attorneys to speak on-air.

A Speakers Bureau will allow volunteer attorneys the ability to choose their strengths or areas of expertise. In addition to helping educate your community this program is a great way to promote your firm and your services.

Below you will find a form that you can fill out and mail or fax, or go to the KBA Web site at www.ksbar.org to enroll in this important public service.

---

Join the Speakers Bureau!

The Kansas Bar Association Speakers Bureau is an important public service program and a valuable educational resource. Through the Speakers Bureau, volunteer bar members are provided an opportunity to help the general public gain a better understanding of the law and our judicial system.

If you are interested in participating in the Speakers Bureau program, please complete the following information and submit it via fax to (785) 234-3813 or mail to the address below. You may also send the same information via e-mail at mwickham@ksbar.org.

Photocopy or detach and mail to:

Meg Wickham
Manager of Public Services
Kansas Bar Association
1200 S.W. Harrison St.
R.O. Box 1037
Topeka, KS 66601-1037

Please list below your law-related areas of strength:

Name: ____________________________
Firm: ____________________________
Address: ____________________________
Telephone: ____________________________
Fax: ____________________________
E-mail: ____________________________

Please list below your law-related areas of strength:

_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
Vern Miller's law enforcement career among Kansas lawyers has no peer. It began in the 1940s when he was a motorcycle officer in Sedgwick County, then deputy sheriff. Following that, the voters elected him to county sheriff, which he held for three two-year terms. While sheriff he commuted three days a week to Oklahoma City University Law School, where he earned his degree in 1966. Three years later, in the fall of 1969, Gov. Docking asked him to run on the Democrat ticket for attorney general, which Miller did, winning 51-49 percent. Miller then ran and won again in 1972 in a presidential election year against a tidal wave of Republicans. That year Richard Nixon swept Kansas taking 67 percent of the statewide votes. Miller's margin was identical — 67 percent, and he won all 105 counties.

Logically, Miller next ran for governor in 1974, losing to Robert Bennett by 3,800 votes. A third-party candidate, running on the prohibition ticket, Marshall Uncapher, swung the election, picking up 11,000 votes. Many would find this to be ironic — Vern Miller's penchant for enforcing the state's arcane liquor laws is known to every Kansas attorney over the age of 50. For instance, Miller gained national attention when he raidied an Amtrak train in Newton. The offense: serving liquor by the drink.

Following the 1974 election Miller went back to Wichita, ran for district attorney and defeated the incumbent, Keith Sanborn. Miller assembled a group of young prosecutors, one who was Stephen Tatum, now a Johnson County district judge. “Vern became D.A. without a lot of trial experience, and he told us to do our jobs, and he would support us, and that’s the way it was. He didn’t interfere, but was loyal and supportive. Loyalty was important to Vern, and he amassed many friends through the years, who were similarly loyal to him.”

But Miller’s time in law enforcement came at the crossroads of great change at many levels, including drug use on our college campuses, and also changes to our country’s obscenity laws. After all, it was the spring of 1973 when the U.S. Supreme Court decided landmark rulings defining obscenity. The Justices added the terms “contemporary community standards” and “prurient interest” to our legal lexicon.

In September 1974, Linda Lovelace, whose film credits need no elaboration here, filmed “Linda Lovelace for President” in Lawrence. The movie includes a parade scene filmed on Jayhawk Boulevard, with 200 students and some members of the KU basketball team. (In the movie, I’m reliably informed — SPOILER ALERT — Linda wins and implements major policy changes on Capitol Hill.)

But there is one story about Vern Miller you may not know. And it has its genesis in Miller’s fight against obscenity in Wichita. You see, following the Supreme Court’s decisions, Vern lead the charge to define Wichita’s community standards, eventually charging some bookstores and movie houses with selling obscene material. Miller’s efforts found support in a large group of ministers and community leaders. And it culminated with a gathering at Century II in late February 1977.

The Wichita Eagle reported it this way: “Miller received a standing ovation as he stepped to the microphone, and Miller emphasized that the laws on the books should be aggressively enforced.”

The Eagle story continued: “While one of the ministers was saying a prayer, the otherwise orderly gathering was disrupted shortly after it began by two streakers who ran across the stage wearing only socks and track shoes. One of the streakers escaped, but the other … was tackled by Miller as he ran across the stage.”

Miller recently recalled what happened: “Anita Bryant was on stage with us. So was Police Chief Richard LaMunyon. It was a ‘Who’s Who’ of notable public figures in the city. The place was wall-to-wall jammed with people. And here came this streaker. He ran across the stage so fast, no one quite knew what had just happened. But when the second guy bolted across, I was more prepared. He was fast, probably because he knew the surprise element was now gone. I jumped up and tackled him as down he went. Someone covered him up. It was crazy, wild. Anita Bryant later told me she had never seen anything like it before in her life. And neither had I.” Quite a statement for someone, who, in his time, had seen almost everything.

About the Author

Matthew Keenan grew up in Great Bend and attended the University of Kansas, where he received his B.A. in 1981 and his J.D. in 1984. For the last 23 years, Keenan has practiced with Shook, Hardy & Bacon. He may be reached at mkeenan@shb.com.
LAW STUDENTS’ CORNER

Time for a Change

By Ken DeLaughder, Washburn University School of Law

Ladies and gentlemen, the exchange you are about to read is true. The names have been changed to protect the innocent.

**Big firm interviewer:** “Don’t worry about what you are learning. Most of law school is pretty irrelevant to the real world; once you graduate we’ll teach you everything you need to know about the law.”

**First-year law student:** “So I don’t really have to worry about law school?”

**Big firm:** “You have to stay in the top 20 percent of your class.”

**First-year law student:** “Why is that?”

**Big firm:** “Because we only want the best and the brightest at our firm!”

For a profession that prides itself on logic and argument, it didn’t make much sense to me, and it still doesn’t. Apparently, law school was irrelevant to the practice of law, but excellence in the irrelevant was my ticket to Big Firm. If that was an isolated incident, I might not be writing this piece. In my 18-plus months in school, I have heard this advice repeated over and over again: law school doesn’t really teach what real lawyers need to know, but if you want a good job, do well in law school. It’s enough to make you wish you had gotten different doctorate instead.

Change is possible but needs support from the bar. Hearing that law school is bad at preparing students does not help them. There seems to be few positive comments about law school from practicing lawyers. Lawyer dissatisfaction seems to begin in law school. I recently spoke on a panel at Washburn’s Humanizing Legal Education Conference. Some of our brightest students shared their stories about traumatic aspects of legal education. Some talked about a culture where scholarship is valued more than teaching ability or dealing with an intensely competitive environment that calls for detrimental personal sacrifice of health and relationships. These experiences are fairly universal. I can attest that Washburn is committed to change, and that it can use your support in that effort. But nationwide, studies show that law schools are highly resistant to change and are not concerned enough with faculty development and adapting their curriculum to the profession’s needs. If law schools want their progeny to be client-centered, then they should become client-centered themselves and focus on students and learning.

Law schools are the easy target. The harder question for the bar is what attorneys can do to make a difference. First, you can support students by fostering change and promoting optimism. Attorneys are full of criticism but short on solutions. They can serve as mentors to law students who are willing to encourage success and work/life balance. I have been lucky enough to have two very good mentors, but others may not realize that their cynicism can be harmful. For example, one classmate’s mentor told him to leave law school if he wasn’t in the top 20 percent, another told her mentee to transfer out of Kansas, and yet another said that law school was worthless and his mentee should get another job. When even our mentors express negativity, then change will indeed take generations.

Second, alumni can use their donations to vote for change. Your financial support can buy more than recognition; it can drive stronger teaching and practical skills instruction at your alma mater. Ask questions before you give. What is the school doing to train its faculty to adopt the best teaching practices used in colleges and graduate schools, such as teaching to visual learners and stimulating active learning? To support faculty development? To produce lawyers who are prepared for practice? If enough of you ask those questions, the schools must respond. Spend wisely.

Third, practitioners can bring their own, diverse perspectives to the law schools as instructors. The “2007 Carnegie Report on the Advancement of Teaching” argues that many law faculty are taken from “predictable career paths.” Top law students get on the law review, become judicial clerks, and then become law professors. Break the cycle by applying to teach a course the school doesn’t offer or by volunteering to give a lecture or talk to students about your practice. Varied perspectives and experiences help to bridge the gap between study and practice.

Finally, if you are an employer, you can rethink your reliance on the grading hierarchy. Law students enter this highly competitive environment from diverse backgrounds, and employers often overlook students who may be even better prepared for practice by life experience than those at the top of the class. The unduly narrow emphasis on grade performance often marginalizes married students, single parents, and even otherwise top students who faced one difficult semester due to life circumstances. Until the best trained legal educators are in the classroom, how can we ensure grade scales measure the best and the brightest?

I am a strong critic of legal education, but I am also trying to change it. Those of you who have already committed your lives to the call of the law should also become involved.

About the Author

Ken DeLaughder, M.A., is a second-year law student at Washburn University. He is a former instructor of communication and director of debate at Emporia State University, where he taught from 1999 to 2007. He has served as a research assistant in the area of legal education and has worked in the area of civil claims and municipal law.

---

FOOTNOTES


2. Id. at p. 89.

3. Id.
Members in the News

CHANGING POSITIONS

John E. Angelo has joined Koch Chemical Technology Group LLC, Wichita, as senior corporate counsel.

Doug M. Beck has been promoted to partner at Shook, Hardy & Bacon LLP, Kansas City, Mo.

Allen W. Blair, David W. Frantz, and Brian K. O beness have joined Stinson Morrison Hecker LLP, Kansas City, Mo.

Geron J. Bird and Travis Counts have become members of Hinkle Elkouri Law Firm LLC, Wichita.

Kevin J. Breer has become a shareholder with Polsinelli Shalton Flanigan Suelthaus P.C., Overland Park, and Douglas J. Kramer is now a shareholder at the firm’s Kansas City, Mo., office.

Logan M. Brown has joined the Law Offices of Tim J. Brown P.A., Wichita.

Paula L. Brown, Mary C. O’Connell, and Christopher J. Stucky have joined Douthit Frets Rouse Gentile & Rhodes LLC, Kansas City, Mo.

Brett T. Burmeister has joined Burmeister Gilmore LLP, Independence, Mo.

Michael P. Cannady has joined INTRUST Wealth Management, Wichita.

Jeffrey M. Cook has joined the Murphy Law Firm LLC, Overland Park.

Susanna Coxe has joined the Kickapoo Tribe of Kansas, Horton, as a tribal attorney.

Brian D. DeFrain has joined Shapiro & Protzman P.A., Overland Park.

Tracie R. England and David J. Lar forge have been named partners at Hite, Fanning & Honeyman LLC, Wichita.

Blaine B. Finch is now owner and president of Green & Finch Chtd., Ottawa.

Mark A. Galloway has joined Advanced Legal Planning LLC, Haysville.

Jeffrey W. Gettler has become a partner with Scovel, Emert, Heasty & Chubb, Independence, Kan.; therefore, the firm’s name has been changed to Scovel, Emert, Heasty, Chubb & Gettler.

Jonathan S. James has joined the Ford County Attorney’s Office, Dodge City.

Monika D. Jenkins has joined Seigfreid, Bingham, Levy, Selzer & Gee P.A., Kansas City, Mo.

Kimberly B. King and Derek T. Teeter have joined the litigation department at Blackwell Sanders LLP, Kansas City, Mo.

Andrew N. Kovar has joined Triplett, Woolf & Garretson LLC, Wichita.

Travis D. Lenkner has accepted a clerkship at the U.S. Supreme Court for Justice Anthony M. Kennedy, Washington, D.C.

Robert D. Maher and Charles G. Renner have become members at Husch & Eppenberger LLC, Kansas City, Mo.

Joshua D. Mast has joined Crow, Clothier & Associates, Leavenworth, as an associate.

Sarah E. Morrison has joined the Kansas Appellate Defender’s Office, Topeka.

Ralph F. Munyan III has joined APlus.net, Overland Park, as general counsel.

Trevor D. Riddle has joined Monnat & Sturrier Chtd., Wichita.

Nichole J. Mohning-Roths has joined Cutler & Donahoe LLP, Sioux Falls, S.D.

Kathryn A. Seебerger has joined Kansas State University, Manhattan, as an instructor.

Ken W. Strobel has joined the city of Dodge City as the city manager and legal counsel.

Karan M. Thadani has become a partner at the Law Office of Johnson & Johnson LLC, Lawrence.

Michael D. Yates has joined Deloitte, Salt Lake City.

CHANGING PLACES

Barnett Law Firm Chtd. has moved to 816 Ann Ave., Kansas City, KS 66101.

Berkowitz Oliver Williams Shaw & Eisenbrandt LLP has moved to 4200 Somerset Dr., Ste. 150, Prairie Village, KS 66208.

The Halbrook Law Firm has moved to 3500 W. 75th St., Ste. 300, Prairie Village, KS 66208.

Amy P. Maloney has started her own firm, Maloney Law Firm, 4600 Madison, Ste. 810, Kansas City, MO 64112.

Connie J. Nordboe-Tinker and Donald C. Tinker Jr. can now be reached at P.O. Box 9010, Wichita, KS 67277-9010.

Steven W. Peterson has moved to 6716 S.W. Finsbury Ave., Topeka, KS 66614.

Joel J. Rook has started his own practice, Law Office of Joel Rook, 115 S. Kansas Ave., Olathe, KS 66061.

James J. Rosenthal has started his own practice, Rosenthal Law Office, 1311 Wakarusa Dr., Ste. 2200, Lawrence, KS 66049.

Robert E. Shaver has moved to 3450 N. Rock Rd., Ste. 603, Wichita, KS 67226.

Debra A. Vermillion has started her own firm, Vermillion Law Office LLC, 214 S. Kansas Ave., Olathe, KS 66061.

Dawn C. Watkins has started a firm, Barbera & Watkins LLC, 6701 W. 64th St., Ste. 315, Overland Park, KS 66202.

(Continued on next page)

Dan’s Cartoon by Dan Rosandich

“He’s an ordained minister and a divorce lawyer. He gets you coming and going.”
Richard C. “Jack” Byrd


Byrd was a founding partner of the law firm Anderson, Byrd, and Richeson in Ottawa and served in various capacities as Franklin County attorney, chair of the Kansas Corporation Commission, governor’s representative to the Interstate Oil Compact Commission (IOCC), and later as general counsel to the IOCC. He was also a lifetime member of the Kansas Bar Association, joining in 1947.

He is survived by his wife of 63 years, Jane G. Byrd, Palm Desert, Calif.; four children; and six grandsons.

Obituaries

Members in the News

MISCELLANEOUS

Steve A.J. Bukaty Chtd. has changed to Bukaty & McVauley Chtd., Overland Park.

Michael G. Jones, Wichita and Patrick J. Murphy, Wichita, have been installed as board members in the Kansas Association of Defense Counsel; as well as Tracy A. Cole, Wichita, installed as secretary-treasurer and F. James Robinson Jr., Wichita, becoming a member and receiving the Kansas Association of Defense Counsel’s Distinguished Service Award.

Steven C. Day, Wichita, has become a Fellow of the American College of Trial Lawyers.

Jeff Kennedy, Wichita, has received the Mildred Clodfelter Alumni Award from the University of Kansas Alumni Association.

Greg L. Musil, Overland Park, has been elected by the Overland Park Chamber of Commerce as the 2008 chair of the Chamber’s board of directors.

Alan L. Rupe, Wichita, has been admitted as a member of the Litigation Counsel of America.

Patrick H. Thompson, Salina, was appointed by Gov. Kathleen Sebelius as a 28th Judicial District judge.

Editor’s note: It is the policy of The Journal of the Kansas Bar Association to include only persons who are members of the Kansas Bar Association in its Members in the News section.
LAW PRACTICE MANAGEMENT TIPS & TRICKS

Analog Technology for Digital Attorneys

By Larry N. Zimmerman, Valentine & Zimmerman P.A., Topeka

One of the biggest failings of technologists is our dogmatic attempts to computerize everything. The best established technologies are often overlooked in favor of bleeding edge gadgets available on installment with monthly subscriptions. A true technologist learns to fit the tool to the task — even when that technology was invented centuries ago. Gadget heads need not despair, however, as there are plenty of new tweaks to old ideas.

Hardware

A reliable pen is basic to any attorney’s arsenal. It is a tool that should travel well enough to always be ready in the pocket, be durable enough to stand up to hard use — including trips through a washer and dryer — and that can write at odd angles for mobile note taking. The Fisher Bullet Space Pen, www.spacepen.com, fits the bill perfectly though many analog folks prefer the similarly tiny and rugged Inka, www.writeanywhere.com.

Treo and Blackberry have both had their shot as my mobile note taker but fall short. The interfaces are slow, and the tiny keyboards are awkward. Business cards, notecards and even Post-its are the battery-free best for jotting notes and contacts. I meet my gadget craving by using a Slim Wallet Writer from Levengers, www.levengers.com. This tiny wallet holds a dozen or so business cards and pen at the ready.

Keeping paper notes organized is really easy with the Circa system from Levengers. Circa uses small plastic disks that click into specially-shaped punches in paper or note cards to help in creating an infinitely variable planner and archival system. A sample pack of disks and pages can be purchased for $40 and ships with a $40 gift certificate toward future purchases.

Software

Though store shelves are still well stocked with preprinted planner templates, several Internet communities are creating better templates for free. The best is Do It Yourself Planner (DIYP) at www.diyplanner.com. Everything from address book templates to project and time tracking pages are available in Adobe Portable Document Format (PDF). They even provide templates based on Benjamin Franklin’s personal self-improvement plan that he outlined in his autobiography, available free at www.bartleby.com.

The DIYP templates and forms can be combined with the free Pocketmod application, www.pocketmod.com. One snip with the scissors and a few simple folds turn a letter-sized page into a miniature planner perfect for portable note taking. Another site, www.repocketmod.com, makes the process even simpler by providing an online application that allows you to drag-and-drop templates onto a planner page that print directly from the site or can be saved as a PDF file for repeat use.

Training

No technology truly serves its user well until the user has been carefully trained. Most training for the use of pen and paper came when you were a few years old. This is precisely why it is such a quick and natural interface, it is etched permanently in your neurons — unlike tiny keyboards. However, organizing papers and the thoughts that need to make it from brain to paper to action does not appear to be so thoroughly engraved in our synapses.

One of the hottest trends in organizational approaches is the simple organizational process described by David Allen in his book “Getting Things Done” (GTD) at www.davidco.com. The guiding principle underlying GTD is to remove all the things you need to remember from your head — where they get forgotten and cause unnecessary stress — to your inbox where you can better categorize and accomplish your tasks.

Though it has been adapted to computerized implementations, the GTD system is tuned for pen and paper. It can be a daunting system to begin but is simple and even a gradual implementation can be immediately rewarding. New initiates should start with the book, $9 at Amazon.com, and by browsing the articles and forums at www.43folders.com. A cheat sheet for the GTD workflow is also available at DIYP.

Going Analog

The key behind going analog is not a Luddite rejection of technology. The goal instead is to find the best technology for a task and then fine-tune that particular technology to very personal needs. On-the-go notes, jotting contacts, and even tracking appointments and to-do lists are particularly well suited to analog tools where interfaces and gizmos will not interfere with the task at hand.

About the Author

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

To join the LPM Section or any other KBA section, you may register online at www.ksbar.org or call (785) 234-5696.
ALPS is your Kansas Bar Association endorsed professional liability insurer.

ALPS comprehensive professional liability program offers industry-leading guidance, financial stability and protection to you and your law firm.

SUPERIOR POLICY FEATURES AVAILABLE:

- **Defense Costs Paid in Addition to the Limits of Liability**
- Input on selection of mutually acceptable defense representation
- **No “Hammer Clause”** regarding the appropriateness of a settlement
- **First Dollar Defense**: Avoid paying deductible for defense costs if no loss payment is made
- **Directors and Officers Coverage** while serving select tax-exempt organizations
- **Extended Reporting Endorsement** for solo attorneys in the event of death, disability or full and permanent retirement if insured with ALPS for 5 continuous years
- **Innocent-Insured Coverage** for members of firm who did not commit the error
- Same defense to non-lawyers, who refer business to our insured firm
- Enhanced policy coverage available for services to family members
- **Deductible**: pay no more than two in a policy year
- **Reduced Deductible** for claims resolved through formal mediation
- **Supplementary Payments**: Defendant’s Reimbursement Coverage and Grievance Defense
- **Claims/Incident Reporting** is available 24 hours per day, 365 days per year

IN ADDITION ALPS SERVICES INCLUDE:

- Providing you and your firm with the best coverage and assistance possible
- Highly efficient claims management and procurement
- Industry-leading education and risk management programs

CALL ALPS TODAY FOR YOUR NO-OBLIGATION QUOTE: 1-800-FOR-ALPS

ALPS works diligently to promote the honor and dignity of the legal profession and provides resources to address issues affecting lawyers, law firms and bar associations. Examples include lawyer assistance programs, rookie camps, access-to-justice support and professionalism programs.

ALPS is the endorsed or affiliated lawyers professional liability carrier for 17 bar associations, more than any other insurance company and is rated **A- (Excellent)** by A.M. Best Company.

www.alpsnet.com
THINKING ETHICS

New Developments: An Opinion on Refused Representations and a Cautionary Tale of E-Discovery

By Mark D. Hinderks, Stinson Morrison Hecker LLP, Overland Park

Representing Clients Who Just Say No

Lawyers are sometimes appointed to serve as counsel for otherwise competent criminal defendants (or others) who then refuse the lawyer’s services in a manner or circumstance that does not result in the tribunal excusing the lawyer from the representation. This places the lawyer in a difficult situation: One must consider the normally applicable duties owed to the client and the lawyer’s duties to the tribunal arising from the appointment in light of the unwilling “client’s” lack of cooperation and desire not to be represented. On Oct. 20, 2007, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 07-448 (Opinion) to provide guidance for attorneys in this situation.

A number of the Kansas Rules of Professional Conduct (KRPC) require interaction with a client to achieve the goals of a representation. KRPC 1.2 requires the lawyer to abide by the client’s decisions concerning the objectives of representation (with some limitations). Similarly KRPC’s 1.1, 1.3., 1.4, and 1.6 require competent representation, diligence, communication, and a confidential relationship. The lawyer’s compliance with these and other rules is undermined when the client is uncooperative and does not wish to be part of an attorney-client relationship. Thus, the Opinion concludes that when a client does not accept the attorney-client relationship, there is no attorney-client relationship for purposes of the Rules of Professional Conduct. Accordingly, the duties of the lawyer in that situation are limited to: Any duties identified and ordered by the appointing tribunal; and any duties the lawyer would otherwise owe to persons other than a client, e.g., duties to the tribunal (KRPC 3.3), opposing parties and counsel (KRPC 3.4), others (KRPC 4.1, 4.2, and 4.3), and the system (KRPC 3.5, and 8.3).

Client Nuked, Lawyers Rebuked: E-Discovery Sanction

In Qualcomm Inc. v. Broadcom Corp., 2008 WL 66932 (S.D. Cal. Jan. 7, 2008), U.S. Magistrate Judge Barbara Major issued a major sanctions order for e-discovery failures in a patent infringement case, one that is now making the rounds of national discussion. It serves as a seminal reminder of the discovery obligations of the ethical requirements of litigation counsel in the modern era. As a result of the decision, Qualcomm had failed to conduct basic searches for electronic documents, produce the documents identified just before trial, and investigate following that discovery. Notably, the court faulted outside counsel for accepting unsubstantiated assurances of the client that searches for documents had been sufficient, particularly in light of warning signs to the contrary.

Qualcomm presents an extreme case. The protagonists concealed a large quantity of materials, their claim that a reasonable search could have missed this much material was implausible, and their conduct eventually reached the level of knowing concealment. Nonetheless, the message is clear:

Lawyers must exercise reasonable diligence to assure themselves that a client has searched for all relevant documents, electronic or otherwise, and must heed and act upon warning signs. Clients similarly must be made aware of the consequences of passive exercise of their duties as well as intentional misconduct.

The good news about this case is it provides a perfectly scary story to bring those messages home to lawyers and clients alike.

About the Author

Mark D. Hinderks is the managing partner of the Overland Park office of Stinson Morrison Hecker LLP, practicing business litigation. He also serves as the firm’s co-general counsel and is a frequent speaker and author on matters of professional responsibility and trial practice.
The Blue Book

From compiling to printing to final delivery, we maximize our resources to provide a directory that allows customers to reach you faster and more efficiently. And with over 70 years of publishing expertise we can minimize your effort to accelerate the exposure of your professional business listing across the state. The KANSAS LEGAL DIRECTORY can help you reach a bigger market.

A bigger market is out there... ...you too can reach it with the Blue Book

To order your copy or to be included in the next edition contact us at 1-800-447-5375

Legal Directories Publishing Company, Inc. - www.LegalDirectories.com
How Letters of Credit Operate in International Commercial Transactions: An Introduction to the UCP

By John W. Head

I. Introduction

Most international letters of credit — that is, letters of credit used in commercial transactions involving buyers and sellers in different countries — are not governed by the Uniform Commercial Code (UCC). Instead, they operate under the Uniform Customs and Practice (UCP), a multilateral set of rules that are issued and regularly updated by the International Chamber of Commerce (ICC). If your Kansas client is engaged in a transborder sale-of-goods transaction and wants to maximize the chances of getting paid by the foreign buyer, both you and your client should know the basics about the UCP.

The aim of this article is to provide a nutshell account of international letters of credit, with special emphasis on the UCP. The article focuses on commercial international letters of credit that are used in financing a transborder sale-of-goods transaction of the sort mentioned above. The article does not examine other types of international letters of credit that are commonly confronted in practice, such as standby letters of credit and back-to-back letters of credit.

II. The Setting: International Documentary Sales

Assume that your client, Shera Manufacturing Corp. (Shera), is a Kansas corporation with offices, facilities, and a warehouse in Wichita. Shera produces state-of-the-art geopositioning system (GPS) equipment and has sold that equipment for several years to buyers in the United States — but it recently entered into negotiations with a buyer in the Netherlands named Hugo de Groot Ltd. (Hugo), which wants the GPS equipment shipped to Rotterdam. Shera now seeks your legal advice about how the negotiations, and the transaction itself, should proceed, and particularly about how Shera can be assured of getting paid by Hugo. After all, Hugo is both physically and legally "distant" from Kansas, and Shera does not have total confidence in Hugo.
How might you advise Shera? First, you could point out that, as a general matter, the negotiations and procedure for the transaction can be regarded as falling into four parts: (1) formation of the sales contract, (2) arrangement of financing, (3) shipment of the goods, and (4) payment for the goods. Shera's biggest concern is over the fourth part — getting paid — but addressing that concern requires proper attention to the other steps as well. You might identify those steps as follows:

Part 1: Formation of the sales contract

Step 1.1: Shera and Hugo negotiate the terms of the transaction, including the requirement of a documentary sale, with payment under a confirmed letter of credit with a U.S. confirming bank.

Step 1.2: Shera and Hugo conclude and sign a contract that fully reflects those negotiated terms.

Part 2: Arrangement of financing

Step 2.1: Hugo approaches its bank in the Netherlands, Amster Bank, and asks it to issue a letter of credit in favor of Shera.

Step 2.2: Amster Bank opens a letter of credit in favor of Shera — this makes it the "issuing bank" — and so advises its correspondent bank in Wichita, Prairie Bank. Amster Bank requests Prairie Bank to confirm the credit. Prairie Bank agrees to do this, thus becoming the "confirming bank."

Step 2.3: Prairie Bank, in its capacity as the confirming bank, advises Shera that the issuing bank has opened the letter of credit and that Prairie Bank has "confirmed" it.

Part 3: Shipping of the goods and handling of the documents

Step 3.1: Shera is likely to engage a freight forwarder to make detailed arrangements for handling the goods at the port of shipment. Let us assume the parties have designated Houston for the port of shipment.

Step 3.2: Shera has the goods transported to the port of Houston where the freight forwarder facilitates their delivery to the carrier, the operator of the oceangoing vessel that will transport the goods across the Atlantic.

Step 3.3: The goods might be inspected by an inspection agent of Hugo; if so, that inspection agent issues a Certificate of Inspection.

Step 3.4: When the carrier's vessel arrives in the port of Houston, the goods are loaded onto it, whereupon the carrier issues a negotiable bill of lading.

Step 3.5: Shera arranges for insurance coverage of the goods during their ocean transportation. In this regard, the insurer issues an Insurance Certificate.

Part 4: Payment for the goods and release to buyer

Step 4.1: Shera draws a draft on Amster Bank and presents it and the required documents to Prairie Bank for payment by Prairie Bank to Shera under the confirmed letter of credit. The required documents typically will include:

- Negotiable bill of lading endorsed by Shera;
- The Insurance Certificate;
- A packing list used in putting the GPS equipment into the cartons;
- The Commercial Invoice that Shera prepared for the sale of the goods;
- A Certificate of Origin that Shera would have secured — probably from the Wichita Chamber of Commerce or some similar entity — showing that the GPS equipment comes from the United States; and
- The Certificate of Inspection, if required.

Step 4.2: If Prairie Bank finds that the documents presented by Shera match the documents required in the letter of credit, then Prairie Bank honors the draft and pays Shera.

Step 4.3: Prairie Bank endorses the bill of lading and then forwards it and the other documents listed above to Amster Bank, which pays Prairie Bank, probably by crediting an account that Prairie Bank has with Amster Bank.

Step 4.4: Amster Bank endorses the bill of lading and then transfers it and the other documents to its customer Hugo, typically by charging Hugo's account with Amster Bank or by giving credit to Hugo.

Step 4.5: When the goods arrive by vessel at the port of destination, Hugo presents the negotiable bill of lading, endorsed by Amster Bank, to the carrier, whereupon the carrier releases the goods to Hugo.

See Illustration A for a stylized diagram summarizing the movement of goods, documents, and money as described in the pertinent steps enumerated above under a documentary sale with a confirmed letter of credit.

The document that serves as a "lynchpin" in the transnational documentary sale transaction described above is the letter of credit. If properly used, that letter of credit can make the transaction proceed smoothly, to the benefit of all parties involved: the seller gets paid promptly, the buyer receives the goods as ordered, the issuing and confirming banks earn fees for temporarily accepting risks that they were in a good position to assess and bear, the carrier has been paid for transporting the goods, and the freight forwarder has earned a fee for facilitating the movement of goods and documents at the port of shipment.

However, such transactions sometimes do not proceed smoothly. For example, the documents presented by
the seller, in the hypothetical case described above, to the confirming bank might include some discrepancy when compared to the description that the letter of credit gives of the documents that are required thereunder. (As noted below, there are several different types of discrepancies.) In such a case, a question arises for the bank: Should the bank accept those documents and pay the seller, notwithstanding the discrepancy? If it does accept and pay, a similar question would arise when the issuing bank receives the documents (including the discrepancy) from the confirming bank. Another question also might arise: How long does the issuing bank have to make up its mind about accepting or rejecting the documents? And does it have a duty to contact the buyer (its customer) to see if the discrepancy concerns the buyer?

Questions of these types, and of many other types, have arisen countless times in transnational documentary sales involving letters of credit, and, not surprisingly, different answers have been given in different legal systems. Because of the role that London has long played as an international commercial and financial center, English law was for years a dominant source of guidance in handling such questions. More recently, an internationally accepted set of rules, the UCP, has largely supplanted the English law — although the latter continues to be influential. The internationally-accepted rules are discussed in the following paragraphs.¹

III. The Fundamentals of International Letters of Credit

One source provides this overview of letters of credit:

A letter of credit, in its most basic form, involves three parties: two parties who have entered into a contract between themselves, and a separate, independent party who will guarantee certain funds to one of the contracting parties on behalf of the other party.

In a typical situation, the contracting parties are a buyer and a seller. The third party is most commonly a bank. The bank issues the letter of credit, which is entirely independent of the contract, to the seller on behalf of the buyer. The letter of credit usually reads like a letter and states that the bank will pay the beneficiary (seller) the amount specified in the letter of credit, upon the presentation [by the seller to the bank] of all the documents specified in the letter. The documents (e.g., bills of lading, invoices, affidavits of certain officials, and/or packing lists) serve as proof of the proper completion of the transaction. All the documents must be properly presented in the form specified, otherwise the letter of credit will not be honored at that time. ...

... There is a fee for obtaining a letter of credit from the bank, and the customer [the buyer in the transaction] will [typically] have to arrange for security. The customer begins by completing the application, [which] is the legal agreement between the bank and the applicant/customer. ... The information typically asked is:

1. applicant’s name [and] address;
2. beneficiary’s name [and] address;
3. amount of the credit;
4. tenor of the draft — that is, whether the letter of credit will require presentation of a sight or time draft [that is, payable “at sight” or payable at a specified later time] …;
5. documents required to be presented;
6. description of the merchandise;
7. trade definitions or terms …;
8. point of shipment; and
9. expiration date, or the last date on which the documents may be presented to the bank for payment.

... [Among the] fundamental principles [that] govern the operation of letters of credit [are these]:

1. The rule of independence, by which the letter of credit is considered independent from the sales contract or any other agreement between the parties; [and]
2. The rule of strict construction, by which the terms and conditions of the letter of credit are strictly adhered to ...

... [The first of these, the rule of independence, is straightforward.]

FOOTNOTES
Letters of credit are self-contained agreements involving the bank, the bank’s customer, and the beneficiary. The bank has the duty to look only at the propriety of the documents presented and does not have a general duty to investigate the underlying performance. As with negotiable instruments, such as checks, parties to a letter of credit are bound to pay according to their obligations as set forth in the credit, regardless of any developments that have occurred in the underlying transactions — with, perhaps, the possible exception of extreme fraud.

... Because the letter of credit is independent from the underlying transaction between the parties, the only real [safeguard] available to the bank customer opening a credit is the ability to specify exactly to whom and on what terms it will be paid. When the ... documents presented do not conform to the specifications set forth in the letter of credit, questions of strict construction are raised.  

The following two sections of this article examine those two fundamental principles — first the principle of strict construction, more accurately referred to as strict “compliance,” and then the principle of independence.

IV. The Principle of Strict Compliance

A case decision often cited to illustrate the principle of strict compliance — the principle that the documents as submitted must strictly comply with (or match) the description of the documents as set forth in the letter of credit — is the Raynor decision from the English Court of Appeal. In that case, decided in 1943, the question was whether a confirming bank acted properly in refusing to pay a seller in England that had submitted documents relating to a shipment of nuts that were to go to a buyer in Denmark. The bank’s refusal to pay rested on the fact that whereas the letter of credit (issued by a bank in Denmark) had called for the documents to refer to “Coromandel groundnuts,” one of the documents (the bill of lading) had referred instead to “machine-shelled groundnut kernels.” The commercial invoice had in fact referred (properly) to “Coromandel groundnuts.” The seller had presented evidence at trial that the two terms — “Coromandel groundnuts” and “machine-shelled groundnut kernels” — meant exactly the same thing, as anyone involved in the trade, at least in London, would know.

The Court of Appeal ruled in favor of the confirming bank, saying that its refusal to pay the seller had been proper. The court’s opinion has been widely cited as a clear expression of the principle of strict compliance:

In [an earlier case, one of our fellow judges has] said: “It is elementary to say that a person who ships in reliance on a letter of credit must do so in exact compliance with its terms. It is also elementary to say that a bank is not bound or indeed entitled to honour drafts presented to it under a letter of credit unless those drafts with the accompanying documents are in strict accord with the credit as opened.” And Lord Sumner in Equitable Trust Co. of New York v. Dawson Partners Ltd. said:

“It is both common ground and common sense that in such a transaction ... the accompanying documents [must comply] strictly [to the terms of the letter of credit]. There is no room for documents, which are almost the same, or which will do just as well. Business could not proceed securely on any other lines.” ... 

The defendant bank [in this case] were told by their Danish principals to issue a letter of credit under which they were made to accept documents — an invoice and bills of lading — covering “Coromandel groundnuts in bags.” They were offered bills of lading covering “machine-shelled groundnut kernels.” The words in that bill of lading clearly are not the same as those required by the letter of credit. [Therefore] the bank was entitled to refuse to accept this sight draft on the ground that the documents tendered, the bill of lading in particular, did not comply precisely with the terms of the letter of credit, which they had issued. ... [It is of no consequence that businessmen who deal in such things know that the two terms mean the same thing], ... for it is quite impossible to suggest that a banker is to be affected with knowledge of the customs and customary terms of every one of the thousands of trades for whose dealings he may issue letters of credit.

(Continued on next page)
LEGAL ARTICLE: HOW LETTERS OF CREDIT OPERATE ...

The Raynor case illustrates the principle of strict compliance, as it was applied in English law more than six decades ago. A more recent rendition of that principle appears in the UCP — or, as it is officially cited, the "Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600." The pertinent provisions of the UCP are reprinted below, with particularly important parts underlined.

UCP Article 14, Standard for Examination of Documents
a. A nominated bank acting on its nomination, a confirmiting bank, if any, and the issuing bank must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation.

b. A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank shall each have a maximum of five banking days following the day of presentation to determine if a presentation is complying. This period is not curtailed or otherwise affected by the occurrence on or after the date of presentation of any expiry date or last day for presentation.

d. Data in a document, when read in context with the credits, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit.

g. A document presented but not required by the credit will be disregarded and may be returned to the presenter.

UCP Article 15, Complying Presentation
a. When an issuing bank determines that a presentation is complying, it must honour.

b. When a confirming bank determines that a presentation is complying, it must honour or negotiate and forward the documents to the issuing bank.

UCP Article 16, Discrepant Documents, Waiver and Notice
a. When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank determines that a presentation does not comply, it may refuse to honour or negotiate.

b. When an issuing bank determines that a presentation does not comply, it may in its sole judgement approach the applicant for a waiver of the discrepancies. This does not, however, extend the period mentioned in sub-article 14 (b).

c. When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank decides to refuse to honour or negotiate, it must give a single notice to that effect to the presenter.

The notice must state:

i. that the bank is refusing to honour or negotiate; and

ii. each discrepancy in respect of which the bank refuses to honour or negotiate; * * *

f. If an issuing bank or a confirming bank fails to act in accordance with the provisions of this article, it shall be precluded from claiming that the documents do not constitute a complying presentation.

The reason why your client Shera (in the hypothetical case introduced above) should care about these rules is that they are almost universally used in international documentary letters of credit. The Uniform Commercial Code (UCC) rules that Shera (or Shera’s lawyers) might be familiar with in the context of domestic documentary sales transactions almost never apply to international documentary sales transactions. Why? Because a decades-long process of creating and updating an international set of rules has been undertaken by the International Chamber of Commerce (ICC), a group of international experts in commercial law and practice, and has resulted in their nearly universal acceptance. As noted above, the most recent iteration in that updating process appeared less than a year ago, in mid-2007.

The specific manner in which the UCP is made applicable to an international documentary sale of goods involving a letter of credit transaction is “incorporation by reference.” That is, in a letter of credit that a bank prepares for a customer in connection with an international sale of goods transaction, the UCP will usually be incorporated by reference. Illustration B shows such a letter of credit. Notice the next-to-last paragraph in the letter.

(Continued on Page 22)
Prarie Bank
415 East Karatan Street
Wichita, Kansas

Date of Issue: 9 March 2008
Irrevocable Documentary Credit # : X06-144
(Advice # : AB0002)

Beneficiary:
Shera Manufacturing Corporation
802 West Book Farm Terrace
Wichita, Kansas

Applicant:
Hugo de Groot Ltd.
2-A Jan Van Heswik
Amsterdam, Netherlands

Issuing Bank:
Amster Bank
1648 Westphalia Ave.
Amsterdam, Netherlands

Expiration Date: 20 May 2008
Amount: US$27,000 maximum
(twenty-seven thousand US dollars maximum)

To: Shera Manufacturing Corporation

Dear Sir/Ms:

We are instructed by Amster Bank to inform you that they have opened their irrevocable credit as detailed above, available by negotiation of your drafts at sight drawn on Amster Bank when accompanied by the following documents:

* Commercial Invoice (1 original and 3 copies) covering:
  120 Units GeoStat SuperStar GPS Model R-444 — CIF Rotterdam (Incoterms 2000)
* Packing list and 2 copies
* Full set of clean “On Board” negotiable ocean bills of lading, endorsed in blank marked “Freight Prepaid,” showing “notify Raj Eyck, customs broker, 14 Hoek Pl., Amsterdam”
* Marine insurance policy or certificate, covering All Risks and War Risks
* Certificate of origin and 1 copy
* Certificate of inspection issued by GSG ICPSI showing conformity within technical parameters as advised by Hugo de Groot.

Special Instructions:
* Documents must be presented not later than 10 days after date of shipment but prior to expiration of the credit
* Shipment from Houston, Texas to Rotterdam, Netherlands
* Partial shipments: Not allowed
* Transhipments: Not allowed

This credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600.

We confirm the credit and hereby undertake to purchase all drafts drawn as above specified and accompanied by the required documents.

By: ____________________________

Confirmation Date: 10 March 2008
International Credit Department
The next-to-last paragraph of this letter of credit makes the UCP applicable to it. Hence, the provisions shown above from Articles 14 to 16 would apply, requiring Shera to present to Prairie Bank (the confirming bank) the documents exactly as set forth in the letter of credit. Specifically, Article 14a requires that the documents “appear on their face to constitute a complying presentation” — that is, that they are “in accordance with the terms and conditions of the credit” — and Article 2 provides that whether they are in fact in compliance shall be determined by “international standard banking practice.” Article 14b allows the bank “a maximum of five banking days following the day of presentation” of the documents, to examine them to see if they are in compliance. If they are, the bank must, according to Article 15, honor them. If they are not, the bank may, according to Article 16, refuse to honor them. That is, it may refuse to pay.

What if there is a very minor point of noncompliance? The UCP is structured in such a way as to protect the bank(s) against having to make judgments of what is and what is not a “minor” point of noncompliance. The reason for this is to minimize the risks to banks and thereby keep the cost of letters of credit low enough to make them attractive as means of facilitating payments in transnational transactions. Just as in the Raynor case referred to above, banks are not expected to know the intricacies of transactions for which they issue and confirm letters of credit. Nor are they expected to ask. As made clear in UCP Article 16b, an issuing bank has no duty to contact the buyer (its customer) to see if the seemingly minor discrepancy concerns the buyer. According to that provision, “[w]hen an issuing bank determines that a presentation does not comply, it may in its sole judgment approach of the applicant for a waiver of the discrepancies.” (emphasis added)

It would seem natural, however, that surely some sorts of discrepancies (between documents as submitted and documents as required in the letter of credit, that is) would be so small as to lie outside the scope of the principle of strict compliance. For example, what if there is one single typographical error in a document — say, the bill of lading? Would a bank be justified in refusing to pay against the documents in such a case of a typographical error? One well-known U.S. case illustrated this issue by examining whether a typographical error in the name of the person to whom notice was to be given of the arrival of the goods was sufficient to support the confirming bank’s refusal to accept the documents.8

In March 1978, Beyene agreed to sell to Mohammed Sofan, a resident of the Yemen Arab Republic, two prefabricated houses. Sofan attempted to finance the purchase through the use of a letter of credit issued by the Yemen Bank for Reconstruction and Development (YBRD) in favor of Beyene. YBRD designated Irving as the confirming bank for the letter of credit, and Irving subsequently notified Beyene of the letter’s terms and conditions. ... In May 1979, [Beyene] sent Irving all of the documents required under the terms of the letter of credit. Thereafter, Irving telephoned [National Bank of Washington] NBW to inform it of several discrepancies in the submitted documents, including the fact that the bill of lading listed the party to be notified by the shipping company as Mohammed Soran instead of Mohammed Sofan. ... Irving refused to pay.

While some variations in a bill of lading might be so insignificant as not to relieve the issuing or confirming bank of its obligation to pay, we agree with the district court that the misspelling in the bill of lading of Sofan’s name as “Soran” was a material discrepancy that entitled Irving to refuse to honor the letter of credit. First, this is not a case where the name intended is unmistakably clear despite what is obviously a typographical error, as might be the case if, for example, “Smith” were misspelled “Smithh.” Nor have appellants claimed that in the Middle East “Soran” would obviously be recognized as an inadvertent misspelling of the surname “Sofan.” Second, “Sofan” was not a name that was inconsequential to the document, for Sofan was the person to whom the shipper was to give notice of the arrival of the goods, and the misspelling of his name could well have resulted in his nonreceipt of the goods and his justifiable refusal to reimburse Irving for the credit. ... In the circumstances, the district court was entirely correct in viewing the failure of Beyene and NBW to provide documents that strictly complied with the terms of the letter of credit as a failure that entitled Irving to refuse payment.

Another point is worth examining regarding the application in practice of the principle of strict compliance: How comprehensive and specific do the documents as presented to a bank need to be in order to “match” adequately the documents as described in the letter of credit? The key UCP provisions touching on this issue also appear in Articles 14-16 reprinted above. Among other things, those provisions state that the details in a document “need not be identical to, but must not conflict with” the details in “any other stipulated document or the credit.” This tells us that there must not be inconsistencies between two of the documents. Presumably, if any one document (among the set of documents being presented to a confirming or issuing bank) has a nonconforming element, then that nonconformity is not “cured” by the fact that another document was compliant. Recall that in the Raynor case the commercial invoice properly noted “Coromandel groundnuts”; this fact could not overcome the fact that the bill of lading carried the term “machine-shelled groundnut kernels.”

IV. The Independence Principle and Its Exceptions

Another of the fundamental principles applicable to letters of credit asserts that the letter of credit is to be considered independent from the sales contract or any other agreement

between the parties.\(^9\) Hence, the fact that there is some failure on the part of the seller to meet its obligations under the contract of sale will typically not provide grounds for interrupting the payment under a documentary letter of credit, as long as the documents themselves, as presented by the seller, comply with the terms of the letter of credit.

A famous old U.S. case — not resting on UCP rules but generally regarded as reflective of their intent — illustrates this principle.\(^10\) At issue was whether a bank should pay the seller under a letter of credit relating to a sale of paper that, according to the underlying contract, was to be of a specified tensile strength. The letter of credit did not require the submission of any document certifying that factual matter. The court ruled that the bank was to pay under the letter of credit despite a deficiency in the quality of the paper:

If the paper when delivered did not correspond to what had been purchased, either in weight, kind, or quality, then the purchaser had his remedy against the seller for damages. Whether the paper [was] what the purchaser contracted to purchase did not concern the bank and in no way affected its liability. It was under no obligation to ascertain, either by a personal examination or otherwise, whether the paper conformed to the contract between the buyer and seller. The bank was concerned only in the drafts and the documents accompanying them. This was the extent of its interest. If the drafts, when presented, were accompanied by the proper documents, then it was absolutely bound to make the payment under the letter of credit, irrespective of whether it knew, or had reason to believe, that the paper was not of the tensile strength contracted for. ...\(^11\)

It is noteworthy that the principle of independence is almost surely subject to an exception in the case of fraud. This exception has been developed in case law. It is generally thought that where the documents submitted by a seller are fraudulent — in that they do not represent actual merchandise but instead cover boxes fraudulently filled with worthless material — then a bank is not required to pay against those where the seller’s fraud has been called to the bank’s attention before the documents have been presented to the bank for payment. In other words, in such a case the principle of independence of the bank’s obligation under the letter of credit should not be extended to protect the unscrupulous seller.\(^11\)

Obviously, this fraud exception can be important in some cases. The UCP offers little guidance in this regard, however, so uncertainty can arise about the exact scope of the fraud exception in actual practice in cross-border letter-of-credit transactions. The reason why the drafters of the UCP have not defined clearly the contours of the fraud exception is (according to some sources) that the UCP provisions are designed to serve as rules of best banking practice, not rules of law, and issues of fraud are traditionally regarded as legal issues. Not surprisingly, some authorities, and many lawyers, find this situation unsatisfactory.\(^12\)

V. Conclusion

To sum up: Letter of credit transactions — including in particular those international letter of credit transactions governed by the UCP — proceed on the basis of certain principles designed to protect the banks involved against undue responsibility and liability. Hence the principle of strict compliance and the principle of independence. There are, to be sure, some exceptions to these principles — as in the case of a single, patently unimportant typographical error, or as in the case of fraud known by the bank before paying against documents. These exceptions are, however, very narrow. Why? In part because any significant expansion of the exceptions would expose the banks to substantially greater risks, which in turn would naturally increase the costs the banks would charge for undertaking letter of credit obligations.

Lawyers assisting their clients with cross-border commercial transactions need to be aware of the facilitative role that letters of credit can play in those transactions. Such letters of credit, when properly used, can reduce risk both to the seller (of not getting paid) and to the buyer (of getting nonconforming goods). Specifically, lawyers need to have at least a basic understanding of the rules that govern the use of letters of credit in documentary sales. The most commonly used rules appear in the ICC’s Uniform Customs and Practice, which are incorporated by reference into most letters of credit for such transnational transactions.

About the Author

John W. Head is a professor of law at the University of Kansas School of Law. His teaching and scholarship focus on international business law, public international law, and comparative law. He is the author of “Global Business Law” (2nd ed. 2007) and several other books and articles. Able assistance in the preparation of this article was provided by Katie Lula and Justin Waggoner. The article is dedicated to Shera Bhala and her parents.

---

Had you happened to be walking down the main street of Larned in the 1890s, you might have seen a sign leading to the offices of the town’s most singular attorney, G. Polk Cline. Had you been accused of a crime you would almost certainly have gone up the flight of stairs to the two rooms he used as his office. When you entered, you would have seen a large room, with three big windows. The room was dominated by an enormous walnut desk; according to its owner it was 18 feet long. There were cabinets filled with the supplies necessary to a lawyer’s life, a half dozen wooden chairs, an old iron safe, a wood stove, a coal bucket, and spittoons. The walls were filled with pictures of the occupants’ heroes. There was Grant and Lincoln, as well as General Lee and old Jeff Davis, testimony to the lawyer’s Southern origins. And, unusually, for the walls of a frontier lawyer’s office, there were images of Robbie Burns and Sir Walter Scott, himself a lawyer, as well as Shakespeare, Dickens, and Twain. The second room was filled with books, what his daughter called “one of the finest libraries in Western Kansas,” along with a second desk, hickory chairs, and a fine Turkish carpet on the floor. This was obviously the lawyer’s favorite place. The lawyer in question, the self-styled “old Sage of the Arkansaw,” was Polk Cline, one of the most eccentric and best read lawyers of his age in Kansas.

Had you walked upon the lawyer himself, you might well have been startled by his appearance. If you had happened upon him just back from court, you would have seen a somewhat odd apparition. Not a large man but one with a large presence. He had piercing eyes set in a narrow face. On his head would have been his favorite old “plug hat”: what Lincoln called a stovepipe. He would have been wearing a formal, frock coat, but likely without a tie, since he never learned to tie one. If you’d look closely you might also have seen the pearl handled pistol he always kept tucked into his back trousers pocket. And, most odd of all, no shoes would have been on his feet, for he favored the barefoot look.

Polk Cline was born in 1851 in Davi s County, Mo. He studied law in Missouri and in Des Moines, Iowa, and then crossed the border to settle a claim in Lacrosse, Kan., in Rush County. Not very long after he’d settled in Rush County, he relocated to the then small town of Larned. From 1886 until his death 50 years later, Polk Cline was a Larned man and a practicing lawyer there. He married in 1874 and had four children, two of whom died in childhood. Of the survivors, his daughter, Nellie Cline, became one of the first women lawyers in Kansas, practiced in partnership with her father until his death, was one of the first women elected to the Kansas Legislature, and was the first woman to argue a case before the Supreme Court of Kansas.

Polk Cline stood out among his generation of Kansas lawyers. Life in Western Kansas in the early years was not so genteel as it is today. Lawyers were often poorly read, even in the law. But Polk Cline loved literature, loved

FOOTNOTES
1. I must thank my friend and Thursday lunch partner, Glee Smith, for his willingness to share his reminiscences of Larned, Cline, and the Western Kansas Bar with me. Without his help, I could not have written this essay.
2. The description that follows comes from Nellie Cline Steenson, The Jayhawkers. Stories and Memories of the Early Days in Western Kansas (1967), pp. 82-83.
3. I.e., Missouri.
4. This description comes from Steenson, n.1, above, pp. 86-87 and from a photograph of Polk Cline at age 76 published in the Wichita Beacon, Jan. 23, 1927, to accompany an article by Rolland Jacquart, Polk Cline Yearns for Another Fight. This article also includes a description of Polk Cline.
5. Biographical details about Polk Cline come from the Wichita Beacon article cited above, n.3; see also Roots Web, www.worldconnect.rootsweb.com.
6. See the article Honor to Woman, in the Topeka Journal for April 3, 1918.
to write, and loved a good fight — at least in a courtroom. He was fond of quoting Shakespeare and Twain. He filled the columns of Kansas newspapers with his often biting-prose accounts of trials and legislative inanities. He was fond of saying that he became a lawyer not for the money, but for the fight.7 When his clients could not pay, he would represent them anyway, if he thought their case merited it. Above all, he was a criminal lawyer and many a scoundrel sought help from Polk Cline. He was enough of a character to attract the attention of journalists who loved to chronicle his exploits. And, in 1910, Cline organized and was about to hang the two murderers. Vandivert interrupted the hanging and told the crowd that they should turn over the two men to the sheriff and that, if they did, he promised that he “would guarantee their conviction and sentence them to death and that he would then go before the governor and ask that he allow them to be executed ...”10

While these actions show Judge Vandivert’s dedication to the legal process, they don’t demonstrate a great commitment to a fair trial.

Although Polk Cline had serious reservations about certain members of the Kansas judiciary, his faith in the legal profession and the legal system remained unshaken throughout his life:

The lawyer in full practice has neither religion nor politics except as a matter of form. He has no admiration for the “pomp of glorious war,” and never “seeks the bubble reputation at the cannon’s mouth.” But notwithstanding all that he is a very essential element in our civilization. He is the exponent of the bulwark and palladium of our liberties. The judiciary is the chief anchor of our government. With an upright judiciary the country is safe.12

While we may admire Polk Cline’s views in the abstract, it is also clear from his writings that his view of legal ethics and trial practice differed from our own. In describing the role of a trial attorney, he wrote:

A well-tried law-suit is like a well regulated play. The manager of a theatrical troupe never puts his play upon the stage until each actor can play his part. The same is true of the successful lawyer. Witnesses often require information before they can testify. If the eminent counsel will see that they are properly instructed as to the facts of the case, and their personal knowledge thereof, he may expect good service. He must also be able to affiliate with the jury. They are sometimes hungry and always thirsty. These details must be looked after. A friendly and sympathetic audience is another important factor. If he neglects all these things he may expect to march to defeat with the courage of invincible ignorance.13

7. Wichita Beacon article, cited n.3, above.
8. Polk Cline, Polk Cline’s Book (1910) [hereafter “The Book”].
11. This article may be found, in abstract, on www.newspaperabstracts.com.
Nonetheless, some degree of professional skill was required to practice law, even on the western frontier:

Having all the players now on the stage, the comedy beings. Milt was the first violin. As he knew no more about the law than he did about the facts it soon became evident that the learned judge was losing patience. After the court had borne with him something like an hour, Milt was called to order and the dignitary on the bench addressed him thus: “Young man, do you expect to make a livin’ in this country by practicing law?” To this Milt promptly answered, but he was making for the door all the while, “Not before such a g--------- court as this.”

And Polk Cline was certainly not above helping out his friends when he could, as illustrated by what he called “Cline’s Complimentaries”:

Now Posterity may require some explanation as to what is meant by a "complimentary ticket." As the firm representing the defendant in this case had the leading practice, it necessarily follows that they had some cases they were sure of winning. In a case of great emergency, or in a particular case, all the friends of the counsel as well as their clients, were duly subpoenaed on some case which he knew nothing about, but was sure to get his fee. The witnesses all understood it and referred to these subpoenas as “Cline’s Complimentaries.”

In the end, Polk Cline had a realistic, if jaundiced view of the law as it was practiced in his day, a view he expressed and vulgarity” [as opposed to Polk Cline who gloried in all of these]. Soon after he settled at Kinsley he was retained to try a criminal case, of horse theft — or so he thought. He defended his client to his utmost. Unfortunately:

He quoted history, recited poetry, and even entered the realms of philosophy. But as he clothed his ideas in language devoid of profanity, slang, and provincialisms, it was as incomprehensible to that mob as the parables of “our blessed Saviour” when speaking to a lot of wharf rats and fishermen.

The case went from bad to worse and soon the crowd began to mutter about a hanging. At this point, the defendant managed to slip away unseen. The crowd grew enraged and began to call for the eastern lawyer to take his client’s place in the noose they now carried. The poor lawyer, scared for his very life, ran screaming from the courtroom, abandoned his office and all his things, and caught the next train out of town never to return. When he was gone all the crowd, including the lawyers divided up his goods to take as souvenirs. Only years later, did the poor lawyer learn that the entire trial was a sham, designed to frighten him and amuse the crowd. One gathers that like Queen Victoria, he was not amused. But he never did return to Kansas.

The days of sham trials, drunken juries, and “complimentsaries” are long gone now in Kansas. And that’s, no doubt, a good thing. But is also a good thing to be reminded of those days and of our colorful professional ancestors every once in a while, for in these days surely “giants walked the earth” here in Kansas

**About the Author**

Michael H. Hoeflich has a B.A. and M.A. from Haverford College, M.A. from Cambridge University, and a J.D. from Yale Law School. He has taught at the University of Illinois, Syracuse University, and the University of Kansas. He also served as dean of the College of Law at Syracuse University for six years and as dean of the School of Law at the University of Kansas for six years. He stepped down from the deanship at KU on July 1, 2000. He is currently the John H. & John M. Kane Distinguished Professor of Law at the University of Kansas. He has published six books and more than 60 major articles. He teaches and writes in the areas of legal history, legal ethics, contract law, and technology law, among others.

---

15. The Book, pp. 95-96.
18. The Book, pp. 120-121. Interestingly, Kos Harris, a Wichita contemporary of Cline’s, relates that a similar incident occurred in the early days of the Wichita Bar.

Could this have been a common practice when eastern lawyers moved to Western Kansas? See, Kos Harris, “A Lawyer’s Reviews of the Times When Wichita was in the Gristle,” in H.O. Bentley, History of Wichita and Sedgwick County, Kansas (1910), pp. 132-166.
Need clients? Need increased visibility?

Join the Kansas Bar Association Lawyer Referral Service

Join LRS online at www.ksbar.org/LRS

Why is the LRS good for business?

“I participated in the KBA Lawyer Referral Service for much of the nearly 20 years that I practiced in Dodge City. During the time I was involved with the LRS, I also advertised intensively in the local telephone directory. Although paid advertising and LRS referrals both generated a substantial volume of inquiries from potential new clients, I found that LRS-generated clients tended to bring more ‘solid’ legal matters and were more reliable than those who initially responded to phone book advertising.”

“The effectiveness in my experience of LRS referrals is demonstrated by my having sent a check to LRS for its 10 percent referral fee of nearly $54,000.”

—Henry Goertz, Goertz Law Office, Dodge City

The trusted source for finding the right attorney.
Criminal

STATE V. MURRAY
DOUGLAS DISTRICT COURT – AFFIRMED
NO. 94,619 – JANUARY 18, 2008

FACTS: Murray convicted of first-degree murder of former wife. On appeal he claimed: (1) prosecutorial misconduct during closing argument by misstating DNA analysis of blood spot as Murray’s and in misconstruing witness testimony, (2) error to allow state to recall police officer to testify regarding Murray’s post-Miranda silence, (3) error to admit hearsay statements of victim concerning her relationship with Murray, (4) cumulative error denied him a fair trial, and (5) circumstantial evidence was insufficient to support his conviction.

ISSUES: (1) Prosecutorial misconduct, (2) post-Miranda silence, (3) hearsay statements, (4) cumulative error, and (5) sufficiency of evidence

HELD: No prosecutorial misconduct on Murray’s two claims. Sufficient evidence in record supports prosecutor’s statement that blood found in victim’s bathroom was Murray’s, and prosecutor’s argument that witness thought Murray was a murderer was a reasonable inference based on witness testimony. Prosecutor’s comments were provoked and made in response to prior arguments or statements by defense counsel.

Under facts of case, defense counsel’s questions during cross-examination of officer provided sufficient justification for state’s limited questioning of officer on redirect to the effect that the reason he did not ask additional relevant questions was that Murray declined to be reinterviewed. Officer’s testimony on redirect merely responded to defense counsel’s cross-examination implication of a faulty police investigation, and thus was invited error and cannot be basis for reversal. Even if admission of officer’s statement was error under Doyle v. Ohio, 426 U.S. 610 (1976), any such error was harmless in this case.

Trial court was correct for wrong reason in admitting statements victim made to her mother and to an attorney. Trial court improperly admitted statements to show relationship of the parties, which is not an exception to hearsay rule. Instead, statements were admissible under K.S.A. 2006 Supp. 60-460(d)(3) exception for hearsay statements by an unavailable declarant. Also under facts of case, any error in admitting these statements would have been harmless.

No trial error supports Murray’s claim of cumulative error.

Although evidence linking Murray to the killing is entirely circumstantial, Murray had motive and opportunity, and state produced evidence of injuries to Murray’s hands and arms consistent with how the victim was killed. Sufficient evidence for jury to find Murray killed the victim intentionally and the murder was premeditated.

STATUTES: K.S.A. 2006 Supp. 60-460, -460(d)(3); and K.S.A. 21-3401(a), 60-455, -459(g)(3)
Appellate Practice Reminders . . .
From the Appellate Court Clerk's Office

The Appellant’s Burden to Designate the Record

No attorney sets out to provide the appellate court an inadequate record for purposes of deciding the issues on appeal. Given the number of citations to the legal maxim that it is the appellant’s burden to designate the record, however, a number of attorneys fail in that burden. See, e.g., State v. Goodson, 281 Kan. 913, 919, 135 P.3d 1116 (2006); Ellibee v. Aramark Correctional Services Inc., 37 Kan. App. 2d 430, 433, 154 P.3d 39 (2007).

Supreme Court Rule 3.02 (2007 Kan. Ct. R. Annot. 22-23) sets out those portions of the entire record, which the clerk of the district court is obligated to include in the record on appeal. All other portions of the record will be included only at the request of an attorney (or party, if unrepresented). Significant among those portions of the record that are not automatically included are jury instructions and exhibits.

Even when a portion of the record is to be included, it may be inadvertently omitted. For example, if a court reporter does not know that a transcript is for appeal purposes, the reporter may not file it with the clerk of the district court. If not filed with the clerk of the district court, the transcript will not be included in the record on appeal even though all attorneys and even the judge in a post-trial proceeding may have relied on the transcript.

Other areas in which the appellate courts frequently find portions of the record missing are administrative appeals. The underlying administrative record may have been critical to the decision of the district court, but that record will not necessarily be included in the record on appeal.

In K.S.A. 60-1507 appeals, the appellate court needs the record from the underlying criminal case as well as the record from the 1507 proceeding. District court clerks are instructed to include the underlying criminal case in the transmission to the appellate courts, but counsel should also verify that it has been included.

The cautionary tale here is that attorneys should carefully review the table of contents, early and often. If an item is not included in the table of contents, it will not be transmitted to the appellate courts as part of the record on appeal.

For questions about these practices or appellate court rules, call the Clerk’s Office and ask to speak with Carol G. Green, Clerk of the Appellate Courts, at (785) 296-3229.
Civil

AUTOMOBILE/BICYCLE ACCIDENT, JURY INSTRUCTIONS, NEGLIGENCE, AND FUTURE MEDICAL EXPENSES
KENDRICK V. MANDA
JOHNSON DISTRICT COURT – REVERSED AND REMANDED WITH DIRECTIONS
NO. 96,198 – JANUARY 11, 2008

FACTS: Kendrick was riding her bicycle to work in the evening when she was struck in the pedestrian crosswalk by Manda's automobile. A jury found Kendrick sustained damages of $70,990.40 for which Manda was 70 percent at fault.

ISSUES: (1) Automobile/bicycle accident, (2) jury instructions, (3) negligence, and (4) future medical expenses

HELD: Court stated that a bicycle is not defined as a vehicle for purposes of the Rules of the Road in Kansas. Likewise, a bicyclist is not defined as a pedestrian for purposes of the Rules of the Road in Kansas. Nevertheless, if a bicyclist operates a bicycle on a roadway, the bicyclist has the same rights and duties applicable to drivers of vehicles. Moreover, if a bicyclist uses a sidewalk, the bicyclist has the same rights as a pedestrian and is not subject to vehicular traffic laws. Court held Manda’s defense was that Kendrick failed to use the pedestrian traffic signal, which would have extended the red light for traffic and given her ample time to cross the street safely. Though Instruction No. 13 informed the jury that bicycles operated upon the roadway have the rights and duties of vehicles, the jury received no instruction about the rights and duties of pedestrians. The jury’s later question to the court demonstrated its struggle with this issue. Court concluded the jury was not given the law applicable to Manda’s theory of the case for which supporting evidence was presented at trial and reversed for new trial. Given its decision of a new trial, the court stated that it was not prepared to say there was no evidence from which a jury could find some fault on the part of Manda. Court found jury’s verdict on future medical expenses was not supported by the evidence and that on retrial, the district court should not instruct on future medical expenses if nothing more is presented on this element of damages than what was presented at trial.

STATUTES: K.S.A. 8-1411(b), -1508, -1509, -1587; and K.S.A. 2006 Supp. 8-1446, -1485

ESTATES, CONSERVATORSHIP, AND MOTION TO DISMISS
RECTOR V. TATHAM ET AL.
DOUGLAS DISTRICT COURT – REVERSED AND REMANDED
NO. 97,725 – JANUARY 11, 2008

FACTS: Rector contracted with her siblings that she would receive the remaining funds, if any, used to care for their mother after their mother’s death. In consideration of her siblings’ promise to turn over these funds to Rector, Rector conveyed her one-half interest in the home she jointly owned with her mother to the conservatorship established for their mother’s care. After their mother’s death, Rector sued her siblings for breach of contract for failing to turn over the remaining funds. Rector’s siblings moved to dismiss Rector’s lawsuit, maintaining that her petition failed to state a cause of action against them. The trial court agreed and dismissed the action.

ISSUES: (1) Estates, (2) conservatorship, and (3) motion to dismiss

HELD: Court held that although Rector’s petition failed to state a valid claim under a family settlement agreement theory or the theory that the mediated agreement was incorporated into a court order, she may be entitled to relief under her theory that her siblings assigned their expected inheritance or a theory of promissory estoppel. As a result, the trial court should not have dismissed Rector’s petition for failure to state a claim.

STATUTES: K.S.A. 59-102(8) and K.S.A. 60-212(b)(6)

EXHAUSTION OF ADMINISTRATIVE REMEDIES AND TEACHER CONTRACTS
GUSS V. FORT HAYS STATE UNIVERSITY
ELLS DISTRICT COURT – AFFIRMED
NO. 97,461 – JANUARY 11, 2008

FACTS: Guss began his transition into retirement in 2003 from his professorship at Fort Hays State University (FHSU). Guss was employed as a half-time professor for 2003-2004. Guss and FHSU entered a five-year phased retirement agreement. Guss was ordered to report for teaching duties in August 2003 and when he failed to report, he was terminated September 2004. Guss filed a grievance with the university asserting his right to reject a unilaterally imposed class schedule and his right to be paid for unused sick leave. The grievance committee denied his class schedule argument, but granted his entitlement to reimbursement for sick leave pay. On Feb. 24, 2005, the University Appeals Committee and FHSU president agreed with the grievance committee decision. Guss appealed within 30 days. Two months later, the university issued a letter informing Guss that he had concluded his grievance procedures and exhausted his administrative remedies and then attempted to dismiss the action for failure to exhaust administrative remedies. The district court rejected the university’s jurisdiction and contract interpretation arguments, entered a money judgment in favor of Guss for his unpaid salary, and ordered Guss to be reinstated for the remaining term of his contract. The court also affirmed the university’s decision that Guss was entitled to sick leave pay.

ISSUES: (1) Exhaustion of administrative remedies and (2) teacher contracts

HELD: Court held the district court did not err in concluding that the university’s letter of Feb. 24, 2005, constituted a final order despite the remaining ministerial task of calculating the value of Guss’ unused sick leave and despite the failure of the letter to strictly comply with the requirements of K.S.A. 77-613(c). Guss’ petition filed on March 23, 2005, was timely. Court upheld the district court’s interpretation of the contract. Court stated that a plain reading of the agreement did not require Guss to work half-time during the entire academic year as opposed to full-time one semester, that Guss’ schedule could be adjusted by mutual agreement only, and that the university contracted away its right to unilaterally determine Guss’ schedule by entering into the phased retirement agreement.

(Continued on next page)
HABEAS CORPUS AND INEFFECTIVE ASSISTANCE OF COUNSEL
PENN V. STATE
SEDGWICK DISTRICT COURT – REVERSED
NO. 97,755 – JANUARY 11, 2008

FACTS: In 1999, Penn was convicted of multiple felonies and sentenced to life imprisonment plus 192 months. In 2004, he filed a 60-1507 alleging prosecutorial misconduct and ineffective assistance of trial and appellate counsel. The trial court denied it as successive and it was affirmed on appeal, but before the mandate was issued, new counsel was appointed and issuing the mandate was stayed. New counsel missed the deadline to file a petition for review, but moved to file a petition out of time. The Supreme Court denied the motion. Penn filed a third 60-1507 asserting his appellate counsel moved to file a petition out of time. The Supreme Court denied the motion. Penn filed a third 60-1507 asserting his appellate counsel was ineffective. The district court denied Penn’s motion.

ISSUES: (1) Habeas corpus and (2) ineffective assistance of counsel

HELD: Court held that it could conclude without remand that Penn was denied effective assistance of counsel by his counsel’s failure to timely file a petition for review. Court stated that the trial court erred in determining that it lacked jurisdiction to grant relief under Penn’s 60-1507 motion. Clearly, Penn was denied effective assistance of counsel when his appellate counsel failed to timely file a petition for review. Penn should have been allowed to file a petition for review with our Supreme Court. Based on the decision, Penn’s remaining issues were moot.

STATUTÉ: K.S.A. 60-1507

HEALTH CARE STABILIZATION FUND RESOLUTION OVERSIGHT CORP. V.
KANSAS HEALTH CARE STABILIZATION FUND SHAWNEE DISTRICT COURT
AFFIRMED IN PART AND DISMISSED IN PART
NO. 97,410 – JANUARY 11, 2008

FACTS: Western Indemnity issued two medical malpractice insurance policies to Emergency Medical Services Inc. (EMS), which covered EMS employee Dr. Catherine White. EMS had two policies, one for $1 million per claim and the other for $200,000 per claim. In September 1999, James Winfrey sued White in Wyandotte County for medical malpractice occurring in Kansas. At the time the $1 million policy was issued, it did not restrict coverage to medical malpractice in Missouri. Western issued a revised endorsement to the $1 million police on Feb. 22, 2000, limiting coverage to Missouri. Western tendered $200,000 to the Kansas Health Care Stabilization Fund (Fund) in satisfaction of its obligation to defend White. The Fund claimed coverage under the $1 million policy. Western and the Fund agreed to settle the Wyandotte action for combined policy limits of $1.2 million; and if Western obtained a favorable ruling on their policy coverage, the Fund would reimburse $800,000. In 2001, Resolution Oversight Corp. (ROC) was appointed receiver for Western and demanded the $800,000 from the Fund. The Fund replied that Western had not obtained a favorable declaratory judgment. ROC filed a declaratory judgment in Missouri, but the Fund was dismissed for lack of personal jurisdiction and finding the $1 million policy excluded coverage in Kansas. ROC sued the Fund in Shawnee County. The district court granted summary judgment for the Fund based upon its conclusion that the Fund was not statutorily authorized to enter into the letter agreement with Western and the contract was void as ultra vires.

ISSUE: Health Care Stabilization Fund

HELD: Court concluded the Fund has the implied authority to enter into an agreement with an insurance carrier to seek a declaratory judgment on rights under applicable insurance policies. Such a procedure is warranted by the Fund’s authority pursuant to K.S.A. 2006 Supp. 40-3403(b)(1)(A) to execute the powers, duties, and functions of the Fund. However, the exercise of such authority must be conducted within the parameters provided by the Health Care Provider Insurance Availability Act. Because K.S.A. 40-3410 requires court approval of the settlement agreement if the settlement implicates the Fund, the Fund’s attorney acted without authority in contractually obligating the Fund to pay a portion of the settlement absent such court approval. Court also held that in addition to acting outside of its authority by agreeing to reimburse the insurer for a portion of its settlement with the claimant without district court approval of the settlement, the Fund also acted ultra vires to the extent the parties agreed to seek an extra-jurisdictional determination of the Fund’s liability. Court stated that the letter agreement of Aug. 16, 2000, was ultra vires and unenforceable, and the district court appropriately granted summary judgment to the Fund on ROC’s breach of contract claim. Court also held that it lacked jurisdiction to consider ROC’s argument that the district court erred in finding that a claim for statutory liability would have been barred by the statute of limitations and dismissed the claim.

STATUTES: K.S.A. 40-3402, -3403(a), (b), -3404, -3407, -3408, -3410; and K.S.A. 60-511, -512, -1610(b)(3)

INEFFECTIVE ASSISTANCE OF COUNSEL AND JURY NULLIFICATION
SILVERS V. STATE
SEDGWICK DISTRICT COURT – AFFIRMED
NO. 96,869 – JANUARY 11, 2008

FACTS: Silvers was charged with rape and aggravated criminal sodomy of a child under 14 years of age. Defense counsel refused the rape evidence at trial, but admitted Silvers had some sort of... (Continued on next page)
consensual sexual activity with the victim, claimed the victim said she was old enough, looked old enough, and that she wanted to mess around with the two perpetrators. The jury found Silvers guilty of aggravated criminal sodomy, but acquitted of rape. Silvers filed a 60-1507 motion contending trial counsel’s jury nullification strategy resulted in counsel entering a guilty plea without his consent. The district court found Silver’s trial counsel “did everything she could, short of violating her ethical oath to testify truthfully, to provide assistance to her former client.”

ISSUES: (1) Ineffective assistance of counsel and (2) jury nullification

HELD: Court stated that when defense attorneys have made an educated, well-considered decision to rely on a jury nullification strategy, appellate courts have generally concluded such attorneys afforded effective assistance of counsel. But, when jury nullification strategy is presented haphazardly or in preference for other defenses with a likelihood of success, appellate courts have concluded such attorneys were ineffective. Court held trial counsel conceded Silver’s guilt on the aggravated criminal sodomy charge in order to preserve Silver’s honesty so the jury might believe Silvers’ version of the facts on the rape charge, or maybe even feel sympathy for Silvers and ignore the district court’s instructions and acquit on the aggravated criminal sodomy charge as well. To a certain extent trial counsel’s strategy was successful. Far from showing incompetency, trial counsel’s representation was that of an effective attorney. Importantly, Silvers has not established he did not consent to trial counsel's strategy. At the evidentiary hearing, Silvers chose to rest on the record and his motion, neither of which state Silvers did not understand or agree with trial counsel's strategy. Trial counsel testified her usual practice was to discuss defense strategy with her clients, and indeed counsel could not remember an instance where she had not done so.

STATUTE: K.S.A. 60-1507

**INSURANCE, DUTY TO DEFEND, AND ASSAULT AND BATTERY EXCLUSION**

**GILMORE V. BEACH HOUSE INC. ET AL.**

**SEDGWICK DISTRICT COURT – AFFIRMED**

**NO. 97,858 – JANUARY 11, 2008**

FACTS: In January 2005, Gilmore left Beach House, a gentleman’s establishment. Gilmore was intoxicated, and upon leaving the club, he was intentionally shoved from behind by another individual. He slipped and fell on the club's icy steps, hitting his head on the concrete. Gilmore successfully sued Beach House for his personal injuries. Colony Insurance covered the insurance needs of Beach House, but declined to defend the action or indemnify any obligation based on an assault and battery exclusion in the policy. Judgment was entered against Beach House for $250,000. Under an assignment and covenant not to execute between Gilmore and Beach House, garnishment proceedings were commenced against Colony. The trial court granted summary judgment to Gilmore finding that Gilmore's injuries arose out of the battery and as such were excluded from the insurance policy.

ISSUES: (1) Insurance, (2) duty to defend, and (3) assault and battery exclusion

HELD: Court held that under the uncontested facts of this case, where injuries occurred when the intoxicated injured party standing on icy steps was subject to a battery that caused him to slip and fall, the assault and battery exclusion of the insuring agreement applies and there is no coverage afforded for the resulting loss. Consequently, Colony had no duty to defend Beach House in the underlying action.

STATUTE: None

**VERSE CONDEMNATION**

**ISELY ET AL. V. CITY OF WICHITA**

**SEDGWICK DISTRICT COURT – REVERSED AND REMANDED**

**NO. 97,417 – JANUARY 25, 2008**

FACTS: Isely (lessor) is the successor in interest to land in which a 99-year lease was granted to College Hill Development Corp. Inc., in 1959. Starr Holdings (lessee) is the successor in interest to this developer. On Oct. 25, 2000, the lessee signed a “Public Street and Utility Easement,” which the parties stipulated “purports to grant the city a permanent right-of-way and easement for the purpose of construction and maintenance of a roadway and utilities along and under” the land. The easement covers about 8,000 square feet along the north and west sides of the land. The city constructed “acceleration/deceleration/turn lane improvements” on the burdened portion of the land. Prior to filing this action the lessors demanded that the city either initiate condemnation proceedings or provide compensation. The district court granted summary judgment in favor of the city. The district court stated that the law permits the lessee to grant an easement for the period of the lease. The lessor is not currently entitled to possession of the property until 2058, absent a default or abandonment by the lessee. The district court held there is no taking until the lessor is entitled to possession and unless the city refuses to relinquish possession of the property covered by the expired easement.

ISSUE: Inverse condemnation

HELD: Court stated that a landowner need not hold all of the sticks in the bundle of fee simple rights to establish a property interest under the Fifth Amendment. Court held that under the facts of this case, present possessory rights were not necessary. A paradigmatic taking requiring just compensation is a direct government appropriation of physical invasion of private property. Court held that the city's limited authority to occupy the land for the 51 years remaining on the lease does not alter the facts on the ground, the city's roadway currently occupies a portion of the lessor's land. Court reversed the summary judgment, and remanded for entry of partial summary judgment in favor of the lessors and for a trial on the issue of damages.

STATUTE: K.S.A. 26-513

**MEDICAL MALPRACTICE AND STATUTE OF LIMITATIONS**

**DREILING ET AL. V. DAVIS ET AL.**

**SHERMAN DISTRICT COURT – DISMISSED IN PART, REVERSED IN PART, AND REMANDED**

**NO. 97,355 – JANUARY 18, 2008**

FACTS: On Feb. 25, 2002, Dr. Davis removed Loretta Dreiling’s gallbladder. Dr. Austin, Dreiling’s long-time doctor, assisted in the surgery. Dreiling died on March 1, 2002. Davis issued a death certificate on March 11, 2002, stating that Dreiling’s cause of death was “acute/fulminant liver failure” with a secondary diagnosis of nodular cirrhosis. Raymond Dreiling, the deceased's administrator, said the funeral director told him that an autopsy probably would not be helpful. Over the next several months, Raymond contacted law firms and ultimately decided to pursue exhuming Dreiling's body for an autopsy. Dreiling's body was exhumed in August 2002, and the autopsy revealed severe micronodular cirrhosis in Loretta's liver, but concluded that Loretta's cause of death was acute progressive pulmonary disease and acute bronchopneumonia. On May 14, 2004, Raymond filed suit against Davis, Austin, and the hospital claiming Dreiling's death was caused by medical malpractice and that he did not learn of the true cause of Dreiling's death until August 2002. The district court granted summary judgment to all defendants concluding, in pertinent part, that the action was barred by the two-year statute of limitations because the fact of injury was reasonably ascertainable as of the date of Loretta's death.
ISSUES: (1) Medical malpractice and (2) statute of limitations
HELD: Court stated that Raymond focused in the trial court on alleged misrepresentations or inaccurate statements concerning Dreiling’s cause of death certified by Davis, claiming it should extend the statute of limitations. Court stated the evidence in the case leads to the question of whether Raymond acted reasonably in not requesting an autopsy when he was admittedly suspicious about Dreiling’s death. Court held reasonableness is a fact question and that resolution in the present case would likely involve credibility determinations, and it appeared reasonable persons could reach different conclusions. Court held the district court erred in granting summary judgment to Davis and Austin and that the case was reversed and remanded further proceedings. Court dismissed the hospital as an appellee since there were no claims of vicarious liability.

STATUTES: K.S.A. 12-105b; K.S.A. 40-3403(h); and K.S.A. 60-256, -513

OIL AND GAS
Dexter et al. V. Brake et al.
CHAUTAUQUA DISTRICT COURT – AFFIRMED
NO. 97,102 – JANUARY 25, 2008

FACTS: In 1964, Osborn executed an oil and gas lease covering a single tract of 520 acres in Chautauqua County. When this case was initiated in 2004, the lessees’ interest was owned 92 percent by Brake and 8 percent by Blankenship. Nelson had surface and mineral ownership of 280 acres. The Dexter Trust had surface ownership and 50 percent mineral ownership of the other 240 acres, and the Monroes had the other 50 percent mineral interest. In July 2004, the Dexters and Nelsons filed suit to cancel the lease, alleging breach of the covenants contained in the addendum; the Monroes were not joined as parties. Brake and Blankenship answered contending they had expended significant amounts of money and time to bring the leasehold back into production and had otherwise complied with the addendum and original lease; they did not assert as a defense that necessary parties were not joined, nor did they affirmatively seek to join the Monroes. The district court granted summary judgment to the Dexters and Nelsons finding a breach of the lease and that although the lessees had substantially complied with the lease and that the Monroes were necessary and indispensable parties to the suit, it found the actions of the lessees did not constitute substantial performance and that the Monroes were not necessary parties to the cancellation action. The lease was ordered cancelled to the extent of both the Dexters’ and Nelsons’ interests.

ISSUE: Oil and gas
HELD: Court held the Monroes were not contingently necessary parties to the lease cancellation action. Court stated that the owner of a perpetual nonparticipating royalty or nonexecutive mineral interest is not a contingently necessary party to an action to cancel an oil and gas lease, in whole or in part, for breach of covenants. Since the cancellation decree terminates the lease as to both lessor and royalty owner, there is no danger of multiple litigation or of inconsistent judgments on the cancellation issue. Court held the district court did not err granting summary judgment to the lessees because the lessors failed to controvert the facts set forth in the summary judgment motion and these facts demonstrated the lease should be cancelled. Court found no abuse of discretion in the district court’s decision denying attorney fees.

STATUTES: K.S.A. 55-202; and K.S.A. 60-219, -256

TEACHER CONTRACT, DUE PROCESS HEARING, AND AGE DISCRIMINATION
Nickels v. Board of Education of U.S.D. 453
LEAVENWORTH DISTRICT COURT
APPEAL DISMISSED
NO. 97,598 – JANUARY 11, 2008

FACTS: Nickels had been a teacher for U.S.D. 453 (school district) for three years when she was notified that her contract would not be renewed. Nickels claimed the nonrenewal was because of her age. The school district denied Nickels a hearing arguing the hearing procedures were not applicable to her case. The district court determined that Nickels’ allegations based on her age fell within hearing procedures and she was entitled to a due process hearing. The board appealed asking the court to conclude the district court erred in finding Nickels was entitled to a hearing.

ISSUES: (1) Teacher contract, (2) due process hearing, and (3) age discrimination
HELD: Court held that under the facts of this case, the district court’s decision ordering a school board to hold a teacher due process hearing pursuant to K.S.A. 72-5446 was not a final, appealable decision, and the school board’s appeal was dismissed as interlocutory.

STATUTES: K.S.A. 60-2102(a)(4); K.S.A. 72-5446; and K.S.A. 77-623

WORKERS’ COMPENSATION AND ELECTED OFFICIAL
Stephen v. Phillips County
WORKERS’ COMPENSATION BOARD – AFFIRMED
NO. 97,254 – JANUARY 18, 2008

FACTS: Less than six months before the 2004 election, Phillips County Sheriff Leroy Stephen was injured while trying to handcuff an unruly prisoner. After the injury, he was off work for nearly two months. When he returned to work, his doctors directed that he lift (Continued on next page)
no more than 10 pounds and avoid stooping, bending, or twisting. While operating under those restrictions, he lost the primary election in August. In October 2004, the work restriction was expanded to allow him to lift up to 30 pounds. While operating under the revised work restrictions, he lost a write-in campaign in the November general election. Stephen was an employee covered by the Kansas Workers’ Compensation Act, and he sought and obtained a permanent partial disability award that included an amount partially compensating him for his wage loss after he lost his job. The county argued that because there was no proof that Stephen lost his job as a result of his injury, he should not be allowed to recover any amount compensating for wage loss after his term. The board awarded benefits to Stephen because his layoff was for economic reasons unrelated to his injury.

ISSUES: (1) Workers’ compensation and (2) elected official
HELD: Court held that on the facts of this case, an elected official who was injured on the job and then lost his job through an election defeat is entitled to a work-disability award when his post-injury wages were substantially less than his preinjury wages. There is no requirement that the claimant show that his election defeat was

STATUTE: K.S.A. 44-501(b), -510e(a)

WORKERS’ COMPENSATION, JURISDICTION, AND FUND LIABILITY QUANDT V. IBP ET AL.
WORKERS’ COMPENSATION BOARD
AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH DIRECTIONS
NO. 96,559 – JANUARY 11, 2008

FACTS: Quandt slipped and fell while working at IBP in 1993. She was awarded compensation in 1997. The award was assessed against the Kansas Workers’ Compensation Fund (Fund) since IBP hired Quandt knowing of her pre-existing neck and knee conditions. The board affirmed the award. Quandt applied for review and modification in 1999. In 2000, the administrative law judge (ALJ) did not impose Fund liability this time around because Quandt did not have a pre-existing back condition and IBP did not have any requisite knowledge of her back condition. All liability for back treatment was assessed to IBP. IBP did not immediately appeal the order. Numerous hearings followed. Eventually in 2005, the ALJ determined that Quandt’s job-related accident and the resulting knee injury aggravated a pre-existing condition in her back. On review, the board held that IBP’s appeal was timely and modified the award by assessing all liability for Quandt’s lower back condition to the Fund rather than IBP.

ISSUES: (1) Workers’ compensation, (2) jurisdiction, and (3) fund liability
HELD: Court held the hearing in 2000 was not a final hearing because there remained disputed issues to be resolved after the award of temporary disability benefits. Court held the board did not err in finding IBP’s appeal to be timely. Court held there was ample evidence upon which a rational factfinder could conclude that Quandt’s altered gait aggravated and rendered symptomatic her lower back condition. Consequently, the board did not err in concluding that Quandt’s lower back condition was a result of her altered gait. Court held the board assessed liability for Quandt’s back condition to the Fund when there had been no showing that IBP had caused Quandt’s back condition. Court stated there was no rational basis for the board’s conclusion that the Fund is liable for Quandt’s lower back condition and reversed the board’s finding of Fund liability. Court also found the board did not err in granting Quandt post-award compensation for her back injury because her original award was in 1997 and it was not until late 1998 that her back condition manifested itself to the point of requiring treatment.

STATUTE: K.S.A. 44-528, -534a(1), -551(f)(1), -567(a), (b)

STATE V. DUKES
SEDGWICK DISTRICT COURT – AFFIRMED IN PART AND REVERSED IN PART
NO. 96,563 – JANUARY 18, 2008

FACTS: Dukes convicted of driving under the influence of alcohol and of driving with a suspended license. District court imposed $2,500 fine and required reimbursement to Board of Indigents’ Defense Services (BIDS) for attorney fees and application fee. On appeal, Dukes claimed that proving license suspension and proper certification of the machine, without calling witnesses who maintained his driving record and handled the calibration and certification process, violated his constitutional right to confront witnesses against him.

ISSUES: (1) Certification or calibration of breath-test machine or certification of machine operator, (2) driving record, and (3) sentencing fines
HELD: Documents showing certification or calibration of a breath-test machine or certification of the machine operator do not constitute testimonial evidence under Crawford v. Washington, 541 U.S. 36 (2004), and if otherwise admissible, may be offered without an accompanying witness for cross-examination. Accord with other jurisdictions noted.

Similarly, proof of a defendant’s driving record is nontestimonial evidence under Crawford. This is in accord with majority of the limited jurisdictions addressing this issue.

The $2,500 fine is vacated because district court assessed more than minimum fine without making explicit findings required by K.S.A. 21-4607(3). Assessment of BIDS attorney fees is also vacated because there was no on-the-record consideration of Duke’s financial resources and the burden of the assessed fee. Application fee is affirmed because Duke did not request waiver, claim hardship, object to the fee, or present any information about his financial resources.

STATUTES: K.S.A. 2006 Supp. 8-1567(f), 22-4513(b), -4529; and K.S.A. 8-1020, -1567(f), 21-4607(3), 22-4513, 65-1,107

STATE V. JEFFERY
GEARY DISTRICT COURT
REVERSED AND REMANDED WITH DIRECTIONS
NO. 97,251 – JANUARY 11, 2008

FACTS: On New Year’s Eve 2005, police officers were dispatched to Jeffrey’s apartment to respond to a tip that the resident at that address had cut his wrists and attempted to hang himself in a tree. Jeffrey would not initially open the door, but later talked with the security chain attached. Finally, Jeffrey opened the door, the officers rushed him, ordered him to lie on the floor, and handcuffed him. The officers searched the apartment in walk-through fashion, claiming officer safety, and discovered marijuana and drug paraphernalia. The trial court denied the motion to suppress and Jeffrey was convicted of various drug crimes.

ISSUE: Motion to suppress search
HELD: Court reversed Jeffrey’s conviction. Court held the exception for search incident to arrest does not apply because Jeffrey was not arrested and any concerns of safety should have been for Jeffrey’s alleged suicidal conduct. Court held the exception for emergency-aid doctrine does not apply because there was no emergency need to clear Jeffrey’s apartment of items that he might use to harm himself when he returned to the apartment after the officers indicated they were taking him for a mental health evaluation. Court held the district court erred in denying Jeffrey’s motion to suppress the physical evidence obtained in the search of his apartment.

STATUTES: K.S.A. 22-2202(4) and K.S.A. 59-2953(a)
STATE V. JONES
SALINE DISTRICT COURT – REVERSED
AND REMANDED WITH DIRECTIONS
NO. 97,588 – JANUARY 11, 2008

FACTS: In 06CR107, Jones was charged with one count of felony possession of methamphetamine and several misdemeanors. He was released on bond. In 06CR197, 21 days later, Jones was charged with one count of felony possession of methamphetamine and several misdemeanors. He was again released on bond. Jones failed to appear in 06CR197 and a bench warrant was issued for his arrest. He appeared and bond was reset. He later failed to appear for his arraignment on both charges. The district court issued a bench warrant and stated that bond would be ordered revoked, but the warrant stated that the court declared a bond forfeiture. After being picked up on both warrants, Jones’ attorney stated a plea agreement had been discussed with the state, and the district court continued the case and reinstated the bonds in both of Jones’ cases. The state charged Jones with an additional count of aggravated failure to appear. The district court accepted Jones’ guilty plea, but held that Jones could not be charged with aggravated failure to appear because there was no forfeiture of the bond. The district court said that it revoked the bond, but that it was not forfeited until there is a payment in by the surety, and discharged Jones on the charge of aggravated failure to appear.

ISSUES: (1) Aggravated failure to appear, (2) bond forfeiture, and (3) bond revocation

HELD: Court stated that when a defendant fails to appear as required by the terms of an appearance bond, the district court is required to declare a forfeiture of bail. The district court’s mistaken use of the word “revocation” rather than “forfeiture” does not alter the legal nature of the judicial act and the record establishes the necessary threshold predicate for an aggravated failure to appear prosecution. Court held that under the facts of this case, the district court did declare a forfeiture of bail when the defendant failed to appear, but erred in concluding the appearance bond was not forfeited until payment of bail was made by the surety to the clerk of the district court. The evidence presented at preliminary hearing was sufficient to bind the defendant over for trial on the charge of aggravated failure to appear.

STATUTES: K.S.A. 21-3814 and K.S.A. 22-2807

STATE V. LOWDEN
SEDGWICK DISTRICT COURT
CONVICTIONS AFFIRMED, SENTENCES VACATED, AND CASE REMANDED WITH DIRECTIONS; CROSS-APPEAL DISMISSED
NO. 95,564 – JANUARY 11, 2008

FACTS: Lowden was convicted of two counts of aggravated indecent solicitation of a child for offering ice cream to 13-year-old girls if they would expose their breast. Based on Lowden’s prior conviction in 1970 for solicitation of a minor, the court classified Lowden as a persistent sex offender and imposed a 76-month sentence for the base conviction of aggravated indecent solicitation of a child and a concurrent 38-month sentence for his second conviction.

ISSUES: (1) Lesser included offense, (2) persistent sex offender, and (3) Apprendi

HELD: Court found the age of the victims was not disputed. Consequently, the jury was not entitled to lesser-included offense instruction of indecent solicitation of a child. Court also held under the facts of this case, in using Lowden’s prior conviction under G.S. 1949, 38-711 (1961 Supp.) to determine that the defendant is a persistent sex offender, the sentencing court went beyond the mere fact of his prior conviction to make the factual finding that his prior conviction involved sexually motivated conduct. Court also held under the facts presented, Lowden’s prior conviction under G.S.

(Continued on next page)
1949, 38-711 (1961 Supp.) was not enough to establish that he is a persistent sex offender. To establish that Lowden is a persistent sex offender requires a second fact, which the sentencing court sought to establish on its own and in a manner contrary to the holding in State v. Yrigolla, 23 Kan. App. 2d 784 (2004), no error to use Morton’s prior convictions to determine criminal history.

ISSUE: (1) Expungement of diversion agreement and (2) related arrest records

STATUTES: K.S.A. 2006 Supp. 21-4619 and K.S.A. 2006 Supp. 22-2410 are examined and construed. Historical background of both statutes shows Legislature intended for K.S.A. 2006 Supp. 21-4619(b) to apply to petitioners for expungement resembling Yrigolla’s situation. Under facts of case, K.S.A. 2006 Supp. 21-4619 is the specific statute and thus controls over K.S.A. 2006 Supp. 22-2410. Trial court correctly denied Yrigolla’s petition for expungement because five years had not passed since Yrigolla satisfied the terms of his diversion agreement.

STATUTES: K.S.A. 2006 Supp. 21-4619, -4619(a)(2), -4619(b), 22-2410, -2410(a), -2410(c), -2410(c)(4)(A); and K.S.A. 21-4619, 22-2902

**STATE V. MOORE**

**SEDGWICK DISTRICT COURT – AFFIRMED**

**NO. 97,003 – JANUARY 18, 2008**

FACTS: Moore convicted of aggravated weapons violation for carrying a “dangerous knife” concealed on his person. On appeal he claims the knife in question was a “pocket knife” under K.S.A. 21-4201(a)(2) and thus not prohibited. He also claims the term “dangerous knife” is unconstitutionally vague, and contends district court erred in determining the knife was dangerous.

ISSUES: (1) Pocket knife exception in K.S.A. 2006 Supp. 21-4201(a)(2), (2) constitutionality of K.S.A. 2006 Supp. 21-4201(a)(2), and (3) dangerous knife

HELD: A knife with a 3.5-inch straight, sharp, and pointed serrated blade that is sheathed in a comb but does not fold into the comb and has a handle that also serves as the handle for the comb is not a pocketknife under K.S.A. 2006 Supp. 21-4201(a)(2). District court did not err in concluding the knife found on Morton was not an ordinary pocketknife, which would be legal to carry concealed on one’s person.

No statutory or appellate court definition of “dangerous knife.” A dangerous knife under K.S.A. 2006 Supp. 21-4201(a)(2) is a knife that likely will produce serious injury or death when used as a weapon. The term in not unconstitutionally vague.

Under facts in case, district court did not err in determining the knife in question was a dangerous knife.

STATUTES: K.S.A. 2006 Supp. 21-4201, -4201(a)(2); and K.S.A. 21-4202

**STATE V. MORON**

**MORTON DISTRICT COURT – AFFIRMED**

**NO. 96,719 – JANUARY 18, 2008**

FACTS: Morton convicted of aggravated battery and aggravated assault of law enforcement officers. On appeal, Morton claimed prosecutorial misconduct by improperly bolstering officer’s credibility, by misstating elements of aggravated assault charge, by referring to Morton’s two prior escapes, and by characterizing defense to Morton’s two prior escapes, and by characterizing defense as “smoke and mirrors.” He also claimed insufficient evidence supported the aggravated battery conviction, and claimed his prior convictions were improperly considered in determining his criminal history.

ISSUES: (1) Prosecutorial misconduct, (2) sufficiency of the evidence, and (3) criminal history

HELD: Prosecutor’s opinion regarding credibility of a witness, and reference to Morton’s prior escapes, were improper but harmless under facts of case. Prosecutor’s comment regarding aggravated assault charge fell within latitude afforded prosecutors and did not misstate elements of the offense. Compared to other cases with “smoke and mirror” prosecutorial misconduct claims, comments in this case were not impermissible, and were harmless if any error.

The question of whether biting the officer could inflict great bodily harm or disfigurement was question for jury. Sufficient evidence supports Morton’s conviction.


STATUTES: K.S.A. 2006 Supp. 21-3415 and K.S.A. 21-3414(a)(1)(A) and (B)
The 2007 KANSAS ANNUAL SURVEY

Topics Include:
- Bankruptcy
- Business Organizations
- Civil Procedure
- Construction Law
- Criminal Law
- Ethics & Discipline
- Family Law
- Immigration Law
- Tax Law
- Torts
- Workers’ Compensation
... and many more

On Sale for a Limited Time at the KBA Bookstore
www.ksbar.org/bookstore

Now $50
LEGAL COUNSEL Corporate counsel needed for local aviation company. Minimum three (3) years’ legal experience required. Business and litigation background highly desirable. Employment law experience helpful. Please contact Lisa Becker at lisa.becker@aero.bombardier.com.

LEGAL DEPARTMENT, CITY OF TOPEKA, seeks a public service minded attorney for an Attorney III position involving civil litigation work. Must be licensed in Kansas state and federal courts. Requires five years legal experience. Send resume and writing sample to City of Topeka, Human Resources, Attention Michele Smith, 215 S.E. 7th St., Topeka, Kansas 66603. The City is an Equal Opportunity Employer.

CIVIL LIBERTIES DEFENDER NEEDED ACLU seeks staff attorney to lead legal program for Kansas and western Missouri affiliate. Kansas City office; competitive salary and benefits; requires demonstrated commitment to civil rights and the goals of the ACLU. For job description and further information, visit www.aclukswmo.org.

ATTORNEY SERVICES

PARALEGAL SERVICES Smith Legal & Consulting Services Inc., Sheila C. Smith, P.O. Box 12252, Overland Park, KS 66282-2252. Cell: (913) 713-9332 Fax: (205) 449-0285.

ANDERSON ECONOMIC GROUP Experts in economics, finance, and statistics for matters of commercial damages, business and asset valuation, lost earnings or profits, anti-trust, taxation, buy/sell agreements, fairness opinions, securities, trusts, and estates. Also provide economic and market feasibility studies. Industry expertise includes alcoholic beverages, automotive, franchises, manufacturing, oil and gas, real estate, rental car, retail, and telecommunications. Offices in Oklahoma, Texas, Illinois, and Michigan. Contact Patrick Fitzgerald, Ph.D., J.D., at (405) 360-4040 or visit www.andersoneconomicgroup.com.

ATTORNEY SERVICES

MCNABB, PURSLEY & KINNEY LLC Our firm is located in Butler, Mo., near Linn and Bourbon counties in Kansas and Bates, Cass, and Vernon counties in Missouri. Our firm specializes in creditor’s rights, including bankruptcy, real estate, title insurance, probate and estate planning, general business services, and banking law. We practice in Missouri and Kansas state courts and in the federal courts in Kansas and both districts of Missouri. We welcome co-counsel appointments. Call Brandon Kinney at (660) 679-4153 or e-mail at kinney-mpklaw@sbcglobal.net.

LET ME WRITE YOU A CHECK. I want your OKLAHOMA and KANSAS referrals. I pay all costs and do all the work. Member of the Kansas, Oklahoma, and American trial lawyers associations. Practice limited to Plaintiff’s cases. * Truck Accidents * Products * Med-Mal * Oklahoma Insurance Bad Faith * Nursing Home Abuse * Injury Car Wrecks. (405) 410-2848 or (800) 296-6074. Attorney John Branum JBrAnum@CarrCarrOKC.com.

FRENCH LAW OFFICE LLC General practice, including bankruptcy. Reasonable rates. (785) 235-5500.


KANSAS REPORTS complete from Vol. 1 through Vol. 261 and subsequent advance sheets. Vols. 1 to 74 in rough shape. KA2d from Vol. 1 through 22 and subsequent advance sheets. $1,000 or best offer. Phone (316) 265-2834.

OFFICE SPACE AVAILABLE

WICHITA LAW OFFICE. Includes office, workstn for support staff, receptionist, and other amenities. Contact Ryan Hodge at (316) 269-1414.

SHARED OFFICES: WINDMILL VILLAGE, 7111 W. 98th Terrace, Ste. 140, Overland Park. Available now ($700) for a 12 x 14 office suite or ($500) for a 12.5 x 11.5 office suite, administrative assistant space also available ($200). Amenities include large conference room use, receptionist, incoming mail, package handling, kitchen area, janitorial services, convenient and unallocated parking. Lanier copier/scan available if needed and legal reference material as well. Call Sherry (913) 385-7990, ext. 310 or e-mail sherry@tomesdvorak.com.

EXECUTIVE OFFICE SUITES AVAILABLE IN LEAWOOD Six full-service executive offices are available in Leawood within one block of College and Nall. Each tenant will be charged a monthly base rent for tenant’s office. Referrals available from other attorneys in the building. Call Glen Beal at (913) 387-3180 for more information.

OFFICE SHARING IN OVERLAND PARK – Existing law offices seek 1-4 attorneys to join shared office space and expenses. Offices are located at 7007 College Blvd., one block south of I-435. Enjoy reasonably priced large office with a wall of windows overlooking a park-like setting. Office suite includes shared conference room(s), shared receptionist/office manager, scanner, copy machine, high-speed printer, phone system, fax, storage space, office server platform, postage meter, kitchen, and more. Office building has secured electronic card-reader for after hours access, overnight express mail pick up, USPS pick ups, and an onsite deli. Interested parties contact Corrie Craig at (913) 381-1500.

KBA MEMBERS

FREE Classified ads up to 75 words with your membership! Renew today at www.ksbar.org.

To place your ad call Susan McKaskle at (785) 234-5696 or e-mail smckaskle@ksbar.org.
<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Type</th>
<th>Topic</th>
<th>Presenter(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tuesday, Mar 4</td>
<td>Noon - 1 p.m.</td>
<td>Telephone seminar</td>
<td>An Overview of School Law Issues for the Private Practitioner</td>
<td>Donna L. Whiteman and Cynthia L. Kelly, Kansas Association of School Boards, Topeka</td>
</tr>
<tr>
<td>Wednesday, Mar 5</td>
<td>Noon - 1 p.m.</td>
<td>Telephone seminar</td>
<td>Wrongful Death and Survival Claims</td>
<td>Cynthia J. Sheppeard, Weathers, Riley &amp; Sheppeard, LLP</td>
</tr>
<tr>
<td>Tuesday, Mar 25</td>
<td>Noon - 1 p.m.</td>
<td>Telephone seminar</td>
<td>Fair Labor Standards Act: Nuts &amp; Bolts</td>
<td>Kellie A. Garrett, Spencer Fane Britt &amp; Browne LLP, Kansas City, Mo.</td>
</tr>
<tr>
<td>Wednesday, Mar 26</td>
<td>Noon - 1 p.m.</td>
<td>Telephone seminar</td>
<td>Is the FLSA Going Green? Hybrid Fair Labor Standard Act and State Wage and Hour Litigation</td>
<td>Kellie A. Garrett, Spencer Fane Britt &amp; Browne LLP, Kansas City, Mo.</td>
</tr>
<tr>
<td>Friday, Mar 28</td>
<td>9 a.m. – 4 p.m.</td>
<td></td>
<td>Health Law</td>
<td></td>
</tr>
<tr>
<td>Wednesday, Apr 2</td>
<td>Noon – 12:50 p.m.</td>
<td>Brown Bag Ethics including lunch</td>
<td>Ethics Update - Recent Kansas Supreme Court Ethics Decisions and the Newly Revised Kansas Rules of Professional Conduct</td>
<td>Janith Davis, Office of the Disciplinary Administrator, Topeka</td>
</tr>
<tr>
<td>Wednesday, Apr 9</td>
<td>Noon – 12:50 p.m.</td>
<td>Brown Bag Ethics including lunch</td>
<td>Legal Ethics &amp; E-Lawyering</td>
<td>Prof. Michael Hoeflich, University of Kansas School of Law, Lawrence</td>
</tr>
<tr>
<td>Friday, Apr 11</td>
<td>9 a.m. – 4 p.m.</td>
<td></td>
<td>Family Law</td>
<td></td>
</tr>
<tr>
<td>Monday, Apr 14</td>
<td>Noon – 12:50 p.m.</td>
<td>Brown Bag Ethics including lunch</td>
<td>The Three Roles of the Ethical Lawyer</td>
<td>Hon. Stephen D. Hill, Kansas Court of Appeals, Topeka</td>
</tr>
<tr>
<td>Saturday, Apr 19</td>
<td>8:30 a.m. – 12:10 p.m.</td>
<td></td>
<td>Environmental Law DVD Debut</td>
<td></td>
</tr>
<tr>
<td>Friday, Apr 25</td>
<td>9 a.m. – 4:35 p.m.</td>
<td></td>
<td>If You’re Still a Bankruptcy Lawyer, You Probably Oughta Hear This</td>
<td></td>
</tr>
<tr>
<td>Friday, Apr 25</td>
<td>9 a.m. – 5:20 p.m./Saturday, Apr 26, 9 – 11:55 a.m.</td>
<td></td>
<td>KBA YLS Hands-On CLE Series: Expert Preparation &amp; Examination &amp; Opening Statements, Session II (Limited to 24 registrants)</td>
<td></td>
</tr>
</tbody>
</table>

KBA Continuing Legal Education: Your Partner in Practice!

For more information, or to register online, visit www.ksbar.org.

These KBA CLE seminars are being submitted for accreditation to the Kansas CLE Commission.

Potential walk-in participants should call the KBA office at (785) 234-5696 prior to the seminar to check for possible schedule changes.

For updates on CLE credit approval, visit www.ksbar.org/public/cle.shtml.

To access your Kansas CLE transcript online, visit www.kscle.org/Tran_Query.aspx.
Do you have an idea for an article? One you believe would be of interest to your colleagues in the practice of law in Kansas?

*Share your knowledge!*

Lead articles should be oriented toward the interest of Kansas lawyers as distinguished from articles of general interest to the bar in the United States. They should deal more with what the law is than a discussion of what it should be (i.e., be practice oriented).

All articles or subject ideas for articles are reviewed by the Board of Editors. You may send a copy of the article or an outline of a proposed article to the Board for review. Mail or e-mail to:

Susan McKaskle, director of bar services
1200 S.W. Harrison
P.O. Box 1037
Topeka, KS 66601-1037
E-mail: smckaskle@ksbar.org