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KBA Officers &
Board of Governors Elections

It’s not too early to start thinking about KBA leadership positions for the 2015-16 leadership year.

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

Officers

- **President**: Gerald L. Green, 2014-15; Natalie G. Haag, 2015-16
- **President-elect**: Natalie G. Haag, 2014-15; Stephen N. Six, 2015-16
- **Vice President**: Stephen N. Six, 2014-15; Gregory P. Goheen, 2015-16
- **Secretary-Treasurer**: Gregory P. Goheen, 2014-15; open
- **KBA Delegate to the ABA House of Delegates**: Rachael K. Pirner; open

Interested candidates should send detailed information to Jordan Yochim, KBA Executive Director, at 1200 SW Harrison St., Topeka, KS 66612-1806, or at jyochim@ksbar.org by **Friday, January 16**, for distribution to the Nominating Committee. Candidates seeking an officer position may be nominated by petition bearing 50 signatures of regular members of the KBA, with at least one signature from each governor district.

Board of Governors

Candidates seeking a position on the Board of Governors must file a nominating petition, signed by at least 25 KBA members from that district, with Jordan Yochim by **Friday, February 20**. If no one files a petition, the Nominating Committee will reconvene and nominate one or more candidates for open positions. The seven KBA districts with seats up for election in 2015 are:

- **District 1**: Incumbent Toby J. Crouse is eligible for re-election. Johnson County.
- **District 2**: Incumbent Charles E. Branson is not eligible for re-election. Atchison, Brown, Doniphan, Douglas, Franklin, Jackson, Jefferson, Leavenworth, Miami, Nemaha, Osage, Pottawatomie, and Wabaunsee counties.
- **District 4**: Incumbent Brian L. Williams is eligible for re-election. Butler, Chase, Chautauqua, Coffey, Cowley, Elk, Greenwood, Lyon, and Sumner counties.
- **District 5**: Incumbent Cheryl L. Whelan is eligible for re-election. Shawnee County.
- **District 6**: Incumbent Bruce W. Kent is not eligible for re-election. Clay, Cloud, Dickinson, Ellsworth, Geary, Lincoln, Marion, Marshall, McPherson, Morris, Ottawa, Republic, Riley, Saline, and Washington counties.
- **District 7**: Incumbent Calvin D. Rider is not eligible for re-election. Sedgwick County.

For more information
To obtain a petition for the Board of Governors, please contact Jordan Yochim at the KBA office at (785) 234-5696 or via email at jyochim@ksbar.org. If you have any questions about the KBA nominating or election process or about serving as an officer or member of the Board of Governors, please contact Dennis D. Depew at (620) 325-2626 or via email at ddepew@ksbar.org or Jordan Yochim at (785) 234-5696 or via email at jyochim@ksbar.org.
Pro Bono: We Can All Benefit

As I write this column, I have just returned from the Pro Bono Summit: Partnerships in the Public Interest, co-hosted by the Kansas Bar Association and Kansas Legal Services on December 17, 2014, in Topeka. First, I want to thank Anne Woods, the KBA's public services manager, for coordinating it. We had almost 50 register and attend. Cheryl Zalenski from the ABA's Center for Pro Bono spoke and provided us with a look at the national landscape for pro bono. Twelve pro bono coordinators from KLS were recognized for their statewide efforts. Because of the overwhelming need, I want to focus this column on pro bono services in Kansas, and what we, as Kansas attorneys can do to help.

As Ed Nazar, Kansas Bar Foundation president, observed in his opening remarks at the Summit, attorneys are like many other people, we often give of either our time or money to charitable causes or organizations. Many of us also commit to public or civic service in a variety of ways and to a variety of causes, organizations, or entities. Yet another way as attorneys we can uniquely make a difference in our communities and state is to offer pro bono services to those who cannot otherwise afford legal counsel. As Justice Dan Biles noted in his remarks to the Summit participants, the distance between the ordinary citizen and access to justice and legal representation is growing, and it is even more pronounced for the poor. Too often, legal services are almost unattainable for many people, particularly the poor, but even for those of “modest means” as well.

To be sure, there are programs and organizations in place to address the above problems, KLS being the prime example in Kansas. The constitution does not guarantee the right to legal counsel except in serious criminal cases. The need for legal representation in civil cases, or non-litigation matters is where the greatest need exists. KLS and other such entities can do much, but cannot meet all the needs for legal services among the poor. They cannot help those with modest means, who too often cannot realistically afford an attorney. In 2014, it is estimated that KLS will be contacted by over 37,000 Kansans seeking legal services. Some, because of their income, will not qualify for help and will be told they need to hire an attorney. Many will be helped, but KLS’ resources are not sufficient to meet all the needs presented. Approximately 15,000 Kansas families in need of some form of legal assistance will not be helped because KLS does not have the resources to meet the need. And among those who are turned away because they do not qualify for KLS services due to their income, as a practical matter, many won’t be able to afford an attorney. And I suspect, there are many more who need legal services, but won’t seek help because they expect they cannot afford an attorney, and won’t even bother to ask.

As a profession, collectively we already do much to offer pro bono services. And I applaud everyone who already participates. Many attorneys volunteer their time through KLS and similar organizations, particularly “retired” attorneys. Our law schools and law students help and contribute much to meet the need. Data collected by the ABA confirms that a majority of us do pro bono work. The average attorney responding to the ABA surveys reports providing on average 56.5 hours per year to pro bono work. But 20 percent of those responding say they offer none. And I fear that those who do not respond to the surveys provide even less and that the percentage of those not offering pro bono services among that group is even higher. Ultimately, the plain truth is that the need will not be met unless and until all of us make the commitment to make pro bono services a vital part of our practice.

Now, because I am an attorney, and I know lots of attorneys, and I know how attorneys think, I would be remiss if I did not first address the issue of what is pro bono work, and what is not. Pro bono is not legal work we do expecting to get paid, and then for whatever reason, we do not get paid. If that constituted pro bono work, I suspect most, if not all of us, could (and knowing how attorneys think would) claim we offer “substantial” pro bono services. But before we start patting ourselves on the back too much, that is not what truly constitutes pro bono. The ABA in accordance with Rule 6.1 of its Model Rules of Professional Conduct defines pro bono services as providing the services without expectation of a fee. And that is the way it should be; that we intentionally set about to offer our services without charge. To the extent we do work and then do not get paid, well, that is an issue for another day, and perhaps our law office management program could help! But I digress. For everyone’s convenience and edification, Rule 6.1 provides as follows:

**Public Service**

**Rule 6.1 Voluntary Pro Bono Publico Service**

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono public legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental, and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate;
(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

At the Pro Bono Summit, we heard speakers and comments from KLS, the ABA, our law schools, big firms, small firms, and solo practitioners. What we learned is that there are countless ways pro bono services can be offered. From volunteering to take a case or matter for KLS, to providing the services directly to someone in need, to designating an attorney or attorneys in the firm to handle all or substantially all of the firm’s pro bono work. The important thing is not how the services are provided, but that they are provided. Having said that, however, I would encourage everyone to consider working with and through KLS. They screen the need, confirming it is real and not someone “scamming” the system. Plus, by working through KLS, we are better able to track the level of pro bono services offered. Not so we can claim how much we do (okay maybe that is a little part of it), but so we can better track the need and how it is being met.

I know there are many reasons for not doing pro bono work. I will not begin to try and list them here. Many reasons, if not all, are legitimate. I know we already work hard, commit of our time and resources in many ways, and I believe do more than most in giving back to our state and communities. Yet at the risk of just adding one more request to the list, that is exactly what I am going to do. It is important and it goes without saying, our profession is the only profession that can offer pro bono legal services. If we don’t, no one else can or will.

The need for legal services for the poor or those who cannot afford it is obvious. And while the government and many organizations and entities are doing what they can to help, in the end, as Justice Biles observed, it is up to our profession to meet the need. Ours is a noble profession. We can and do much already. But we can and need to do more. We can and should do more. I encourage all of us to resolve in 2015 to, at a minimum, meet the standard set by the ABA’s Model Rule 6.1. I daresay, we will all benefit from doing so, but those who need the help will benefit even more.

About the President

Gerald L. “Jerry” Green is a member of the Hutchinson law firm Gilliland & Hayes LLC. He currently serves as president of the Kansas Bar Association.

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Help is Needed...

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

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Pro Bono Legal Services

YOU CAN HELP
I recently read an editorial on the perceived decline in critical-thinking skills in today's youth. The problem, the author opined, is that with the advent of user-generated content on the Internet, kids tend either to accept everything they read as true or to reject it all as untrustworthy. The author observed that reality is somewhere in between those two extremes, but kids aren't learning to differentiate between credible stories and sensational ones. And since there is a tendency to gravitate toward stories consistent with one's preexisting biases, kids (and adults) do not always read about issues from more than one perspective. The author concluded with an open-ended query: What can we do to foster these skills in the Information Age?

I don't know whether I agree that young people as a whole are less discerning than they were even a decade ago. (Of course, I read it, so it must be true.) But I do know this: We in the KBA Young Lawyers Section have at least one answer to the author's final question, and that is the KBA YLS High School Mock Trial Competition.

Yes, it's that time of year again.

Each spring, the YLS hosts a mock trial competition for high school students. The contest consists of two regional tournaments—one in Olathe and one in Wichita—and a state championship in Topeka. This year's regional tournaments will take place on Saturday, February 28. The championship rounds will occur Friday and Saturday, March 27-28.

The Kansas Mock Trial Competition is one of the largest and most important functions of the YLS, for all of the reasons driving that editorial. One 2014 student-competitor observed that participating in mock trial "teaches teamwork, diligence, logical thinking, and sportsmanship. Competing in mock trial gives me insight and experience on how the real world works. It has taught me how to debate with an opposing side, while remaining professional and courteous." A Washington district judge who has participated in that state's competition similarly observed that mock trial teaches "the practice of empathy as well as law."

Is there a better service that we as members of the bar can offer to young people? Long before those students are living on their own or voting in the ballot box, they learn to appreciate the role of the justice system in our society. They learn that there is often more than one side to the story, and that some types of information are more persuasive or reliable than others. (In fact, some information is so inherently unreliable that it can't even be presented to a jury.) Those are things that just cannot be taught in a classroom.

And I have good news: The Kansas Mock Trial Competition is growing. In recent years, our tournament has expanded from just a few teams in each region to include teams from dozens of schools, both public and private, across the state. Each year, new schools—from urban and rural areas alike—come observe the tournament or send a team to compete. The Olathe regional now includes strong varsity and novice divisions. This year, for the first time (thanks to the efforts of our Mock Trial Committee: Shawn Yancy, Lauren Mann, and Samantha Woods), Wichita also will host two divisions to allow additional students and schools to compete.

We at the YLS have worked hard to develop this program, and we're ecstatic about its growth. But here's the thing—we need your help.

One of the things that makes this tournament so special is the generosity of lawyers from throughout the state who volunteer to judge a round of competition. Each varsity round needs three judges (novice rounds have anywhere from one to three judges, depending on availability), with one person to rule on objections and generally preside over the trial and two others who score the round. Each round lasts about an hour and a half. Put simply, every time we add two teams, we create opportunities for twelve more lawyers to offer their time and talent to the cause.

For those unfamiliar with mock trial, here is how it works: Each year, all participating schools are presented the same "Problem." (For anyone familiar with competitive debate, this is analogous to the "Resolution," though more extensive.) The problem outlines the subject to be tried, lists witnesses and provides affidavits, and establishes exhibits—both for the plaintiffs and for the defense. Last year's problem was a criminal case concerning a death at an apartment complex in Topeka. This year's problem—composed from scratch by our mock trial chair—presents a civil case with a products-liability issue.

Teams prepare to present both sides of the problem. Thus, in the course of a four-round regional tournament, the same team will argue the case twice for the plaintiffs and twice for the defense. A school's mock trial team typically consists of six people: two students who argue as attorneys, three who present testimony and establishes exhibits—both for the plaintiffs and for the defense. Last year's problem was a criminal case concerning a death at an apartment complex in Topeka. This year's problem—composed from scratch by our mock trial chair—presents a civil case with a products-liability issue.

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I've judged the mock trial tournament for the past four years, and I am always struck by how poised the students are. They spend months preparing, and the manner in which they present and passion with which they argue are impressive. Their excitement to meet "real attorneys" is palpable. And it's a two-way street—volunteering as a judge has made me a better lawyer. It makes me think about the rationale behind evidentiary rules like hearsay, and observe what types of arguments resonate (or don't) with a neutral arbiter. It rejuvenates my enthusiasm for the practice of law and helps me see the big picture.

We lawyers are lucky. We have the honor of helping real people solve real problems every day. I think we owe it to the public—and to ourselves—to give a couple of hours of our time in an effort to instill those skills in society's future lawyers and leaders. Will you help us?

About the President

Sarah E. Warner is an attorney at the Lawrence firm of Thompson Ramsdell Qualseth & Warner P.A. She serves as an adjunct professor at Washburn University of Law, and is a member of both the KBA Appellate Practice Section executive committee and Board of Publishers.

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*Education is the most powerful weapon which you can use to change the world.*  
– Nelson Mandela

The Kansas Bar Foundation Scholarship Committee selected six students to receive scholarships in 2015. Through generous endowments from KBA members and firms, the KBF is able to offer several scholarships. Congratulations to these outstanding students!

**Case, Moses & Zimmerman, P.A. Law Student Scholarship**

This scholarship is intended to go to a 2L law student at a Kansas law school, Creighton University School of Law or Oklahoma City University School of Law.

**Ashley Akers/University of Kansas School of Law**

A Wyoming native, Akers moved to Kansas two years ago to attend the University of Kansas School of Law. She quickly made a home of Kansas and hopes to begin her legal career as a clerk in a Kansas court. Akers is involved in many university organizations and is active in community service roles in the Lawrence community.

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

**The Justice Alex M. Fromme Memorial Scholarship Award**

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

**Matthew T. “Matt” Schippers/University of Kansas School of Law**

A native of Wichita, Schippers attended the University of Kansas and earned a Bachelor of Science in accounting and business administration. The holder of a CPA license, he was a corporate accountant at Koch Industries Inc. in Wichita before starting law school. Schippers is also the recipient of the J.L. Weigand Jr. Notre Dame Legal Education Trust Scholarship and is a staff member with the *Kansas Law Review*. This summer, he will return to Wichita as a summer associate at Hinkle Law Firm LLC and Triplett, Woolf, & Garretson LLC.

“I am honored and humbled to receive this scholarship, and I thank the Kansas Bar Foundation for offering these scholarships to help fund students’ legal education. As a lifelong Kansan, I am fully committed to contributing to the Kansas legal community both before and after graduation. This scholarship will help me achieve my goals as I move forward in my career.”

**The John E. Shamberg Memorial Law Student Scholarship**

This scholarship is for a Washburn University School of Law student who has an interest in plaintiff’s work as well as a bona fide intention to practice law in Kansas.

**Lisa L. Martin/Washburn University School of Law**

Martin is a resident of Prairie Village and previously worked in human resources at Kiewit Corp. prior to pursuing her legal education at Washburn University School of Law. In her position with Kiewit, Martin lived in various cities across the United States and learned that no place compares to “home.” Martin intends to establish a legal career in her home state of Kansas.

“I am pleased to receive the John E. Shamberg Memorial Law Student Scholarship. Mr. Shamberg’s list of honors and achievements is quite impressive. He exhibited the types of qualities I hope to exhibit throughout my career. He was a progressive, open minded individual who cared about his community. I would like to extend a hearty ‘thank you’ to the Kansas Bar Foundation for their continued support of law students such as myself. I am privileged to be a Kansan, eager to become a practicing member of the Kansas Bar Association, and look forward to contributing to my community.”

**Hinkle Law Firm Student Scholarship**

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

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

Desroches and her daughter moved to Kansas from Ohio and have since become self-proclaimed Kansans. She credits Washburn University School of Law for granting her the opportunity to make her dream a reality. She intends to reside and practice law in Kansas. Desroches’ goal is to utilize the knowledge she has acquired and her life experiences to change the lives of children for the better. She intends to practice in the areas of family and juvenile law with the goal of implementing aver-sion programs so that at-risk youths have the chance to rise to their highest potential. Desroches plans to intern with Kansas Legal Services in Topeka, and also looks forward to partnering with Kansas Appleseed Justice Center in distributing meals to children this summer. Desroches has volunteered for several organizations, including the Good Neighbor Home, Compassion International, Topeka Rescue Mission, Harvesters, and America Reads.

“I am overwhelmed with gratitude to the Kansas Bar Foundation for selecting me to receive the Hinkle Scholarship. As
... serving the citizens of Kansas and the legal profession through funding charitable and educational projects that foster the welfare, honor, and integrity of the legal system by improving its accessibility, equality, and uniformity, and by enhancing public opinion of the role of lawyers in our society.

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a first generation Haitian-American, I have always had a passion to assist the underrepresented members of our community. Giving back to others is important to me because, I would not be where I am today without the assistance of others. I have always believed that the less fortunate do not need a handout but a helping hand to assist them. Aside from the financial support, this award allows me the chance to continue pursuing my passion in the profession of law and impact the lives of children for the better – one rising star at a time. I would like to thank the Kansas Bar Foundation for this honor.”

Lathrop & Gage Scholarship Award

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

Kayla Roehler/Washburn University School of Law

A Washburn Rural High School and Kansas State University graduate, Roehler intends to stay in Kansas to practice law. She is currently an intern at the Shawnee County District Attorney’s office. Her plan is to become a prosecutor after law school. She will graduate this May with a certificate in advocacy and pro bono. Roehler volunteers with the Topeka Youth Projects Youth Court and helps raise money for various charities by running. After losing her uncle, Roehler was one of the top fundraisers for the Pancreatic Action Network’s Purple Stride in 2012 and she helped organize one of the largest teams for the Race Against Breast Cancer. Raising funds for cancer research is not the only important part of her background. As a law student with a learning disability she tries to encourage others to succeed in the face of adversity. While at Kansas State University, she started their chapter of Delta Alpha Pi International Honor Society for students with disabilities.

“I am honored to receive the Lathrop & Gage Scholarship Award. Working to help the community has always been important to me and my family; my earliest memories are community service projects with the Girl Scouts and Boy Scouts. I look forward to continuing my practice of community involvement after law school. The only way a community can grow is by having its citizens get involved. I look forward to becoming involved in the Kansas Bar Foundation next year.”

Frank C. and Jeanne M. Norton Scholarship Award

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

Travis Ternes/Washburn University School of Law

Ternes is a native of Oxford, Kansas. He attended Kansas State University and graduated in 2011 with a Bachelor of Arts in criminology and communication studies. He is currently a law clerk at Alderson, Alderson, Weiler, Conklin, Burghart & Crow LLC. He has an emphasis in Oil and Gas, and Natural Resources law and wants to have a future working in land acquisitions and issues. Ternes intends to practice in Kansas.

“I would like to sincerely thank the Kansas Bar Foundation for choosing me for the Frank C. and Jeanne M. Norton Scholarship. The value of scholarship goes further than the mere dollar amount. The scholarship symbolizes a reward for my hard work and the bar foundation’s interest in promoting the Kansas legal community. It is particularly exciting to see support for my interest in practicing law in Kansas.”

KBF Giving Options

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

This month’s “Substance & Style” tackles substance. Let’s face it: some briefs and memos have it, but many do not. When analysis seems only to skim the surface, the missing depth is usually in the counteranalysis: tackling head-on the rules and facts that are most damaging to one’s position. Due to its need for mature critical thinking, counteranalysis is one of the most difficult skills to teach law students, and so—to the chagrin of judges everywhere—many practicing lawyers still tend to address mostly favorable authority and then skip directly to its application to the bare facts.

Having taught legal writing for some years now, my sense is that cursory analysis stems from three sources: a tendency to view the client’s matter too positively or too negatively (black-and-white, dualistic thinking); a habit of reading authorities for surface “case-briefing” features rather than for deep context; and a lack of concrete tools to use as “training wheels” to ensure that opposing facts and authority are adequately addressed.

**Full-spectrum thinking**

It seems to be a well-settled proposition in human development that young adults gradually mature from dual to relative thinking. Even in adulthood, we can tend toward different ends of the spectrum. In education, the ability to learn critical thinking is sometimes described as an ever-receding, holy grail. The necessary ingredients, such as life experience, exposure to diverse views, and development of expertise, can begin in college but must mature with the assumption of adult professional and personal life.

When I was in this stage, I remember my boss, a veteran plaintiffs’ trial lawyer, often lamenting that we associates were stuck in “glass is half empty” thinking. Debating the facts and law with an experienced lawyer was invaluable training, and encouraged me to go beyond reciting the black-letter law and into better storytelling, public policy reasoning, statutory interpretation, and use of creative analogies. Lawyers can also practice these strategies:

- Change hats: devote separate research and writing sessions to just those facts and authorities that work against your conclusions.
- Look for a narrative: facts are not merely a dry chronology; finding the story can open up new avenues for issue-spotting and persuasion.
- Develop a case theory: many briefs lack a theme and tend to divorce the law from the case’s fact and policy context.
- Broaden authority: address the binding law first, but increase scope with viewpoints and fact patterns from compatible jurisdictions.
- Think flexibly about statutes: the plain language must control, but because legislators do not have a crystal ball, locate potential flexibility or ambiguity.
- Generalize analogies: Instead of looking for the elusive “perfect case” with identical facts, look for cases with different surface facts but the same underlying dynamic.
- Consider public policy: especially in close cases, think about how a ruling will affect judicial efficiency, the role of government, public safety and welfare, etc.
- Look for non-legal solutions: sometimes clients present with underlying financial, mental health, or other issues that cannot be addressed through litigation alone.

**Critical reading**

One of the first skills we learned in law school was how to brief a case. While classroom discussion goes much deeper, many of us tend for a long time afterward to approach case reading as a box-checking exercise, rather than as a reflective, engaged, and skeptical process. A few tips for getting beyond surface-level reading are:

- Skim for surface features first, but if the authority is at all relevant, go back for a second and third look. If the authority will be cited, return many times.
- Devote the most attention to the facts and reasoning. If the court only makes oblique reference to the reasoning, the authority will be less persuasive. However, if the case is binding or otherwise highly persuasive, do not speculate, but try to draw reasonable inferences by comparing the facts of the case to the holding and the citations. In the facts, look for tone and emphasis to see which aspects the court found convincing. To remain properly candid with the court, cue an inference with citation signals and phrases such as “the court seems to . . . .”
- Consider the case within the social and political context of the time and place it was decided, and be willing to critique on that basis.
- Consider statutes within the context of the wider code, and cases within the broader line of authority.

**Structural tools**

Especially when a “box-checking” approach to legal writing feels tempting, it can help to have a checklist of surface features that will—hopefully—cue counteranalysis:

- Start with an outline template that contains placeholders for describing and negating the opponent’s best facts and authority in each unit of analysis.
- Think of the law as a spectrum of fact patterns and outcomes. Map them out in a graph or with index cards, and assess where the client’s case falls on the spectrum.
- In the first draft, begin multiple paragraphs with the formulaic “while [the opponent] argues x, . . . .” Then in later drafts, change to a more sophisticated thesis statement for each point rather than beginning with the opponent’s argument.
- Ensure that each issue is peppered with comparative and contrastive words such as “although,” “however,” “despite,” “in contrast,” etc.
While none of these strategies can substitute for raw experience, both in professional life and personal development, they can help lawyers become more mindful about their writing and their attention to depth of reasoning.

Sources and further reading


About the Author

Tonya Kowalski is a professor at Washburn University School of Law, where she teaches Legal Analysis, Research, and Writing and is a contributing faculty member in the Institute for Law Teaching and Learning.

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In a future column, we would like to answer your legal writing questions. Email questions to pkeller@ku.edu with the subject line SUBSTANCE & STYLE. You can also mail your questions to Pam Keller, University of Kansas School of Law, 1535 W. 15th St., Lawrence, KS 66045.

Rep. Carmichael Mistakenly Excluded from Lawyer-Legislator Listing

The Kansas Bar Association would like to apologize for failing to include Rep. John Carmichael in the January KBA Journal article listing all Kansas lawyer-legislators. He has been an important champion and valued member of the KBA for over 30 years. Our sincerest apologies for the oversight.

Rep. John Carmichael, D-Wichita
House District No. 92

Carmichael represents the 92nd District in Wichita. He earned his political science degree from University of Kansas in 1979, his administration of justice degree from Wichita State University in 1980, and his law degree from KU School of Law in 1982. Carmichael is of counsel with the law firm of Conlee, Schmidt & Emerson LLP in Wichita. He has been a member of the Wichita Bar Association and the KBA for over 30 years. Carmichael will serve as ranking minority member on the House Judiciary, and a member of the Elections and Energy/Environment and local government committees this session.

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S o by now we are a month into 2015 – how’s it going for you? I hope your life and your law practice are both humming along well and in perfect balance. You may be wondering, “How’s it going for the Kansas Lawyers Assistance Program?” So glad you asked. We are doing quite well – due largely to the help and support from members of the court, the KBA and the great lawyers we have here in Kansas, including those on our board.

Let me just share one story to begin. In a recent disciplinary hearing before the Supreme Court, one lawyer said that the disciplinary complaint had been a blessing in disguise because it led to him working with KALAP. “I was tumbling down pretty hard but that referral probably saved me from falling all the way down. It saved me from trauma, helped my family and led to a better practice of law.” THAT is the best outcome and illustrates why we do what we can to offer help and hope.

Getting back to the KALAP board – we’ve had some changes, so let me fill you in on those. Board chair is Billy Rork of Topeka, and vice chair is Sue Dickey of Overland Park. Continuing members include Carol Ruth Bonebrake, Topeka; Lara Blake Bors, Garden City; Hon. Ben Burgess, Wichita; Lauren Reinhold, Lawrence; Steve Smith, Overland Park; Mike Studtmann, Wichita; and Cal Williams, Colby/Salina. New member Sarah Sweet McKinnon, Hutchinson, will be joining the board soon. Many of you know we lost a wonderful founding member, Wayne Hundley, last October. And another well-known, long-time member, Jack Focht, Wichita, rotated off. The term for Judge Karen Humphreys, Wichita, also expired, just in time for her retirement from the bench. I list those excellent people so that you’ll know KALAP is more than just the Topeka staff and hope you’ll feel free to contact any board member.

Judge Ben Burgess is our newest member and he is also chair of the Judges Assistance Committee, so we have an optimum opportunity for sharing information about KALAP services with members of that committee. And KALAP will be doing that with other judges as well at several of the judicial events in 2015. This is so important for at least two reasons: first, judges are in a great position to observe when a lawyer is having problems and urge her or him to get help. Second, on those rare occasions when a judge might need help, it is important for the bench and bar to know about and use the Judges Assistance Committee.

Many of the larger states’ lawyer assistance programs offer support groups and we do as well here in Kansas – in Topeka, Lawrence, and Overland Park. They are free, confidential discussion groups just for lawyers and they are open to any lawyer. Attendees need not be KALAP clients, or have a substance or mental health issue. Wichita has its own group which predates KALAP. We are keenly aware of the lack of any group west of Highway 81 and plan to implement some type of video conferencing group before this year is over.

Our statistics and outcomes from 2014 are not a lot different from the past two or three years, though this year the number of attorneys with an alcohol problem increased:

- Files opened: 48
- About one-third of those resulted in a formal Monitoring Contract. About 50 percent of contracts were successfully completed in 2014.
- Males: 39; Females: 9
- Presenting issues: Alcohol: 15; Depression: 13; Aging: 1; Stress: 2; Drugs: 2; Dual: 5; Disruptive: 2; Attention Deficit: 4; Other: 4
- Bar applicants or law students working with KALAP: 10

We are acutely aware of the growing number of aging attorneys and the special issues they present. Cognitive impairment is probably the main issue, but medical conditions can also impact the ability to practice. My experience has been that partners in firms are mostly on top of this and work to help the lawyer retire with dignity. They care both about their elder partner and about their ethical responsibility as partners. Solo practitioners may have a more difficult situation. They may not recognize it is time to retire, or may feel they cannot due to financial constraints. And there may be no one to bring that to their attention. Since KALAP is confidential and participation is voluntary we do not have the authority to make someone retire. We can however, talk with them, encourage them, and offer assistance with the practical details of closing a practice.

Previously, I mentioned the support of many in the legal profession and must mention one of the most important groups – the people who do the real, one-on-one, work: KALAP volunteers. We have about 150 of THE BEST. And there’s room for more. One need not be “in recovery” to be a volunteer – one just needs a bit of compassion, and patience, and willingness. We offer a training event and CLE for KALAP volunteers – and any other lawyers who want to attend – each year in the spring.

We continue to offer four counseling sessions at no cost to the attorney, for those who contact KALAP and need them. For those who need other or additional treatment and cannot afford it we have the KALAP Foundation. Although we might wish that there were not a need for KALAP services, there clearly is, and we are making a difference in the lives of Kansas lawyers, just like the one I quoted above.

About the Author

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

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We Knew the Real Killer Before the First Commercial Break

Editor’s note: This article has been reprinted from the May 2006 KBA Journal.

In case you haven’t noticed, lawyer shows are the rage these days. “Law & Order” and “Boston Legal” are just two of them. I suspect most lawyers have little interest in fictional accounts of our profession. But many of my nonlawyer friends watch these shows. So I watched one. It was “Boston Legal” — whose senior partner is William Shatner, who went from Captain Kirk to the lead partner in a Boston law firm. The episode was the most preposterous thing I have ever seen. It was fiction beyond a screenwriter’s wildest dreams. Shatner was more believable when he wore a polyester jump suit and barked out commands to Sulu.

You see, I’m an expert on Hollywood and the law. I grew up watching “Perry Mason.” In 1972 in Barton County, our home got two television channels, both beamed in from Wichita. Based on the signal strength, Mars seemed closer. And on channel 12, the afternoon show was “Perry Mason.” In one hour you had a murder, an arrest, Mason retained, witnesses interviewed, alibis developed, and then the courtroom scene. Perry Mason was our star. It was real TV, real lawyering. For some reason the programming guy at KAKE 12 thought that 10-year-old kids would watch this stuff over cartoons. And we did. In spades.

Back then the practice of law was simple. Perry had no use for the billable hour. No retainer. Justice was in demand and Mason was happy to deliver. My two brothers and I sat and watched every episode. The stock in trade for most episodes was blackmail schemes with embarrassing photos. Like a man caught with his shirt off or something else incredibly benign by today’s standards. The shows had great titles, which Google helped me find: “The Case of the Lazy Lover,” “The Case of the Screaming Woman,” “The Case of the Fatal Fortune,” and “The Case of the Runaway Corpse.” In contrast, “Boston Legal” has titles like “Breast in Show” (aired in February).

Perry’s success was due to his crack team, Della Street and Paul Drake. Della was so much more than just a secretary. She was a know-it-all without being a know-it-all. Paul Drake was like her male clone. He was part detective, part paralegal, and all dedication. He knew everyone and everything. In almost every plot Perry would hit some dead end, and things would look bleak. That’s when Paul would say something like “I have a bartender friend downtown who knows something about handgun ballistics. I’ll go pay him a visit.” Five minutes later, he would return with a gleam in his eye. He broke the case but couldn’t say anything until after the commercial break.

The Internet is brimming with Web pages dedicated to this stuff. I found it interesting that someone has spent hours piecing together dialogue between Paul and Della to prove they were actually having an affair behind Perry’s back. I immediately called my brother, Marty, for his reaction. “That’s outrageous,” he blurted. “You and I know Della was too dedicated to try any hanky panky. Plus, she adored Perry. That was clear from the outset.” I agreed.

Anyway, back to Perry. He was fully capable of acquitting his client and obtaining a confession at the same time. Seconds apart. The suspect was never hiding out on some distant island. There was no “America’s Most Wanted” because no one went on the lam. Instead they were in court, awaiting the moment when they spilled their guts. The confession was dramatic. It often involved some jealous love interest. They not only confessed, they went into detail with motive and everything. It was like a “confession in a box.” The show would be 45 seconds from concluding. I would sit there and say, “How are they going to wrap this up?” And then it would happen. The camera would go into the assembled courtroom gallery. Some woman would start to cry. “He lied to me. He said we would get married, but he lied. He had photos, too. I had no choice. I did it. I shot him in the back. I’m sorry.” She would fall to the ground and faint. The camera would fade to Perry, and he would nod as if to say, “I knew it all along.”

District Attorney Burger was the embodiment of the team that plays the Harlem Globe Trotters and has never won a basketball game. He deserved an Emmy. When he looked shocked, amazed, and stunned you actually believed him. There were other bit players, like detectives and policemen, but they didn’t matter. At the end of the show, there was always a scene where they tied up loose ends and made certain viewers were able to connect all the dots and understand the various plot lines. That was one part of the show we never watched. Such spoon feeding was best left to grade-school kids in places like Derby. We knew the real killer before the first commercial break.

About the Author

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

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Amazon Echo

In “Star Trek,” the Federation utilized a variety of voice-controlled computer interfaces. The communicator badges on Star Fleet uniforms provided a wearable option akin to Google Glass or the growing number of powerful smart watches such as the Moto 360. The computer aboard the starship Enterprise could also simply listen and react when it heard voice commands. While Google and Apple pursue wearables, Amazon has elected to explore the Enterprise’s omnipresent voice control with its consumer experiment – the Echo.

The Echo is a 9-inch tall cylinder that plugs into power (no batteries) and connects to your home or office Wi-Fi. (The product page with a demonstration video is at amazon.com/echo.) Its seven microphones provide omnidirectional listening coverage so you can park the Echo discreetly on a shelf in the corner and it will still activate on your voice command. The bulk of the device is dedicated to sound output with two speakers and a plastic tube specially-designed to channel sound for a deeper bass response and enhanced volume to be heard from anywhere in a room. A full tear-down review of the device is at iFixIt.com (http://bit.ly/1AQt3XD).

Configuring the Echo is handled through a web browser or, preferably, an app available either for Android or iOS. The app can also be used to control the device instead of using voice commands and it is the graphical interface for the various functions that Echo provides (e.g., to-do lists, timers, music streaming playlists, etc.) The app can allow remote control of the media player functions but there is also a stand-alone, dedicated remote as well. Most importantly, the app gives a primer of all the voice commands available.

Meet Alexa

Once configured, the Echo sits dormant listening for its name, Alexa, to be called. As soon as it hears “Alexa,” it knows to listen for a voice command and then execute that command. Sample commands include:

• “Alexa, put change oil on my to-do list.”
• “Alexa, what’s the extended forecast for Chicago?”
• “Alexa, how many people live in Atlanta?”
• “Alexa, what’s in the news?”
• “Alexa, shuffle my new music?”
• “Alexa, set the timer for 50 minutes.”

Those voice commands prompt the Echo to do exactly what you request. If you pulled up the app on your iPhone and checked your to-do list, you would find “change oil” added. If you set a timer for 50 minutes, the Echo would alert you when the time had run. You can also ask, “Alexa, how much time is left on my timer?” The commands are carefully chosen not to be full-on remote control of a PC but, instead, to provide a quick interface to a variety of assistive tasks. Checking Wikipedia for Chief Justice Nuss’ appointment involves opening a new browser tab and several keystrokes and clicks or you can more easily and quickly just ask the Echo, “Alexa, Wikipedia: Lawton Nuss.”

When this article went to press, the Echo was still an invitation-only product. Like the Google Glass, the product is still something of a beta and working it out with a test audience seems prudent. Once invited, the cost to Amazon Prime members is $99. The regular pricing for non-Prime members is $199. Those without invites can score one on eBay but are cautioned that Amazon knows what you are doing and terms of service may impair continued function.

Most of the early adopter reviews felt that the $99 price was very reasonable for the functionality and performance but most also agreed that $199 was a bit steep. The cautions on price are mostly focused on the limited functionality. For example, you can search Wikipedia with the Echo but you cannot do a voice command search of Google. Satisfaction with the actual hardware and software is very high, suggesting the device has the best voice command capabilities currently available, and the voice of Alexa is more natural and pleasing than alternative systems – certainly better than Siri.

Adoption Issues

The various voice command systems do come with a “creepy factor.” Google Glass is essentially doomed from negative reactions. People became irrationally uneasy that they were being recorded by people with Glass all the time and that those clips were being uploaded to Google for various nefarious purposes. Similar concerns have to be on the way for the Echo as well. Users are paying for the privilege of installing seven, always listening microphones in their home or office knowing that the input is fed up to Amazon and other services. That is bound to strike some as going too far and may even prompt some legal columnists to opine that such tools are inappropriate for law office use where confidential matters may be discussed.

Personally, I hope the exploration continues. I have tinkered with various voice command tools and few are as unobtrusively designed as the Echo. This device is heading in the right technological direction – an invisible, natural assist to routine tasks.

About the Author

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

kslpmlarryzimmerman.com
Define and Develop Your Path to Success

When I came to KU Law, I made a point to get involved because I wanted an opportunity to showcase my talents and values. I immediately obtained information on all the clubs and activities offered on campus and joined a few that interested me. This increased my workload but the experience I have gained and camaraderie among my peers has been rewarding. Extracurricular activities are great ways to help develop skills, shape career paths, pursue passions, and relieve stress.

Law school is not just a grade or a GPA, it is an experience. Of course grades are, and will continue to be, important. Grades are crucial to what future employers look for, but they are not the only thing they look for. Getting involved outside the classroom conveys to employers that you are a team player with the ability to be cohesive in a unit and successful at the same time.

The interactions made through clubs and activities are so important to the legal profession because of the lifelong relationships they create. The great thing about law school is being among my future colleagues. There are future district attorneys, managing partners, and senators all attending my law school right now. Although no one knows specifically where their path may lead them, one thing is certain: my fellow students will soon be influencing the world. These important people will be my friends and they offer important bonds to help me build a solid legal career.

Moreover, the cohesiveness helps develop the skill of understanding multiple sides of an argument. The nature of law school is competitive but camaraderie shouldn’t be forsaken for the sake of competition. The competitive aspects are designed to be the steel that sharpens your sword. I came to school with my own set of perspectives, beliefs, and strategic style. My extended involvement helped me foster deeper interactions with people with different life experiences and perspectives. In these first few months of law school, I understand so much more about how people think and how proper arguments are formed. I have become a better advocate for my clients, gather evidence, prepare witnesses, and communicate with my client, gather evidence, prepare witnesses, and orally argue the case before a three judge panel. This semester I even wrote a writ of certiorari requesting a hearing before an en banc panel. Those were opportunities I would not ordinarily get in my 1L year, but they have been invaluable in the progression towards mastering my chosen craft.

Experiences like the ones I have in traffic court are great ways to find your career path. Many people come to law school without fully knowing what to do with their law degree. That is OK. Clubs and activities offer great opportunities to find out what aspects of the law you like or don’t like. Only then can you adequately decide what type of law to pursue and, therefore, which classes to take. Everyone has strengths and weaknesses, but identifying those strengths and weaknesses provides leverage and true opportunity for development. Sure, grades provide some of that identification, but law school activities provide more immediate and in depth feedback. That feedback, both external and internal, helps to truly find and foster your legal path.

Undoubtedly, law school is stressful, but clubs and activities provide a much needed break from the scholastic strain. During orientation, so many lawyers spoke of the need to find the proper balance for success. I interpret that as a warning against all work and no play. The experience of being involved in activities and not just classwork teaches the value of work/life balance. Finding that balance is necessary to achieve the most in all areas of life. Law school keeps us busy, but so will life and a legal career. Now is the time to define the right amounts of each that yields the best happiness.

There is so much form and structure to law school that my extracurricular activities have become my creative outlet. When I get bogged down in a mountain of memo research and discovery projects, I relieve the stress by pursuing my passions. Before I came to law school I enjoyed community service and mentoring young people. Now, I pursue my passion for community service by helping coordinate the Black Law Student Association’s canned food drive or my passion for mentoring by engaging with prospective law students through our KU ambassador program. Whatever your passion is, pursue it. Be the real you. Be the best you. Find a club that you are passionate about and get to work. Find an underserved area and create a club. Let your best qualities shine through more than a four-hour final.

About the Author

Kriston Guillot is a 1L from Shawnee, who received his bachelor’s degree in business administration from the University of Kansas. Before law school, he worked in the pharmaceutical sales industry. Guillot currently serves as vice president of the 2017 class, is a member of the Black Law Students Association, and is a KU student ambassador.
Members in the News

Changing Positions

Tyra Blew has joined Biggs Law Group L.C., Wichita.

John C. Brown and Todd D. Powell have become partners with Glassman Bird Law Firm, Hays, which is now named Glassman Bird Brown & Powell LLP.

Douglas C. Cranmer has become managing member of Stinson, Lasswell and Wilson L.C., Wichita.

Meredith A. Hoberock has joined Polsinelli P.C. Kansas City, Missouri, as an associate.

E. Lee Kinch has been named the legal consultant for the Derby Recreation Commission, Derby.

Candace R. Lattin has become the assistant county attorney for Pratt County.

Gregory L. Musil has become partner with Douthit Frets Rouse Gentile & Rhodes LLC, Leawood.

David J. Stucky has become partner at Adrian & Pankratz P.A., Newton.

James A. Thompson has joined Malone, Dwire & Thompson LLC, Wichita.

Teresa L. Watson has been sworn in as a district court judge for the 3rd Judicial District, Division 3, in Topeka.

Changing Locations

Gregory S.J. Beuke has moved to 200 W. Douglas, Ste. 621, Wichita, KS 67202.

Boyd, Kenter, Thomas & Parrish LLC has relocated to 221 W. Lexington Ave., Ste. 200, Independence, MO 64050.

Maughan Law Group L.C. has moved to 4425 W. Zoo Blvd., Ste. 5, Wichita, KS 67212.

Carol M. Park and Gregory A. Schwartz have opened Schwartz & Park LLP, 1401A Main St., PO Box 1144, Hays, KS 67601.

Don W. Riley has moved to 1502 N. Broadway, Wichita, KS 67214.

Miscellaneous

Fleeson, Gooing, Coulson & Kitch, Wichita, has been awarded Sedgwick County's legal services for workers compensation litigation, appellate work and Medicare claims related to workers’ compensation.

William K. Waugh III, Overland Park, was inducted into the Estate Planning Society of Kansas City Hall of Fame.

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.
Robert A. Bloomer

Robert A. Bloomer, 66, of Osborne, died December 28, at his mountain home in Cuchara, Colorado. The son of Lloyd C. Bloomer and Martha Arlene Hackorett, he was born October 24, 1948, in Beloit.

He graduated from Osborne High School in 1966, and attended Washburn University, graduating with a degree in business. While in undergraduate school, he was a charter member and president of the Tau Kappa Epsilon fraternity and worked for Stauffer Publications in advertising. In 1973 Bloomer graduated from Washburn University School of Law and worked for the law firm of Edson, Lewis, Porter & Haynes.

Bloomer would return to Osborne and practice law, with his wife, Shelley, and his father as fellow partners. He served as city attorney for Osborne, Downs, and Natoma. He was also a licensed real estate broker and auctioneer, owning Auction One Inc., and serving as president of the Kansas Auctioneers’ Association. An active member of the community, Bloomer served on the board of directors for Osborne Development Inc. and Downs National Bank.

Bloomer is survived by his wife, Shelley D.G. Bloomer, of the home; his mother, Arlene Bloomer; three daughters, Bethany Jacobs, of Osborne, Angie Steven, of Wichita, and Celaine Worden, of McPherson; and six grandchildren, Parker Steven, Chance Jacobs, Trey Steven, Shelley Worden, Ella Steven, and Lainey Worden.

Hon. Gene B. Penland

Hon. Gene B. Penland, 80, of Salina, died unexpectedly on October 31. He was born April 11, 1934, in Springfield, Missouri, but grew up in Dodge City from the age of 3. He was the son of W.R. “Bill” and Agnes (Linnebur) Penland.

Penland graduated from Dodge City College in 1954 with an Associate in Arts degree, where he was named Distinguished Alumnus of Linnebur. He was admitted to the Kansas, Colorado, and Missouri bars. Penland was a member of the Masonic Lodge No. 60, Isis Shrine and Scottish Rite, and was a former member of the Salina Noon Optimists and Salina Rotary. He was a U.S. Army veteran and served on active duty in Germany from 1954-56. After active duty, he served in the reserves for six years until he was honorably discharged in 1962.

Penland is survived by Joyce Ann Renner, of the home; two daughters, Shelley Ann Walle, of McPherson, and Amy Kathryn Jorgensen, of Denver; one son-in-law, Stuart S. Jorgensen; two granddaughters, Lauren Amanda Jorgensen and Brooke Kaeley Jorgensen; and nieces and nephews. He was preceded in death by a sister, Janiece K. Coate; one son-in-law, Eugene L. Walle; and his parents, W.R. and Agnes Penland.

James Yoxall

James Yoxall, 88, of Wichita, died December 12. He was born October 25, 1926, to Richard and Claire (Marshall) Yoxall. He attended school in WaKeeney before finishing his senior year at Kemper Military School in Boonville, Missouri.

Yoxall enlisted in the Navy following high school in 1944 and served until 1946 with stateside officer training and aboard the USS John Land.

He graduated with a Bachelor of Arts degree in political science in 1948 from the University of Kansas and with a Juris Doctor in 1951 from Washburn University School of Law. He went on to practice law following graduation.

Yoxall was admitted to practice before the Kansas Supreme Court, U.S. Supreme Court, and the federal district courts. He was a member of the Seward-Haskell County, South-west Kansas, Kansas, and American bar associations; and the American College of Trust and Estate Counsel. Yoxall became a lifetime member of the KBA in 2001, and served as secretary/treasurer for four years and as a member of the executive council. He served on the Washburn Law School Association board of governors from 1987-95; served as a trustee of the Baughman Foundation since 1970; was a member of the Liberal, Kansas Jaycees Association, where he served as secretary/treasurer, vice president, and president; and as a member of the board of directors on numerous corporations.

Yoxall received the Boss of the Year Award from the MSS Legal Secretaries Association, as well as the Distinguished Service Award from both the Liberal and Kansas Jaycees organizations.

He was married to Constance Cooper Clarke and had three children, Richard Yoxall, Douglas Yoxall, and Bonnie Frederick, followed by two grandchildren, Ashlee Yoxall and Logan Yoxall.
Distinguished Service Award. This award recognizes an individual for continuous long-standing service on behalf of the legal profession or the public, rather than the successful accomplishment of a single task or service.

- The recipient must be a lawyer and must have made a significant contribution to the altruistic goals of the legal profession or the public.
- Only one Distinguished Service Award may be given in any one year. However, the award is given only in those years when it is determined that there is a worthy recipient.

Phil Lewis Medal of Distinction. The KBA’s Phil Lewis Medal of Distinction is reserved for individuals or organizations in Kansas who have performed outstanding and conspicuous service at the state, national, or international level in administration of justice, science, the arts, government, philosophy, law, or any other field offering relief or enrichment to others.

- The recipient need not be a member of the legal profession or related to it, but the recipient’s service may include responsibility and honor within the legal profession.
- The award is only given in those years when it is determined that there is a worthy recipient.

Professionalism Award. This award recognizes an individual who has practiced law for 10 or more years who, by his or her conduct, honesty, integrity, and courtesy, best exemplifies, represents, and encourages other lawyers to follow the highest standards of the legal profession.

Outstanding Young Lawyer. This award recognizes the efforts of a KBA Young Lawyers Section member who has rendered meritorious service to the legal profession, the community, or the KBA.

Outstanding Service Awards. These awards are given for the purpose of recognizing lawyers and judges for service to the legal profession and/or the KBA and for recognizing nonlawyers for especially meritorious deeds or service that significantly advance the administration of justice or the goals of the legal profession and/or the KBA.

- A total of six Outstanding Service Awards may be given in any one year.
- Recipients may be lawyers, law firms, judges, nonlawyers, groups of individuals, or organizations.

Outstanding Service Awards may be given to recognize:
- Law-related projects involving significant contributions of time;
- Committee or section work for the KBA substantially exceeding that normally expected of a committee or section member;
- Work by a public official that significantly advances the goals of the legal profession or the KBA; and/or
- Service to the legal profession and the KBA over an extended period of time.

Pro Bono Award. This award recognizes a lawyer or law firm for the delivery of direct legal services, free of charge, to the poor or, in appropriate instances, to charitable organizations whose primary purpose is to provide other services to the poor. In addition to the Pro Bono Award, the KBA awards a number of Pro Bono Certificates of Appreciation to lawyers who meet the following criteria:

- Lawyers who are now employed full time by an organization that has as its primary purpose the provision of free legal services to the poor;
- Lawyers who, with no expectation of receiving a fee, have provided direct delivery of legal services in civil or criminal matters to a client or client group that does not have the resources to employ compensated counsel;
- Lawyers who have made a voluntary contribution of a significant portion of time to providing legal services to the poor without charge; and/or
- Lawyers whose voluntary contributions have resulted in increased access to legal services on the part of low and moderate income persons.

Distinguished Government Service Award. This award recognizes a Kansas lawyer who has demonstrated an extraordinary commitment to government service. The recipient shall be a Kansas lawyer, preferably a member of the KBA, who has demonstrated accomplishments above and beyond those expected from persons engaged in similar government service. The award shall be given only in those years when it is determined that there is a recipient worthy of such award.

Courageous Attorney Award. This award recognizes a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession. Examples of recipients of this type of award in other jurisdictions include a small town lawyer who defended a politically unpopular defendant and lost most of his livelihood for the next 20 years, an African-American criminal defense attorney who defended two members of the white supremacist movement, and a small town judge who lost his position because he refused the town council’s request to meet monetary quotas on traffic offenses. This award will be given only in those years when it is determined that there is a worthy recipient.

Diversity Award. This award recognizes an individual who has shown a continued commitment to diversity; or a law firm; corporation; governmental agency, department, or body; law-related organization; or other organization that has significantly advanced diversity by its conduct, as well as by the development and implementation of diversity policies and strategic plans, which include the following criteria:

- A consistent pattern of the recruitment and hiring of diverse attorneys;
- The promotion of diverse attorneys;
- The existence of overall diversity in the workplace;
- Cultivating a friendly climate within a law firm or organization toward diverse attorneys and others;
- Involvement of diverse members in the planning and setting of policy for diversity;
- Commitment to mentoring diverse attorneys, and;
- Consideration and adoption of plans to continue to improve diversity within the law firm or organization, whereas;
- Diversity shall be defined as differences of gender, skin color, religion, human perspective, as well as disablment.

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

Nominee’s Name ____________________________________________________________

☐ Phil Lewis Medal of Distinction
☐ Outstanding Service Award
☐ Outstanding Young Lawyer Award
☐ Distinguished Government Service Award
☐ Distinguished Service Award

☐ Diversity Award
☐ Professionalism Award
☐ Pro Bono Award/Certificates
☐ Courageous Attorney Award

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

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Nominator’s Name ________________________________
Address ______________________________________
______________________________________________
Phone ___________________________ Email ____________________________

Return Nomination Form by Friday, March 6, 2015, to:
KBA Awards Committee
1200 SW Harrison St.
Topeka, KS 66612-1806
A Problem-Solving Approach to Legal Disputes

By Monte Vines
The ultimate way to resolve a dispute in our legal system is by a trial in court with a resolution imposed by a judge or jury. Litigation lawyers are trained in trial practice, and many resources are available to develop our trial skills. But in over thirty years of practice, I have rarely had a client who particularly wanted to resolve their dispute by a trial. They want a good resolution, but typically they want to get that resolution with as little delay, risk, stress, and expense as possible.

While the right to a trial is a fundamental part of our justice system, trials have inherent costs and risks. It can take a long time to get to trial. Trials can be expensive. They can be stressful on everyone involved. And it is risky to turn the resolution over to others who may not see things the same way your client does. So it is no wonder that the vast majority of legal disputes get resolved without a trial, and that many disputes are resolved without a lawsuit ever being filed. But while agreed resolutions are the norm, people often put themselves through unnecessary grief, expense, and missed opportunities getting there.

Litigation lawyers can provide a great service to clients by helping them achieve good, timely, and cost-effective resolutions of their disputes. But that can be quite a challenge. The disputing parties typically have interests that are differing or even diametrically opposed. Yet they would need to reach an agreement. And as one party’s lawyer you would represent only one side of the dispute, an inherent limitation on the impact of your advice or influence.

Two Approaches

There are two general approaches to achieving a resolution by agreement. One is to view litigation like warfare—figuratively fighting it out with the adversary. With that approach, the procedures for litigation are weapons for backing the adversary into a corner and forcing them into a settlement, making them run up the white flag of surrender and agree to your client’s terms for a resolution. Sometimes that works, but often it becomes a drawn-out, expensive battle without the desired capitulation.

An alternative is to approach a legal dispute as a problem to be solved. Problems are solved when people apply their skills, resources, and persistence to figure out ways to work through them. When litigation is viewed that way, legal rules and procedures are seen as tools to be used skillfully to work through the dispute to achieve a satisfactory resolution.

The problem-solving approach has some obvious potential advantages. If the parties find a way to work through their legal dispute they can get to a resolution faster, with less expense, with control over the outcome, and even with the possibility of a continuing relationship between the parties. But it can be a challenge to apply a problem-solving approach to a legal dispute, for it requires genuine engagement from the parties. That can be hard to get from people who may be seriously hurt or angry, and who may deeply distrust or even despise their adversary.

There is no one “right” approach to resolving legal disputes. Disputes often arise from human relationships, which are highly variable and sometimes volatile. Every dispute is unique in some respects—the parties, the facts, the circumstances, and even the lawyers. So what works in one dispute may not be effective in another.

In my experience, however, the potential advantages of the problem-solving approach and the potential drawbacks of the warfare approach usually weigh heavily in favor of taking the problem-solving approach. The roadblocks to effectively applying that approach can often be overcome with skillful and persistent use of several key practices.

A Problem-Solving Approach

Here are 21 key practices that make up a problem-solving approach to resolving legal disputes. They can help achieve good, timely, and cost-effective resolutions for clients.

1. Maintain your objectivity

A lawyer’s objectivity in analyzing disputes is one of the most valuable things we can provide to our clients. Clients often cannot be objective in the midst of their dispute. They need their lawyers to be objective for them. If we allow ourselves to identify so much with our client’s dispute that we take it personally, we can lose our objectivity. If we start to view the dispute as a contest between the lawyers, or if we take personal offense from some litigation tactic of the opposing lawyer, we can lose our objectivity that way as well. Our objectivity can be difficult to maintain, especially if we have a close relationship with the client or if we have the case on a contingent fee basis, putting our own finances at risk. But our objectivity is just as important in those situations. So while you should be a skilled advisor and a determined advocate for your client, it’s still your client’s dispute, not yours.

2. Keep your lines of communication open

It can be difficult for the parties involved in a legal dispute to communicate well with each other. They are often angry, frustrated, worried, or hurt, or feel betrayed by the other party. The dispute may pose a profound risk to their finances, their business, their sense of security or to relationships that are important to them. But it is very difficult to work through a legal dispute and achieve a good resolution without open communication between the parties. Because it’s your client’s dispute, not yours, you should be able to communicate openly and professionally with the adverse party or their lawyer.

3. Help your client to not view the other party as an enemy (unless they really are)

The parties in a legal dispute often view each other in very negative ways. They may consider the other party to be essentially an enemy, and think they need to defeat their enemy in order to prevail in the dispute. But it is very difficult to constructively work through a dispute to a good resolution. Encourage your client not to see their opponent as an enemy, by your words as well as your actions. That can foster an atmosphere conducive to achieving a good resolution by agreement.

Sometimes your client’s adversary really is their enemy, if they are intent on taking unfair advantage of the situation or determined to ruin your client through a legal claim. If that really is the case you need to recognize it and deal with it accordingly. But don’t reach that conclusion too quickly, because initial appearances can be deceiving.
4. Recognize the principle of reciprocity

There is a tendency in human nature for a person to reciprocate and treat someone the same way that person is treating them. Recognizing and applying this principle is a key to resolving many legal disputes.

People commonly think they will achieve a better resolution if they come on strong toward their adversary. It’s like the idea that “the best defense is a good offense.” But a typical reaction when someone comes on strong to them is not to back down but to come on stronger in return. This often ratchets up the dispute rather than moving it toward a resolution.

But the principle of reciprocity applies in the other direction as well. If you want the other party to respect the rights and equities of your client in a dispute, demonstrate to them that you and your client respect their rights and understand any equities in their favor. Making a statement that clearly and genuinely recognizes the other party's rights can be a powerful way to get a constructive dialogue going. Most people think of themselves as fair-minded. If you demonstrate to them that your client is concerned for their rights, they may reciprocate by expressing concern for your client’s rights as well. Sometimes the distrust between the parties runs deep, and you may need to do this several times and in a variety of ways before the other party will start to think the concern may be genuine. So be patient and persistent in doing this.

Demonstrate respect not only for the opposing party’s rights but also respect for them as a person. Many disputes have a dimension that goes deeper than the particular facts of the case, and involve the parties’ gut-level sense for the kind of person or organization their adversary is. Their lack of respect for each other at that level can be a serious obstacle to working out an agreed resolution. Effectively demonstrating respect for the adversary can have a powerful reciprocal effect on the adversary’s view of your client.

5. Watch your language

Consider the kind of language you use in communicating with the adversary or their lawyer. If you want to foster a problem-solving atmosphere, use language that reflects that desire, rather than demeaning, distrustful, insulting, or sarcastic language. Lawyers can be masters at crafting sarcastic or demeaning phrases and peppering their communications with them. But language like this is rarely seen by the opposing party as a fair description of them or their position. It is often taken as confirmation that the lawyer using language like that—and the lawyer’s client—are untruthful, unfair, or mean-spirited. It tends to drive the parties further apart and harden their negative feelings toward each other.

You can use respectful language communicating a desire to work through the issues without any prejudice to your client's position if the effort fails and you need to have a judge or jury resolve the dispute.

6. Make sure you have your facts straight

Many disputes arise from a misunderstanding of the facts by one or more of the parties. Getting the parties to a common understanding of the facts makes reaching a good resolution much easier. But before addressing perceived misunderstandings by the adversary, do what you can to confirm your own understanding of the facts. You probably got your initial explanation of the facts from your client. But it is common for people to jump to conclusions or make assumptions about the facts, expecting that they or their employees did what they should have done and that the “fault” must lie with others. Invest time and effort in confirming your understanding of the facts. Get the documents that are involved and review them carefully. If possible, interview multiple witnesses to the relevant events. You may need to get some of the documents and information from the adversary, so be willing to ask the adversary for them.

7. Know what legal footing you stand on

Many disputes arise from a misunderstanding of the parties’ rights and obligations under the law or under their contract. Getting the parties to a common understanding of the law or the contract will often help achieve an agreed resolution. If the dispute arises in an area of the law you are very familiar with and no unusual issues are presented you will have this covered. Otherwise, invest time and effort determining or confirming the law or the contract terms that will govern the dispute. The law is so extensive that no lawyer can already know it all, even within a particular area of practice. Once you have confirmed the legal principles involved for yourself, then you are in a position to address any misunderstanding the other party or their lawyer may have.

8. Understand your adversary’s position

Make sure you understand the adversary’s position and the basis for it. If you don’t, your communications with the adversary may never really address what they consider important. In order to work through the issues, you need to deal with them squarely. If you are not sure you understand the adversary’s position and the basis for it, be willing to ask them to clarify it for you.

9. Be candid with your client about both the strengths and weaknesses of their position

Lawyers often find it easy to advise clients about the strengths of their position in the dispute. Clients like hearing the points in their favor. But one of the most valuable things lawyers can do for their clients is to advise them candidly about the weaknesses in their position and the strengths in the adversary’s position. It can be difficult to deliver advice the clients may not want to hear, but they need to have your best advice on this. Unless clients have a good understanding of both the strengths and weaknesses of their position in the
dispute, it is difficult for them to make a wise decision on what a good resolution of the dispute would be.

10. Speak the truth

Nothing shuts down progress toward a good resolution like discovering that one’s adversary is lying about something. If a party is found to be lying about one thing, it can put everything else they say in doubt and undermine any sense of good faith in the discussions, making a good resolution much harder to reach. So counsel your client about the importance of being truthful in statements made to their adversary or information provided to them. In legal disputes, the truth is a very powerful tool. So use it liberally and treat it with care. It will usually pay dividends.

Recognize that people are often very distrustful of their adversary’s lawyer, expecting that the lawyer is out to take advantage of them. So they are often suspicious and skeptical of anything the lawyer says or does. Careless use of language by a lawyer may easily be seen by the other party as an outright lie, confirming their initial suspicion. It is just as important for the lawyer to be careful with the truth in statements to the adversary as it is for the client. Earn the belief of the adverse party through careful and consistent use of the truth.

11. Regularly reconsider your client’s position

It is not at all uncommon for a lawyer’s initial analysis of the parties’ positions in a dispute to change as they go through the process of dealing with it. They may learn some additional facts that change the picture substantially. Or they may gain a different understanding about some of the facts. They may discover a statute or legal principle or contract term that they didn’t know about initially or didn’t realize would apply to the dispute. So, regularly reconsider your analysis of your client’s position in the dispute to make sure it reflects any new information.

12. Have some humility

Because it is common for your understanding of the dispute to change as you go through it, approach the resolution process with a healthy dose of humility. Being strident in declaring your analysis of the dispute sets you up to look foolish or intransigent if new information undermines your analysis. It can send the message that you are not interested in a genuine discussion of the issues. But displaying some humility in discussing your analysis of the dispute with the opposing lawyer can often generate a reciprocal openness to a genuine discussion on the part of the opposing lawyer.

Here are some simple suggestions. Rather than saying “The fact is that . . . .”, consider using “I understand that . . . .” or “I am informed that . . . .” or “My client believes that . . . .” Instead of “Under the law, my client is entitled to . . . .” try “Here’s how I see it at this point. . . .” If you analyze it differently let me know and we can discuss it.” Those approaches that reflect some humility do not come across as weakness if the substance of what you have to say has merit. And language acknowledging that you may not have all the facts yet or that invites an alternative analysis by the other party’s lawyer sends a strong message that you want to work through the issues to a fair resolution and are willing to collaborate with the other lawyer to get there.

We all want to be seen as having a strong position when discussing a resolution with our adversary. But a strong position carries its own weight and doesn’t need to be shored up with strong language. Posturing by using strong language can give the appearance that it is being used in an attempt to disguise a weak position, or that the lawyer using it has yet to really analyze the dispute.

13. Lay your cards on the table

If you know some good fact or have an analysis of the dispute that favors your client, it is often helpful to share it with the opposing lawyer as soon as possible instead of holding it back for later use. Few cases make it to trial, so if you want that fact or that analysis to influence the resolution that the parties can achieve without a trial, make it known to the other side early in the dispute when it can have the most influence. Occasionally it can be useful to hold a good fact for use in deposing a party or a witness, but you can often get more value out of it by sharing it early. Any genuine discussion of the dispute with your adversary should include your best facts and your best analysis.

14. Do your best to have a good relationship with the other lawyer

Just because the parties are at odds with each other and may dislike each other in the extreme, does not mean that their lawyers need to have a bad relationship as well. In fact, if you can create or maintain a good relationship with the opposing lawyer, you can often use that to facilitate a good resolution of the parties’ dispute. It may help you obtain information or documents from the other party with less time or expense. It may make it easier to have a genuine discussion of each party’s analysis of the dispute. It may also assist in getting to a candid discussion of resolution options.

And there’s no reason that maintaining your good relationship with the opposing lawyer should keep you from discovering the flaws in the adversary’s position or from being an effective advocate for your client. In my experience, lawyers generate more respect in the eyes of opposing counsel and enhance those relationships by doing a great job of representing their clients in the dispute.

You do not have to be friends with, or even like, the opposing lawyer to have a good relationship with them. Treat them professionally and with good faith, respond to them timely and substantively, and be willing to engage with them in genuine discussions of the issues. This is a large part of a positive relationship.

When you encounter a particularly difficult opponent, remember that the rule of reciprocity applies to the lawyers as well. If you treat them with respect, deal with them in good faith, and maybe even express genuine interest in them personally, they may eventually reciprocate and allow you to create a workable relationship with them. It may be a challenge to develop a good professional relationship with them, but if you are up for trying to meet that challenge it can help your client get a good resolution of their dispute.

In working through a dispute, the opposing lawyer may say or do something that strikes you or your client as being untruthful, untrustworthy, unfair, unethical, or even in bad faith. Rather than quickly conclude that a problem-solving approach to the dispute cannot work and that you need to switch to warfare mode, have some patience with them. It
is easy in disputes to misinterpret what the other side says or does. It may be an innocent or careless misstep with no bad faith motivating it. And you usually do not know what is going on in the adversary’s lawyer-client relationship. For any number of reasons, the lawyer may have a difficult or challenging relationship with their client, and may say or do things differently than they would with a different client. Or something totally aside from the case may be exerting pressures on the lawyer, like family, health, or financial problems.

Even if you don’t intend it, you may say or do something in dealing with a client’s dispute that strikes your opponent as untruthful, unfair, or unethical, or as an indication that you are taking a warfare approach to the dispute. If you realize that you have unintentionally given that impression to your opponent, be willing to apologize for the misstep and correct that impression. None of us is perfect, and any lawyer can take missteps in how they handle disputes. A simple and timely apology can go a long way toward maintaining, or restoring, a good relationship with their client, and may say or do things differently than they would with a different client. Or something totally aside from the case may be exerting pressures on the lawyer, like family, health, or financial problems.

While some clients push their lawyer for a quick resolution, others will defer to their lawyer’s perceived busy schedule and be patient while the lawyer handles it at their own pace. Don’t let the patience of your client be a reason for you to put off pursuing a resolution with diligence. Your client’s patience does not indicate that they are pleased with the delay, and you would be doing them a valuable service if you take advantage of an early opportunity to achieve a good resolution.

15. Deal with it sooner rather than later

Disputes rarely get easier to resolve with age. Memories fade. Evidence dissipates. Positions can harden. It is usually easier to achieve a good resolution when the parties and their lawyers diligently pursue it at the outset. It’s not uncommon for one party to be eager to deal with the dispute while the other party would like to put it off as long as possible. If you find yourself dealing with a recalcitrant opponent, be persistent in making overtures to explore a resolution. Use an upcoming deadline or event as a reason to try again. The ultimate deadline is the trial date, and many disputes get put off until close to trial to get resolved. But interim deadlines offer more immediate reasons to explore resolution options in order to avoid the expense or challenge of meeting the deadline. They include any step in the litigation process, like the answer deadline, deposition dates, a pretrial conference, or even a deadline you may impose to file a lawsuit.

While some clients push their lawyer for a quick resolution, others will defer to their lawyer’s perceived busy schedule and be patient while the lawyer handles it at their own pace. Don’t let the patience of your client be a reason for you to put off pursuing a resolution with diligence. Your client’s patience does not indicate that they are pleased with the delay, and you would be doing them a valuable service if you take advantage of an early opportunity to achieve a good resolution.

16. Be realistic and creative

You and your client need to understand the practical position both parties are in — financially, operationally, personally, etc. Those are the surrounding circumstances that can have a major impact on the resolution options. For example, the adverse party may have the ability to finance expensive litigation that your client lacks. Even though the facts and the law support your client’s side of the dispute, if the other party has practical advantages, your client may not be able to obtain the theoretically just resolution. Likewise, if the other party has practical limitations on what they can offer, your client simply may not be able to get the particular resolution they should have. But there may be very different ways to resolve the dispute that are possible for the adversary to accomplish. Be willing to “think outside the box” and consider other options. The freedom to craft a creative resolution is one of the great benefits of resolving disputes by agreement.

17. Help your client consider the costs and recognize the risks

The value of a possible resolution can only be judged in light of the costs and risks of not resolving the dispute that way. So your client needs to understand the likely costs and risks of continuing the dispute and seeking a more favorable resolution. Be as realistic as possible with your estimate of the fees, expenses, and time and effort involved in pursuing a different resolution. Discuss whether there are relationships between the parties that might be preserved or repaired through some agreed resolution rather than being further damaged by pursuing a more advantageous resolution or destroyed during a hard-fought trial. Be candid with your client about the inherent risks of going to trial. Explain that it puts the resolution in the hands of others — others who may not see things the way your client does, who can’t possibly know your client’s situation as well as your client does, and who won’t have the flexibility to come up with creative solutions.

18. Make your litigation tactics consistent with your resolution tactics

If a lawsuit has been filed, you are faced with the challenge of trying to achieve an agreed resolution at the same time you are litigating the case and preparing it for trial. If your litigation tactics are inconsistent with your problem-solving tactics, you can seriously undermine your ability to achieve an agreed resolution. So consider carefully how you approach the steps you take in the lawsuit. Do the claims or defenses asserted have a solid basis in law and fact? Is there a sound argument for the amount of damages sought? Does your answer admit allegations about which there is no real dispute, so as to narrow the dispute to the real issues? Is the discovery you issue focused on the facts that need to be developed to understand and prove the case, and does it take a realistic approach to the practicalities and costs involved in responding to the discovery? Taking a “scorched-earth” approach to discovery, or extreme positions in claims or defenses, can poison the atmosphere for an agreed resolution and is usually unnecessary for effective trial preparation.

If possible, use the procedures and tools available in the lawsuit to help work through the issues that stand in the way of an agreed resolution. If the parties view the facts differently,
the discovery tools of a lawsuit can be used to develop the facts. If the parties understand the law differently, consider filing a motion to obtain a ruling on the legal principles involved. In those ways your litigation tactics can support your efforts to achieve an agreed resolution rather than undermine them.

19. Hear out the opposing party

Parties in a dispute often have a strong desire to tell their story and be heard. They would usually get that opportunity at a trial by testifying on the witness stand. Giving them an opportunity to tell their story and be heard can be just as important to them in being able to agree to a resolution instead. Sometimes that can be accomplished through informal discussions or through correspondence between the lawyers. If a lawsuit has been filed, a good opportunity for that would be taking that party's deposition.

There are several approaches to taking a party's deposition. Unless there is a good reason not to, consider using the party's deposition as an opportunity for them to tell their story and be heard. Ask them all about the facts of their claim or defense. Do it respectfully. Really hear them out on it. Unless it just isn't true, consider how you can use what they have to say to craft a proposed resolution that would be consistent with your client's interests.

20. Know the adversary

Find out what you can about your client's adversary. If you can understand who they are, what their life is like, and what motivates them, it can help you propose a resolution they would be willing to agree to. If the adversary is an organization, try to learn its values or ways of doing business, as well as the identity of the decision-makers for the dispute.

Your client may personally know their opponent, and possibly know them very well. While information on the adversary from your client is certainly important, it is often a good idea not to rely solely on that. Your client may, understandably, have a biased view of their adversary.

There are many ways of learning about the adversary, including the straightforward ways of asking them at their deposition, or asking their lawyer in informal discussions of the case. Interviews or depositions of others who are involved can be a source of good information about the adversary. Online research, including social media sources, can sometimes produce helpful information about them. While it is possible your research into the adversary could produce some negative facts that could be used to undermine their position in the dispute, just having a better understanding of who they are will help you propose a resolution they would be willing to accept.

21. Make a compelling case for your client's position

Be a determined advocate for your client. Take a realistic position that is well-supported by both the facts and the law, and then make the case for that position by a compelling presentation to the adversary's lawyer. You may need to do this issue by issue as you work through the dispute. If you want the adversary and their lawyer to entertain your arguments, be willing to reciprocate and fully consider their arguments as well. Challenge your opponents on any flaws or weaknesses in their position, and be ready to defend your position with good arguments.

Taking a problem-solving approach to the dispute by applying the key practices presented here will often create favorable conditions for your client's position to be persuasive.

Conclusion

Achieving a good, timely, and cost-effective agreed resolution is usually not as dramatic or exciting as going through a trial. But most clients appreciate getting their disputes resolved without the drama and excitement, or the costs and risks, of making a judge or jury resolve it for them. And while no single approach will work for all disputes, lawyers can often provide great value to their clients by effectively using these key practices that form a problem-solving approach to legal disputes.

About the Author

Monte Vines is a partner at Adams Jones Law Firms P.A. in Wichita. His practice focuses on litigation, usually involving business, real estate, and estate and trust disputes. He is a master in the Wesley E. Brown Inn of Court.

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Your trusted legal source.
DISCIPLINARY ADMINISTRATOR: On April 3, 2014, the office of the disciplinary administrator filed a formal complaint against the respondent alleging violations of the Kansas Rules of Professional Conduct (KRPC). Respondent answered on April 15, 2014, admitting the allegations in the formal complaint. In December 2013 and January 2014, counsel for respondent submitted drafts of a proposed probation plan to the disciplinary administrator for comments and suggestions. On April 8, 2014, counsel for respondent finalized the proposed probation plan and submitted it to the hearing panel and the disciplinary administrator. The disciplinary administrator recommended that the respondent be placed on probation, under a proposed plan of probation.

HELD: Court found respondent stipulated to the hearing panel’s report, and thus clear and convincing evidence supported the alleged misconduct. Court agreed with the parties that hearing panel’s recommendation of six-month suspension, but suspended for two years’ probation, was appropriate discipline.

INDEFINITE SUSPENSION
IN RE KAREN A. EAGER
ORIGINAL PROCEEDING IN DISCIPLINE
NO. 111,364 – NOVEMBER 26, 2014

FACTS: This is an original proceeding in discipline filed by the office of the disciplinary administrator against the respondent, Eager, of Lawrence, an attorney admitted to the practice of law in Kansas in 1997. In 2006, Eager worked for the Disability Rights Center in Topeka. In 2012, her license was suspended for failing to comply with CLE requirements. Her license remained suspended. Eager’s ethics violations involved representation of clients who came to the Disability Rights Center for assistance.


DISCIPLINARY ADMINISTRATOR: On December 6, 2013, the office of the disciplinary administrator filed a formal complaint against the respondent, alleging violations of the Kansas Rules of Professional Conduct (KRPC). The respondent filed a motion for additional time to file an answer to the formal complaint on December 17, 2013; the hearing panel granted the motion. The respondent filed an answer on
January 6, 2014, and a proposed plan of probation on January 13, 2014. An amended formal complaint was filed on January 29, 2014. The disciplinary administrator recommended that respondent be suspended for one year.

HELD: Court held the evidence before the hearing panel established by clear and convincing evidence the charged misconduct. Court found that respondent’s comments regarding her clients during the hearing before the court did not demonstrate that respondent had developed an appreciation for the harm inflicted on the clients. Respondent was indefinitely suspended. A majority of the court ruled that respondent's period of indefinite suspension shall be retroactive to January 21, 2013, the approximate date of respondent's termination by the Disability Rights Center; a minority of the Court would not make the period of indefinite suspension retroactive.

SIX-MONTH SUSPENSION
IN RE ERIC MICHAEL GAMBLE
ORIGINAL PROCEEDING IN DISCIPLINE
NO. 112,037 – DECEMBER 5, 2014

FACTS: This is an original proceeding in discipline filed by the office of the disciplinary administrator against the respondent, Gamble, of Kansas City, an attorney admitted to the practice of law in Kansas in 2003. Gamble's unethical conduct involved his representation of the biological father in an adoption case and his communications with the biological mother.

HEARING PANEL: A hearing was held on the complaint before a panel of the Kansas Board for Discipline of Attorneys on May 13, 2014, at which the respondent was personally present. The hearing panel determined that respondent violated KRPC 8.4(d) (2013 Kan. Ct. R. Annot. 655) (engaging in conduct prejudicial to the administration of justice); and KRPC 8.4(g) (engaging in conduct adversely reflecting on lawyer's fitness to practice law). The hearing panel recommended that respondent be suspended for 60 days.

DISCIPLINARY ADMINISTRATOR: On March 24, 2014, the office of the disciplinary administrator filed a formal complaint against the respondent alleging violations of the Kansas Rules of Professional Conduct (KRPC). The respondent filed an answer on April 17, 2014. The disciplinary administrator recommended that respondent be suspended from the practice of law for six months.

HELD: Court found Gamble's ethical violations were established by clear and convincing evidence. Court agreed with the disciplinary administrator's argument that the egregious nature of the respondent's conduct warranted a longer period of suspension than that recommended by the hearing panel. As the hearing panel noted, respondent “attempted to manipulate the biological mother and, as a result, interfered with justice.” Respondent's conduct “amounted to emotional blackmail” of an unrepresented 18-year-old who was dealing with a process that was already “emotionally exhausting.” His “electronic message was designed to embarrass, burden, and create guilt in the mind of the biological mother.” These “bullying tactics directly reflect on [respondent's] fitness to practice law as an attorney.” Court suspended respondent's license to practice law for six months.

ONE-MONTH SUSPENSION
IN RE PETER EDWARD GOSS
ORIGINAL PROCEEDING IN DISCIPLINE
NO. 112,059 – DECEMBER 5, 2014

FACTS: This is an original proceeding in discipline filed by the office of the disciplinary administrator against the respondent, Goss, of Kansas City, Missouri, an attorney admitted to the practice of law in Kansas in 2006. Goss' unethical conduct involved his representation of a plaintiff in a personal injury case against the United States government and payment of liens for medical expenses incurred by the plaintiff.

HEARING PANEL: A hearing was held on the complaint before a panel of the Kansas Board for Discipline of Attorneys on June 4, 2014, at which the respondent was personally pres-

DISCIPLINARY ADMINISTRATOR: On May 7, 2014, the office of the disciplinary administrator filed a formal complaint against the respondent alleging violations of the Kansas Rules of Professional Conduct (KRPC). The respondent filed an answer on May 16, 2014. The disciplinary administrator recommended that respondent be suspended for three months.

HELD: Court found respondent’s conduct was established by clear and convincing evidence. A majority of the Court agreed to suspended respondent’s license to practice law for one month. A minority of the Court would issue a published censure.

INDEFINITE SUSPENSION IN RE MINDY LYNN MILLER
ORIGINAL PROCEEDING IN DISCIPLINE NO. 112,081 – NOVEMBER 26, 2014

FACTS: This is an original proceeding in discipline filed by the office of the disciplinary administrator against the respondent, Miller, of Topeka, an attorney admitted to the practice of law in Kansas in 2002. Miller’s ethics violations involved her employment as in-house counsel of Midwest Health Management Inc. in 2008, the suspension of her license to practice law in 2012, her continued representation, and her failure to tell Midwest that her license had been suspended.


DISCIPLINARY ADMINISTRATOR: On March 28, 2014, the office of the disciplinary administrator filed a formal complaint against the respondent alleging violations of the Kansas Rules of Professional Conduct (KRPC). The respondent did not file an answer. Following a hearing, the disciplinary administrator recommended that respondent be indefinitely suspended from the practice of law.

HELD: Court held respondent was given adequate notice of the formal complaint, to which she did not file an answer, and adequate notice of the hearing before the panel and the hearing before the Court. The respondent did not appear at the hearing before the panel and did not file exceptions to the hearing panel’s final hearing reports. As such, the findings of fact were deemed admitted. Court held that clear and

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convincing evidence supported the alleged violations. Court agreed with the disciplinary administrator’s recommendation of indefinite suspension.

**THREE-MONTH SUSPENSION**
**IN R MICHAEL PELOQUIN**
**ORIGINAL PROCEEDING IN DISCIPLINE**
**NO. 111,127 – DECEMBER 5, 2014**

FACTS: This is an original proceeding in discipline filed by the office of the disciplinary administrator against the respondent, Peloquin, of Wichita, an attorney admitted to the practice of law in Kansas in 2000. Peloquin’s unethical situations involved his failure to file an expungement petition for a client and also several civil matters that were settled by his office manager without respondent’s knowledge and then theft by the office manager.

HEARING PANEL: A hearing was held on the complaint before a panel of the Kansas Board for Discipline of Attorneys on October 21, 2013, at which the respondent was personally present. The hearing panel determined that respondent violated KRPC 1.3 (2013 Kan. Ct. R. Annot. 464) (diligence); 1.15 (2013 Kan. Ct. R. Annot. 553) (safekeeping property); and 5.3 (2013 Kan. Ct. R. Annot. 627) (responsibilities regarding nonlawyer assistants). The hearing panel recommended that respondent be suspended for three months.

DISCIPLINARY ADMINISTRATOR: On August 26, 2013, the office of the disciplinary administrator filed a formal complaint against the respondent alleging violations of the Kansas Rules of Professional Conduct (KRPC). The respondent filed an answer on September 16, 2013. The disciplinary administrator and the respondent entered into a joint stipulation of facts. The disciplinary administrator recommended that respondent’s license to practice law be suspended for six months.

HELD: Court found that the record established by clear and convincing evidence the violations of the alleged disciplinary rules. The record established that respondent failed to act with reasonable diligence and promptness in representing his client in the expungement proceeding. Court also found by clear and convincing evidence that respondent did not properly supervise his office manager, he failed to keep a master list of clients, and failed to keep proper accounting records. Court adopted the hearing panel’s recommendation that respondent be suspended from the practice of law for three months.

**CIVIL**
**WILLS**
**IN RE ESTATE OF STRADER**
**MARSHALL DISTRICT COURT – REVERSED**
**COURT OF APPEALS – REVERSED**
**NO. 105,564 – DECEMBER 12, 2014**

FACTS: Strader’s will was found in her attorney’s office more than four years after her death. District court admitted the will to probate while intestacy proceedings were underway to sell estate’s property at public auction. One of Strader’s adult children (Pralle) objected, arguing that the K.S.A. 59-618 exception to the six-month time limit in K.S.A. 59-617 for admission of will to probate did not apply because the will had not been knowingly withheld. District court, relying on
In re Estate of Tracy, 36 Kan. App. 2d 401 (2006), as allowing an innocent beneficiary to admit a will to probate when more than six months has passed, admitted Strader's will to probate. Pralle appealed. Majority of Court of Appeals panel affirmed, 47 Kan. App. 2d 374 (2012), relying on Tracy. Dissent relied on In Re Estate of Seth, 40 Kan. App. 2d 824 (2008), interpreting K.S.A. 59-618 as requiring a knowing withholding of the will. Pralle's petition for review was granted to resolve apparent conflict between Tracy and Seth. Pralle timely filed motion for attorney fees incurred on appeal before Kansas Supreme Court and Court of Appeals.

ISSUES: (1) Statutory exception for late filing of will and (2) attorney fees

HELD: K.S.A. 59-617 functions as a statute of limitations prohibiting admission of a will to probate more than six months after a testator's death. The knowing withholding of a will is an essential condition that must occur before a will can be admitted to probate under K.S.A. 59-618 after that six-month time limit has expired. Contrary holdings below in this case and in Tracy are specifically disapproved, as is interpreting Seth as softening the "knowingly withholding" to, e.g., careless withholding. The will in this case was not knowingly withheld. District court erred by admitting Strader's will to probate. Judgments of district court and Court of Appeals are reversed.

The motion for attorney fees was granted in part. Attorney fees for work on appeal to Kansas Supreme Court were awarded, to be paid out of the estate pursuant to K.S.A. 59-1504. Pralle did not file motion under Rule 7.07(b) following oral argument in Court of Appeals, thus she failed to preserve her right to fees incurred on appeal to the panel.

STATUTES: K.S.A. 2013 Supp. 60-2103(h); K.S.A. 20-3018(b); K.S.A. 59-617, -618, -1504, -2214; and K.S.A. 60-2101(b)

CRIMINAL

STATE V. COONES

WYANDOTTE DISTRICT COURT – CONVICTION AFFIRMED, SENTENCE REVISED, AND CASE REMANDED WITH DIRECTIONS NO. 107,180 – DECEMBER 12, 2014

FACTS: Coones was convicted of first-degree premeditated murder for killing Kathleen Schroll, with whom he had an ongoing civil dispute over an inheritance. The key evidence was testimony that Kathleen called her mother (Elizabeth) in a panic about 10 minutes before police discovered her body to say that Coones was in the house to kill her and her husband, Carl. Coones was acquitted of murder charges against Carl in the first trial.

ISSUES: (1) Ineffective assistance of trial counsel, (2) erroneous admission of hearsay testimony concerning a confrontation between Coones and Kathleen a few days before the murder, (3) prosecutorial misconduct, (4) cumulative error, and (5) hard 50 sentencing

HELD: Court rejected Coones' claims of ineffective assistance of counsel based on counsel's failure to: (1) object to Elizabeth's testimony regarding the phone call from Kathleen; (2) challenge the caller ID evidence indicating the call came from Kathleen and Carl's home telephone number; (3) secure an expert on caller ID spoofing; (4) give the defense expert the crime scene video; and (5) cross-examine police investigators on their failure to test Kathleen's hands for gunshot residue. Next, Court held Coones' statement during the confrontation with Kathleen was both material and probative and, therefore, relevant. One reasonable interpretation is that it was a threat, which tended to prove the killing was intentional and premeditated—both material facts at issue in the case. It also unequivocally conveyed Coones' desire to prevent Kathleen from further enjoyment of assets she received from Coones' father. Court held the testimony was admissible under exceptions to the hearsay rule and the prejudice did not outweigh the probative value of the evidence. Next, Court held that the prosecutor did not improperly comment on the credibility of the defense's expert witness and evidence of an offer to settle a lawsuit between Coones and Kathleen that was not accepted was not improper comment by the prosecutor. Court found no cumulative error. However, Court vacated Coones' hard 50 sentence as required by Alleyne v. United States, 570 U.S. ___, 133 S. Ct. 2151 (2013), and State v. Soto, 299 Kan. 102 (2014). Court remanded the case to the district court for resentencing.

STATUTES: K.S.A. 21-4635; K.S.A. 22-3601; and K.S.A. 60-261, -401, -456, -460, -463

STATE V. HOWARD

JOHNSON DISTRICT COURT – AFFIRMED NO. 110,439 – DECEMBER 5, 2014

FACTS: Officer Loughman noticed a plastic baggie with a corner missing in a cupholder during a traffic stop. The driver, Howard, and his passenger were arrested for outstanding warrants. Officer Loughman had the passenger, who was noticeably pregnant, sit on the curb about 6 to 8 feet from the car, and Howard was placed in the back of a police car. Officer Loughman then searched the car for illegal drugs based on the fact that plastic-baggie corners are often used to transport drugs. He found an AK-47 firearm, and the State later charged Howard with criminal possession of a firearm, believing he was prohibited from possessing a firearm because he had pled guilty to first-degree burglary in Missouri in 2006. The district court convicted Howard of criminal possession of a firearm after a bench trial on stipulated facts.

On appeal, Howard made three arguments—that he was not prohibited from possessing a firearm because he received and completed probation for a suspended imposition of sentence in Missouri (which is not considered a conviction there), that the police discovered the gun during an unlawful search of his vehicle, and that the district court erred in excluding evidence that he lawfully purchased the AK-47 in Missouri after reporting his criminal background for a federal background check.

ISSUES: (1) Criminal possession of firearm, (2) search and seizure, (3) exigent circumstances, (4) probable cause, and (5) exclusion of evidence

HELD: Court held that Howard was prohibited from possessing a firearm in Kansas because the Missouri court found him guilty of first-degree burglary and in Kansas a person is “convicted” when a sentencing court makes an adjudica-
Appellate Decisions

RATION OF GUILT. See K.S.A. 2013 Supp. 21-5111(d). Second, the State lawfully searched Howard’s vehicle. The police are not required to obtain a warrant to conduct a search if there are exigent circumstances and probable cause to search. Here the mobility of Howard’s vehicle created exigent circumstances, and the torn plastic baggie and the officer’s training and experience regarding such baggies created probable cause to search. Third, Court affirmed the district court’s decision to exclude evidence that Howard lawfully purchased the AK-47 in Missouri. The evidence was irrelevant because criminal possession of a firearm is a general-intent crime and the state had to prove only that Howard possessed the firearm, not that he knew he was considered a convicted felon in Kansas.

STATUTES: K.S.A. 21-3110, -5111, -5202, -5203, -5204, -5207, -5424, -6304; K.S.A. 22-2909; and K.S.A. 60-401

STATE V. MILES
RENO DISTRICT COURT – AFFIRMED
NO. 110,128 – NOVEMBER 26, 2014

FACTS: This is a direct appeal from the denial of Miles’ post-sentencing motion to withdraw her pleas of no contest to premeditated first-degree murder, aggravated robbery, and forgery. Miles was sentenced to life in prison, with no parole eligibility for 25 years, followed by consecutive 51-month and nine-month sentences. Miles argued that she should be permitted to withdraw her pleas, on the basis of the motion filed nearly 11 years after sentencing, because her lawyer told her she had no chance of acquittal and would receive the death penalty or a hard 40 life sentence if she exercised her right to jury trial. Miles also alleged that she did not understand the length of the prison sentence to which she could be subject if she entered the pleas. The district judge conducted an evidentiary hearing on the motion to withdraw pleas, at which Miles testified that she did not learn until after her pleas were entered that the state had never filed a capital murder charge against her. The judge denied the motion.

ISSUE: Motion to withdraw plea

HELD: Court that held the transcript of Miles’ plea hearing persuaded the Court that Miles was not entitled to relief on appeal. The transcript demonstrated that the district judge who accepted Miles’ pleas first engaged in a long colloquy with Miles, including recitation and confirmation of the results of plea negotiations entered into with the state and a verbatim review of the contents of a written plea agreement. This colloquy fully informed Miles of the outstanding charges and the possible sentences. Miles expressed on the record that she understood all of this information, including that the state had dismissed four other charges and had agreed not to seek a hard 40 sentence and would stand mute on the subject of sentence altogether. In short, even if Miles’ attorney had previously misinformed or failed to fully inform Miles of the charges and possible penalties, Court held any prejudice from that error was eliminated by the judge’s thoroughness at the plea hearing. The district judge did not abuse her discretion in refusing to allow Miles to withdraw her pleas because of manifest injustice.

STATUTE: K.S.A. 22-3210
CIVIL

HABEAS CORPUS
WILSON V. STATE
ATCHISON DISTRICT COURT – AFFIRMED
NO. 110,224 – DECEMBER 5, 2014

FACTS: Wilson was convicted of premeditated first-degree murder, based in part on testimony of the only eyewitness. Kansas Supreme Court affirmed the conviction. 281 Kan. 277 (2006). Wilson filed K.S.A. 60-1507 motion claiming ineffective assistance of trial counsel in failing to introduce material evidence and failing to offer police reports and witnesses to impeach state witnesses. District court conducted an evidentiary hearing, concluded that defense counsel's representation was inadequate, set aside Wilson's conviction, and ordered a new trial. State appealed, arguing that the absence of evidence that defense counsel's decisions were not strategic cannot overcome strong presumption that counsel's conduct fell within wide rage of reasonable professional assistance, and claimed district court improperly relied on expert testimony of experienced trial counsel.

ISSUE: Constitutionally ineffective representation of criminal defense counsel

HELD: Wilson was entitled to new trial. On facts in case, Wilson demonstrated that his trial attorney's representation was below minimum standards and that this prejudiced the defense. Court discussed how trial counsel's representation was constitutionally deficient in several respects, including counsel's failure to introduce transcripts of conversations, failure to present evidence that contradicted the date of the murder, failure to impeach eyewitness with letters the eyewitness had written, failure to adequately cross-examine the eyewitness, and failure to introduce a letter Wilson's wife wrote to eyewitness. District court did not err by admitting expert testimony in the post-conviction hearing. Wilson's trial counsel either failed to familiarize himself with the evidence or used an objectively unreasonable trial strategy, and there is a reasonable probability the trial's outcome would have been different had Wilson's attorney provided minimally effective representation.

STATUTE: K.S.A. 60-456(b), -456(d), -460, -1507

CRIMINAL

STATE V. KURTZ
SEDGWICK DISTRICT COURT – AFFIRMED
NO. 110,697 – DECEMBER 12, 2014

FACTS: Kurtz entered guilty plea to 2012 charge of attempted aggravated robbery. District court granted a dispositional departure sentence of 36 months probation. State moved in 2013 to revoke Kurtz' probation, and Kurtz stipulated to the violations. Trial court revoked probation and ordered Kurtz to serve 60 days in county jail and then complete the 36-month probation with an additional 18 months probation. Kurtz appealed the imposition of the 60-day jail sanction, arguing K.S.A. 2013 Supp. 22-3716(c)(1)(B) prohibited sentence of more than 18 days for first time probation violation absent specific findings that he presented a danger to himself or to the public. State argued the appeal was moot because Kurtz fully served 60-day jail sentence while appeal was pending, and argued that the 2013 statutory amendments were not in effect when Kurtz committed the crime or violated his probation.

ISSUES: (1) Mootness and (2) retroactive application of 2013 amendment of sentencing statute

HELD: Appeal was considered on the merits. Exception to mootness doctrine, for consideration of issue capable of repetition, was applied in this case.

Legislature clarified in 2014 that the date that controls the law that applies to imposition of sanctions for violating probation is the law that existed when a defendant violated probation, not the law that existed when the defendant committed the underlying crime, nor the law in effect when the probation hearing occurred. Kurtz's argument failed because the 2013 amendment to the probation sanction statute applies only to violations committed after July 1, 2013. Under K.S.A. 2012 Supp. 22-3716(b), the statute in effect when Kurtz violated his probation, trial court did not err by imposing 60-day jail sentence and then reinstating probation.

STATUTES: K.S.A. 2013 Supp. 22-3716, -3716(c), -3716(c)(1)(B); K.S.A. 2012 Supp. 22-3716(b), -3716(f); and K.S.A. 1989 Supp. 22-3725, -3725(a)
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