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Let Me Introduce Myself

by Shelby L. Lopez

Clearly our lives are shaped by the various experiences we have encountered along the way. If you have read my bio, you have likely noticed that my path has been somewhat unconventional. I have been fortunate to have been presented with experiences that offered magnificent opportunities and interesting people that reinforced the values instilled by my loving and supportive parents. My father taught me the Golden Rule, ‘Treat others as you wish to be treated.’ Be kind and be patient and always have an open mind. On the other hand, my mother taught me that hard-work and perseverance are the primary elements of success. My grandfather taught me how to play gin, and my grandmother taught me how to drink gin—but that’s a story for another time.

As an avid hiker, when I reflect on my career, it frequently manifests itself as a twisted and meandering path lined with lush trees and bathed in beautiful and glorious sunlight. Occasionally, I have stepped off the paved trail, choosing instead the opportunities for discovery and adventure that appeal to my curious spirit, always seeking new ways of understanding and solving problems that haven’t yet been solved.

Don’t let this fool you, the hike hasn’t always been picturesque or easy. On the contrary, the start of the hike was fraught with challenges and a great deal of doubt and anxiety. But in looking back, I am reminded of some important life lessons.

• It’s ok to pursue the unbeaten path, even if the entire route is not visible when you set out.

• Just because the path doesn’t have a clear map or a defined route doesn’t mean it’s not a legitimate and worthwhile path.

• You can turn around! If it’s not a good fit, or you simply need a change of scenery, you can turn around and start down a new path or even forge your own path.

• Everyone navigates the path differently.

I have to remind myself to be a humble hiker…to know when and how to set aside the pride and embrace the experience with those interesting people who have provided love and support while I explored. It’s comforting to know the journey has been well trodden. No other path could have led me to this place, at this time. I am grateful for the opportunity to serve the members of the Kansas Bar Association and am excited to embark on a new adventure together. Let’s go!
IN THE BLEAK MIDWINTER.... Sign up for a CLE!

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February 26, 2019  
Noon – 1:00

Thou Shalt Not Lie, Cheat & Steal – The Ten Commandments of Legal Ethics  
February 28, 2019  
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*To Register:* [www.ksbar.org/CLE](http://www.ksbar.org/CLE)
Celebrating Kansas

by Sarah E. Warner

Each start to a new calendar year brings a slew of resolutions for self-improvement. This is the year, we say, we’ll exercise more. This is the year we’ll eat healthy. This is the year we’ll make time for the things that matter. I love January for that reason—the seemingly unbridled optimism pouring forth in the midst of winter’s chill, the renewed focus on what’s important in life and how we can achieve our personal and collective goals. In a world that becomes more polarized by the minute, this positive energy is a welcome respite. We can make changes. We can be better.

My challenge to each of us as the exuberance of New Year’s Day fades and we fall back into our routine is that we make a concerted effort throughout the coming months to focus on what unites us—as people, as Kansans, as lawyers.

My first column back as President in July/August can be summarized in three simple words: "I love Kansas." And I do. I am fiercely proud to be a Kansan. Thus, in the wake of Kansas Day and 160 years after we adopted our Kansas Constitution, I invite you to take a few minutes to put political and social strife behind us, and to celebrate our Kansas identity—concentrating on some of the many reasons we all choose to live and practice in the Sunflower State.

In Kansas, we balance hope with realism. We take in stride the swings of the Royals between World Series champions and a less-than-stellar 2018. We marvel at Patrick Mahomes’ arm and offensive vision, while at the same time chuckling about the Chiefs’ decision to forego defense. Jayhawk fans revel in moments of basketball brilliance while simultaneously swallowing a season-ending injury to our star center.

Kansans are resilient. Communities devastated by storms pull together to rebuild. After divisive elections, we do not disengage or become complacent. Instead, we remain active in our communities, understanding that changes at the state and national level start with our efforts at home. We steer our school boards, planning commissions and civic organizations. After all, being a Kansan is, in my experience, a lot like being a lawyer: We may disagree with one another on multiple fronts, but at the end of the day, we shake hands and move forward.

We are part of Kansas’s long and proud history of liberty, self-sufficiency and political awareness. We survived border raids and bloody battles during the Civil War, and in spite of this turmoil, (or perhaps because of it?) we drafted our constitution as a Free State in 1859. Less than 15 years into statehood, Kansas enacted a statute that allowed women to vote in local elections. We elected a woman to public office
in 1874—more than 40 years before women’s suffrage on a national level. In 1875, our Kansas Supreme Court observed:

Women are members of society—members of the great body politic, citizens—as much as men, with the same natural rights, united with men in the same common destiny, and are capable of receiving and exercising whatever of political rights may be conferred upon them.

Wheeler v. Brady, 15 Kan. 26, 33 (1875). We extended the right to vote in all elections in 1912. And we were only the fourth state to ratify the 19th Amendment (voting overwhelmingly in 1919 to approve the Amendment only six days after the first three states did). When the infamous Triple Play occurred in January 1957—a political maneuvering that still leaves me speechless, where a lame-duck governor was sworn in as Kansas Supreme Court justice only days before he was to leave office—Kansans were outraged and passed a constitutional amendment that very year to insulate the state’s high court from politics. We are the state of Eisenhower, Dole, and Kassebaum, with a history of producing men and women who reach across the aisle and get things done.

I love Kansas geography. Part of the joy of practicing in this state is driving through the Kansas countryside to meet clients, conduct investigations or travel to hearings. Anyone who spends more than a few passing hours here should understand that Kansas is not "flat." People who dub Kansas a "flyover state" have never experienced the beauty of the Flint Hills in the spring—when they’re speckled with wildflowers—or the majesty of Kansas’s northeastern forests in the fall. These people have never looked up to see the stretches of blue sky in western Kansas that go on forever or watched a thunderstorm roll in on an early summer evening. They have never stopped to appreciate the picturesque beauty of southeast Kansas where I grew up, or seen the resilience of Kansas in a reclaimed strip mine turned wildlife sanctuary.

For these same reasons, I’m grateful to be a member of the Kansas bar, practicing among attorneys who understand the balance between life and work—people I can trust and admire. We take for granted that this spirit of congenial professionalism is unfortunately not always the norm across the country. I enjoy having a heated discussion across the table from a colleague in a deposition on a particular factual or legal question, and then going off the record and discussing kids’ soccer games and family vacations. I have a keen appreciation for our conscious decision as Kansas lawyers to remain an independent and voluntary bar association, allowing us to speak on issues we find important and to guide the development of the law in all branches and levels of government. Our work is important, and Kansas benefits from our engagement.

My dad was visiting from out of state over the holidays, and he asked me at the breakfast table one morning, "Why are people so happy here?" I have a number of theories, and there is clearly no one driving force. But in Kansas, we understand the presence of mind that comes from vast spaces. We know what it’s like to see the stars. It is no coincidence that our state motto is, "Ad astra per aspera." Even when we vehemently disagree, we are all staring at the same constellations. We watch the harvest moon rise, and we feel the same wind against our faces. When we look up, we are reminded that we are connected to and part of something much bigger than ourselves.

Of course, this is not to say that Kansans see eye-to-eye on everything. We don’t. We each come with unique experiences, upbringings, philosophies and faiths. But I believe that Kansans share a fundamental belief in humanity and connection with one another. Frankly, that’s why Brandon and I moved back after being away for law school. There is something here that changes you and makes you a better person.

Thus, as we continue through 2019, I challenge us to be mindful of all of the reasons we have chosen to spend our days as Kansas lawyers. In the words of author P.S. Baber, "the prairie dust gets in your blood, and it flows through your veins until … it’s etched into your soul." It’s true, and I’m so grateful. Here’s to our role in the history, the present, and the future of this great state.
Are You Smarter than a 5th Grader?
by Amy Fellows Cline

Well, if that 5th grader reads the KBF-funded newsletter, "Law Wise," you might be surprised...

The Mission of the Kansas Bar Foundation includes funding educational projects and enhancing public opinion of the role of lawyers in our society. One of the ways the KBF strives to fulfill this mission is by providing educational materials and teacher training for public and private schools about the role of law and lawyers in society. The KBF provides this information through its funding of the “Law Wise” newsletter, and by providing attorney and judge biographical information on now Justice Kavanaugh, but it might seem counter-intuitive to have to make a case for the continuing importance of the First Amendment, but it's common to make demands for voting rights and equality by female suffragists would have certainly riled the passions of slave-owners in the South. Likewise, the history of perspective. In the middle of the nineteenth century, the speech types of cases, we must remember that "offensive speech" is often a matter of perspective. By the middle of the nineteenth century, the speech and the societal attitudes regarding freedom of speech have undergone change in continuing importance of the First Amendment, but it is common to make demands for voting rights and equality by female suffragists would have certainly riled the passions of slave-owners in the South. Likewise, the history of perspective. In the middle of the nineteenth century, the speech types of cases, we must remember that "offensive speech" is often a matter of perspective. By the middle of the nineteenth century, the speech and the societal attitudes regarding freedom of speech have undergone change in a variety of grade levels on that topic. It also includes websites and other resources for more in-depth discussions and other ways to educate students on the topic at issue. For example, last September's issue explained the Supreme Court Justice Confirmation process and featured an article on Brett Kavanaugh, who was awaiting confirmation to the U.S. Supreme Court at the time of publication. The article not only offered biographical information on now Justice Kavanaugh, but it also discussed some of his more notable opinions and rulings on hot button issues, such as abortion, religious freedom, the right to bear arms, environmental regulation, federal bureaucracy and oversight, presidential power and executive privilege.

marketing for the newsletter. Committee members include Kansas attorneys, judges and educators from across the state. The LRE Committee is currently chaired by the Honorable Bethany J. Roberts of Lawrence.

Each issue of Law Wise addresses a timely legal topic, including providing educational articles and lesson plans for a variety of grade levels on that topic. It also includes websites and other resources for more in-depth discussions and other ways to educate students on the topic at issue. For example, last September's issue explained the Supreme Court Justice Confirmation process and featured an article on Brett Kavanaugh, who was awaiting confirmation to the U.S. Supreme Court at the time of publication. The article not only offered biographical information on now Justice Kavanaugh, but it also discussed some of his more notable opinions and rulings on hot button issues, such as abortion, religious freedom, the right to bear arms, environmental regulation, federal bureaucracy and oversight, presidential power and executive privilege.
The October 2018 Law Wise issue provided information for classroom lessons on the midterm elections, covering how a shift in party control impacts the legislative and executive branches. It also featured extensive information about the upcoming 2020 U.S. Census, explaining its purpose, history, impact and uses, as well as providing lesson plans on the census for elementary, middle school and high school levels.

The November/December 2018 Law Wise issue addressed the 2019 Law Day Theme, which is “Free Speech, Free Press, Free Society.” This issue was recently featured in the American Bar Association’s “Law Matters” publication. Law Wise is also used to market the KBA Young Lawyers high school mock trial competition, providing case materials, competition dates and rules, and articles on the winning teams.

Past issues of Law Wise can be accessed at https://www.ksbar.org/LawWise_Archive.

The current issue can be found at https://www.ksbar.org/blog/LawWise. Anyone can request to be added to the Law Wise distribution list, and instructions for doing so are located at https://www.ksbar.org/LawWise. I encourage you to add yourself to the Law Wise distribution list, so you can see what good use the KBF is making of your IOLTA funds, and to make sure you are, in fact, smarter than a Kansas 5th grader.

If you have any suggestions for topics to be addressed in a future issue of Law Wise, please send them to Anne Woods, awoods@ksbar.org.

About the Author

Amy Fellows Cline is a partner of the Wichita law firm of Triplett Woolf Garretson, LLC. She handles a wide variety of commercial litigation matters, including employment, oil and gas, construction and consumer protection disputes. Ms. Cline has significant experience appearing before courts across Kansas, as well as the Kansas Corporation Comm., Kansas Human Rights Comm., Kansas Department of Labor and U.S. Equal Employment Opportunity Comm.

amycline@twgfirm.com
Rekindle Your Love for the Law

by Sarah Morse

The title of this article may be too ambitious. After all, only a lucky few ever truly have a love and a passion for the law. For others, the law is a career that utilizes talents and skills in a meaningful way. For others, it may be nothing more than a means to a paycheck to live a life. Regardless of how you view this profession, hopefully you find something enjoyable and meaningful in the practice of law.

Whether the law serves as a passion or a paycheck, it is all too easy to lose sight of whatever it is that we find enjoyable and meaningful in the profession. It is unfairly easy to fall into a slump. The grind of the day-to-day takes over, and we can forget about those enjoyable and meaningful aspects of the profession that attracted us in the first place. A professional slump may be akin to a Sophomore Slump, which Samantha Stainburn describes as follows:

Pity the sophomore. You are feted as a freshman, but no one seems to care that you’re back on campus. Quirky first-year seminars have been replaced by large foundation classes, making you doubt that major in econ or bio. You’re not high enough up the totem pole to do fun stuff like join a research team or lead student organizations. With the newness of college gone, malaise sets in.1

I think young lawyers are particularly prone to a professional Sophomore Slump as described by Stainburn. The newness of the job has worn off; the excitement of appearing in court or drafting a first project has been replaced by large amounts of research, document review and preparation. You’re not high enough on the totem pole to do fun stuff like sit first chair at a trial and, even if you are, you have likely learned just enough to realize how much more there is to learn. The press of billable hours, client development, projects, career decisions and growth, and internal and external expectations weigh on the mind, and a young lawyer may start to feel overwhelmed and lose sight of their successes. Malaise sets in.

While a collegiate Sophomore Slump seems to impact attrition rates at state flagship campuses whereat six percent of students leave in their second year,2 attrition rates for attorneys appear to be even higher. Most attrition rate studies in the legal profession focus on the attrition rates from law firms. The NALP Foundation’s 2017 Update on Associate Attrition Report, for example, notes 44 percent of associates leave their firms after being there for three years.3 But attorneys are clearly not just leaving law firms, they are leaving the profession entirely. An entire industry has been built around helping attorneys leave the profession and you can find articles questioning why women, in particular, leave the legal profession
The Journal of the Kansas Bar Association

The reasons so many attorneys are leaving the legal profession and how to prevent the departures is a much larger question than this column can tackle. But it is worth considering how a professional slump may play into the numbers, especially for young lawyers. February seems like a good time to muse on slumps because, doesn’t it seem like the slumpiest of all the months? The luster of the holiday season has worn off, the shininess of the new year is over. Hopefully, any resolutions you made are still going strong, but they might be starting to feel a little boring or like drudgery. And winter is... still here.

But February also seems like a great time to talk about breaking out of a slump. In February we are encouraged to think about hearts, chocolate, and love. We start to turn our sights to spring, sunshine, growth and new beginnings. So let us think about how we can rekindle—if not our love for the legal profession—our appreciation for and enjoyment of the profession. How can we break out of a professional slump and, if we are not in one, how can we help others break out?

The best advice I received when I was in a slump during my second year of law school came from my mother. She gave me a necklace with a small square pendant that read “remember why you started.” Amidst the reading, class preparation, pressure of the Socratic method and anxiety caused by the looming bar exam and finding a job, I had lost sight of why I even wanted to be at law school. Taking a step back and seeing how the day-to-day activities of law school added up to the goals I was pursuing helped me refocus my energies and motivated me to keep going.

If you are going through a slump, I encourage you to “remember why you started.” Did you want to help people? Affect change? You may not experience those big, philosophical goals every day, but try to identify how your day-to-day activities add up to those bigger goals. Maybe you never had grand philosophical visions of life as an attorney but just found that you were good at researching and writing, did not like math, and thought it seemed like a steady career path. Try to focus on those aspects of your work and take pleasure in the technical aspects of the job.

Another way to help yourself may be to talk to others about what you like about this profession or to listen to others talk about their career ambitions. Even if you are not feeling fully fulfilled or inspired, talking about why you started on your career path, how you got to where you are and how you hope your career grows from here may re-ignite your enthusiasm. Or maybe you can glean from others’ enthusiasm. Often, I find that listening to others talk about what they like about the profession and what they hope to achieve in their careers inspires and reenergizes me in my own career.

The KBA Young Lawyers Section is getting ready to host several events across the state that may provide an opportunity for you to break out of your professional slump or help others break out of theirs. We will be inviting attorneys in their first year of practice to mentoring events across the state with current KBA members to discuss the legal profession, careers and goals. The Young Lawyer Section will not assign mentors, but intends to foster conversation and an environment where mentorship relationships may develop and grow more naturally. If you want to help others out of any slump they may be experiencing or if you need a jolt of energy in your own career, this could be the perfect opportunity. Keep an eye on your email for an invitation to an event near you.

What better time is there to fight the doldrums than during February? While the grey skies of winter may still linger, we know that the warmth and sunshine of spring are not far away. Let us take inspiration from Valentine’s Day and work to rekindle our love—or at least appreciation—for our chosen profession and let us find that inspiration from each other and together.

About the Author

Sarah Morse serves as the Kansas Bar Association’s Young Lawyer Section President. She is Corporate Counsel at FH Bank Topeka. Sarah received her bachelor’s degree in American History and Literature from Emory University and her law degree from Emory University School of Law in Atlanta, Georgia. Shortly after joining private practice in Topeka, Sarah became involved with the KBA YLS, and she looks forward to working with the engaged and enthusiastic YLS board members this year. In her free time, Sarah enjoys spending time with her family and pursuing more hobbies than is probably advisable.

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2. Id.
Have you ever heard the one...?

by Merideth Hogan

“Have you ever heard the one about the attorney who...?”

Each holiday, one family member or another will begin a conversation this way, having waited patiently for the next family gathering to tell the newest lawyer joke they heard (or to dust off the same lawyer joke they have told for the past 5 years, as often seems to be the case). Usually, these jokes emphasize the avarice and deceit for which lawyers have gained an unfortunate reputation. While the jokes may be funny, they also perpetuate a harsh and inaccurate perception of our profession. To combat these stereotypes, our community has a new counter to the latest lawyer joke—Have you heard the one about the attorney who made a difference?

Every year, the Kansas Bar Association (KBA) considers outstanding attorneys and firms to receive various awards. The Diversity Award is bestowed only in years in which it is determined there is a worthy recipient. “This award recognizes an individual who has shown a continued commitment to diversity; a law firm; corporation; governmental agency, department, or body; law-related organization; or other organization that has significantly advanced diversity by its conduct, as well as by the development and implementation of diversity policies and strategic plans, which include the following criteria:

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


The Kansas Bar Association was pleased to present Eunice Peters with the 2018 Diversity Award. In nominating Eunice, Dennis Depew described her as “one of the biggest diversity cheerleaders in all of the KBA in terms of her efforts to improve diversity within the Kansas bar and the KBA. She was a pioneer in the KBA in the area of diversity and shows no signs of letting up any time soon. Her seemingly never ending enthusiasm in promoting all things diverse is an inspiration for all and is what makes her deserving of this award.” She
provided job leads and other support to diverse attorneys and ensures diverse KBA members are at the forefront of KBA policy planning and implementation. Furthermore, Eunice has provided valuable mentorship to several diverse attorneys.

Eunice’s dedication to the cause of diversity prompted the following responses to her selection as the 2018 Diversity Award recipient:

Amanda Stanley, General Counsel
The League of Kansas Municipalities

When I was in law school I went to a conference the summer after my second year and I met Eunice Peters. My life would never be the same. From day one, Eunice took me under her wing and helped me get involved in the legal community. She asked me to serve as a student representative on the KBA Diversity Committee. When I told her I wasn’t diverse, she pointed out there weren’t a whole lot of one legged attorneys so she hated to break it to me, but I kind of checked the diversity box. After I graduated, Eunice continued to mentor me. She told me about job opportunities, gave me committee assignments with the KBA, and was all around supportive. Eunice is genuinely interested in making sure diversity is front and center in the KBA mission. She daily fights to ensure diverse attorneys have a seat at the table and I am very grateful she is both my mentor and my friend.

Jacqlene Nance-Mengler, Immigration Services Officer
at USCIS

Eunice personifies dedication. She constantly looks for ways to improve the lives of those around her, personally and professionally. When she gets a great idea, which is often, she doesn’t easily back down. She dives in and attacks any problems or barriers. She is humble and great at helping people to shine; she credits all who help even when she does the lion’s share. She is an amazing networker; specifically, she takes the time to get to know folks and helps connect them to others in the community.

The Kansas Bar Association and attorneys throughout the state can rest assured Eunice’s efforts will make a lasting impact—for those individuals and organizations lucky enough to work with her and for those of us inspired by her example.

About the Author

Merideth J. Hogan graduated from Washburn University School of Law in May 2016. She aspires to work with victims and survivors of human trafficking to achieve justice and healing, and to promote education in the community and legislative progress.

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Choosing a Mediator: a Truth You Can Handle

by Shawn Watts

We lawyers know that few cases go to trial. We know that. But our clients, the ones who have seen “A Few Good Men” a few too many times, the ones keeping “Law and Order” on constant syndication order, do not know that. When clients come to us with a case, they are expecting a big, Tom Cruise-Jack Nicholson “You can’t handle the truth!”-style courtroom showdown. So, we have to let them know they will almost certainly settle.

Since settlement is probable, mediation may also be in your client’s future. Mediation is growing in popularity as court dockets bulge and judges are increasingly seeking options for relief. Despite its growing popularity, mediation is still unfamiliar to most clients and even some lawyers.

So, what is mediation? You are likely to get a different answer depending on who you ask and depending on the context of the dispute. But, for most purposes, I like the definition given by my former colleague and mentor, Professor Carol Liebman. Professor Liebman says, “Mediation is a process in which an impartial third person facilitates negotiation between parties in conflict. The mediation process empowers participants to exercise self-determination and find solutions that meet their interests. It is a private, voluntary, informal process during which the mediator or mediators assist participants to resolve their dispute in a manner acceptable to all.”

Professor Liebman’s characterization of the process as a facilitated negotiation is important because there is a continuum of types of mediation. On one end of the spectrum is transformative mediation. At the other end is evaluative mediation. And, nestled in between facilitative mediation.

Styles of Mediation

Transformative mediation focuses on positively transforming the relationship between parties in dispute and, at its best, even looks to transform the parties themselves. This type of mediation is especially effective when the relationship between the parties is close, long-standing, and ongoing. Disputes between family members, long-term friends, and neighbors are examples where transformative mediation can be a wonderful experience for all involved. Parties in a transformative mediation will spend most of their time together with the mediator in the same room, often called joint session. Of course, transformation takes significant time and effort. So, even when parties are willing to put in the considerable effort, time constraints often make transformative mediation impossible.

If you or your clients are already familiar with mediation, evaluative mediation is probably the type of mediation you have experienced. Evaluative mediation focuses on ending the case and not much more. Your mediator makes active judgments about your client’s case and the opposing party’s case. While the mediator may talk about some of the strengths of the cases, the mediator focuses on the weaknesses of each case. Based on the evaluation of both parties’ cases, the mediator will offer predictions about how a judge might decide the
case. Your mediator will likely make recommendations about the settlement your client should offer or accept. Parties are kept separated for the bulk of the time. Instead of being together in joint session, the parties sit in individual sessions or “caucus” with the mediator.

Facilitative mediation sits between transformative mediation and evaluative mediation in terms of objectives and process. Facilitative mediation focuses on problem solving and resolving the case like evaluative mediation, and it also focuses on resolving underlying issues in the dispute like transformative mediation. The parties are likely to spend much of their time in joint session and also have time in individual caucuses. Because these mediation sessions are not solely focused on ending the court case, there are opportunities for parties to address the interests and needs that underlie their reasons for involvement in the dispute.

Which Style of Mediation to Choose?

When you opt for private mediation and in some court-referred cases you can choose your mediator. Depending on your case, one style of mediation might be better suited to your purposes. Transformative mediation, as noble as its goals are and as beautiful as its outcomes can be, is not right for most court cases because both the relationships between the parties, the issues in dispute, and the venue are not well-suited for the time constraints and limited jurisdiction of court.

The reality, then, is that you will be choosing between evaluative and facilitative mediators. In evaluative mediation the mediator, instead of the parties, drives the mediation. To be truly effective, an evaluative mediator will need a be a subject matter expert. And therein lies the rub. If your mediator knows the law for your client’s case better than you do, how can you justify taking your client’s money? And, if the mediator doesn’t know the law better than you, why would you ever listen to that person? Moreover, evaluative mediators often try to steer the mediation toward a particular settlement amount and this value often conflicts with a settlement range you have given your client. That sets you and your client up for a potential conflict that could have been avoided. Then your client is left with the confusion that comes with taking your advice or taking the mediator’s advice and that is bad for everyone involved.

Facilitative mediation is party-driven and seeks to identify and address your client’s interest, needs, and feelings. Because this style of mediation recognizes that there is more to a dispute than what is in the complaint, it is far more creative in the kinds of solutions the parties craft. It’s worth saying that one more time: solutions the parties craft. Therein lies the beauty of facilitative mediation. The parties, not the mediator, drive the process and can be creative in the options they devise to address their needs. Since the solutions are conceived and agreed to by the parties, the parties have a significantly higher level of investment in fulfillment and sustainability of the agreement.

With rare exception, facilitative mediation is the best option for your clients which means it is also the best option for you. Your clients will be far happier with their experience in the process which, again, means they will be far happier with you. They will be so happy, they will never realize they never got their Tom Cruise-Jack Nicholson-style showdown. And, that’s a truth I know you can handle.

About the Author

Shawn Watts is a member of the KU Law lawyering faculty and a conflict resolution training expert for the United Nations. He was the Associate Director of the Mediation Clinic at Columbia Law School, teaching clinical courses in mediation and Native American peacemaking. He has been a visiting professor at both Yale Law School and National Taiwan University Law School in Taipei, Taiwan. A Citizen of the Cherokee Nation of Oklahoma, Watts graduated from Columbia Law School, where he won the Jane Marks Murphy Prize for clinical advocacy and was a Harlan Fiske Stone Scholar.
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- Phil Lewis Medal of Distinction
- Distinguished Service
- Professionalism
- Pillars of the Community
- Christel Marquardt Trailblazer Award
- Distinguished Government Service
- Courageous Attorney
- Outstanding Young Lawyer
- Diversity
- Outstanding Service
- Pro Bono

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2019 Awards of the KBA

The KBA Awards Committee is seeking nominations for award recipients for the 2019 KBA Awards. These awards will be presented in June at the KBA Annual Meeting in Topeka. Below is an explanation of each award and a nomination form for completion. The Awards Committee, chaired by Sara Beezley, of Girard, appreciates your help in bringing worthy nominees from throughout the state of Kansas to the committee’s attention!

Deadline for nominations is Friday, March 1.

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.

• A 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;

• This award is only given in those years when it is determined that there is a worthy recipient.

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.

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.

Pillars of the Community Award

This award is available to a Kansas lawyer and KBA member with a minimum of 10 years active non-specialized, general legal practice in a predominately low-density population area of Kansas. Recipients will have had substantial practice in small or solo law firms or local government service. Requirements are flexible but consideration will be given to the following factors, including how such factors apply to the lawyer’s community:

• The variety/diversity of law practiced

• Impact/high profile law work

• General contributions to the law and legal profession

• Specific contributions to the legal profession

• Mentoring and support for legal education

• Contributions to the State/community

• Notable civic activities

• Periods of elected or appointed public/government service

• Military service

• Examples of volunteerism and charitable activity

• Reputation in the organized bar, state and community

This award may be but need not be given every year. More than one recipient can receive the award in a one year.
**NEW** Christel Marquardt Trailblazer Award **NEW**

This award is named in honor of Hon. Christel Marquardt, the first woman to serve as President of the Kansas Bar Association, by recognizing exceptional KBA members who break new ground, shatter glass ceilings, or pave new paths for others to follow. The award is bestowed upon a member who has made innovative contributions to improve the legal profession or our communities, exhibiting courage, leadership, professional excellence, and service to the profession in a manner that makes a substantial and positive impact on all those who follow in his or her footsteps. The award will be given to a KBA member who demonstrates qualities Judge Marquardt has exemplified, such as:

- Service to the Bar or to the legal profession generally;
- Courage in challenging societal, institutional, or historical barriers;
- Innovation and carving a path for future lawyers through mentorship, hard work, and compassion;
- Leadership by word and example.

The Trailblazer Award will be given in years where there is a worthy recipient.

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

The KBA created a new award in 2000 to recognize 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.

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.

Diversity Award

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

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

The award will be given only in those years when it is determined there is a worthy recipient.
Outstanding Service Award(s)

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 non-lawyers for especially meritorious deeds or service that significantly advance the administration of justice or the goals of the legal profession and/or the KBA.

• No more than six Outstanding Service Awards may be given in any one year.
• Recipients may be lawyers, law firms, judges, non-lawyers, groups of individuals, or organizations.

Outstanding Service Awards may 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(s)

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.

• No more than three Pro Bono Awards may be given in any one year. 

In addition to the Pro Bono Award, the KBA awards a number of Pro Bono Certificates of Appreciation to lawyers who meet the following criteria:

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

Nominee’s Name ____________________________________________________________

Please provide a detailed explanation below of why you have nominated this individual for a
KBA Award. Attach additional information as needed. Award descriptions can be found at
ksbar.org/awards.

☐ Phil Lewis Medal of Distinction ☐ Courageous Attorney Award
☐ Distinguished Service Award ☐ Outstanding Young Lawyer
☐ Professionalism Award ☐ Diversity Award
☐ Pillars of the Community Award ☐ Outstanding Service Award
☐ *NEW* Christel Marquardt Trailblazer Award ☐ Pro Bono Award/Certificates
☐ Distinguished Government Service Award

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__________________________________________________________________________

Nominator’s Name _________________________________________________________
Address _____________________________________________________________________
Phone __________________________ Email _________________________________

Return Nomination Form by Friday, March 1, 2019, to:

KBA Awards Committee
Attn: Deana Mead
1200 SW Harrison St.
Topeka, KS 66612

NOTE: a fillable PDF version can be downloaded at https://www.ksbar.org/awards
Online Reviews: The Courts

When I wrote about user reviews of courts and judges available on Yelp back in 2016, there were barely a handful of courts with reviews on the site. Since publication of that article, Google reviews have provided stiff competition for Yelp. Any time someone searches for a business or government office on Google, their Google reviews are prominently displayed in a call-out box to the right of search results. Realizing that this simplified obtaining and leaving reviews, I turned to Google reviews to see how our courts in Kansas rate with users.

The Dataset

I searched for every district court in the state together with the Supreme Court, the court of appeals, and the judicial branch generically at the end of November 2018 and created a spreadsheet of the data. Within those searches were 172 total reviews left about 55 of our courts—and 31 of those courts received at least one review in 2018. Instead of just a few outlier courts with a Yelp review page, we now have some data from just over 50 percent of our district courts with most of the reviews left in the past two years.

This is still a modest dataset, and it is important to note that 24 of the courts reviewed have just one review. I anticipated that a user taking the time to leave a review would most likely be an upset customer. That does not appear to be the case. While seven of these reviewers left a 1-star review, 11 left a 5-star review. Johnson county is at the other end of the spectrum with 28 reviews. While it is the largest county by population in Kansas, it is not the largest court by case filings. That would be Sedgwick county and it only pulled 13 reviews. Wyandotte, Leavenworth and Shawnee round out the top five most reviewed courts with 14, 11 and 8 respectively.

Unhelpful Reviews

The subject of a court review is often not narrowly focused on judicial branch performance. For example, several of the Leavenworth reviews were related to racist remarks of a county commissioner whose story was blowing up nationally around
the time I compiled results. Politics played a role in one of the Supreme Court’s 1-star reviews, which was also left with a comment, “Liberal idiots!” Multi-use county courthouses received several reviews about how county offices processed tags and titles and many reviews contain no content at all. Other reviews aim for humor: a 1-star in Sherman just says, “It’s a courthouse,” and the Supreme Court’s other 1-star review laments, “I didn’t win.” None of those are helpful.

Critiques and Compliments

Not all of the reviews should be tossed aside, however. The most common complaint across the counties is particularly interesting. A 1-star review very often relates to inaccessibility of court staff by phone. Phones are not answered. Messages are not returned. Staff cannot provide relevant information when a call is answered. The Supreme Court is attempting to address those types of complaints through the eCourt initiative which aims to centralize data, publish more information online and explore options for a call-in help center.

The most common compliments accompanying positive reviews related to helpful, friendly and polite staff. One reviewer shared that court staff went out of their way to assist her and her family. One reviewer in Harper county wanted the internet to know that Debbie, in particular, was friendly and helpful. Words like professional, polite, courteous and helpful were repeated across positive reviews and seem to display what the public’s expectation is from interactions with court staff. A court with an isolated comment about staff not rising to these expectations may be able to chalk it up to a bad day or outcome for the reviewer, but if negative reviews about staff interactions with the public are consistent, it should prompt some managerial introspection.

There are very few reviews that relate to judges themselves. Two negative reviews addressed concerns with courtroom demeanor. One judge allegedly rolled her eyes and suggested she could make matters worse for the reviewer who appears to have been challenging a ticket. The other review gave a 1-star to the judge for refusing to read evidence. Two other reviews dealt more generally with how rushed the court proceedings were, denying the reviewer opportunity to ask questions or understand what was going on in the proceeding, and one was quite upset with a 60-day sentence for public urination. That is as specific as judge reviews get in the data. Reviewers leaving positive comments seem less likely to leave details beyond saying their cases worked out.

Free Advice

Google reviews are not perfect. They can be gamed and are often unfair with reviewers cherry-picking or making up narratives for personal aims. I am not a fan, and that is not just because I have a lousy 3-star average rating myself. Regardless, the reviews are a comment card, and it is worth reading them regularly. We read all of ours as a firm and explore the complaints (and compliments) to see where we can improve. Reviews offer a chance for courts and the judicial branch to do the same and it does not cost a dime.

About the Author

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

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3D PRINTING
AND WHY LAWYERS SHOULD CARE

by Bob Lambrechts
Additive Manufacturing refers to a process by which digital three-dimensional design data is used to build up a component in layers by depositing material. The term "3D printing" is increasingly used as a synonym for Additive Manufacturing. Instead of milling a workpiece from a solid block, for example, 3D printing builds up components layer by layer using materials such as metals, plastics, composites, pharmaceuticals and even human tissue.

As with any advance in technology, 3D printing gives rise to myriad legal issues. How, for example, will intellectual property rights be enforced if anyone with a 3D printer can create replicas of objects, such as sculptures and patented devices? Do 3D printed guns run afoul of U.S. federal law that prohibits firearms that are not detectable by walk-through metal detectors? And who will be held liable if objects created with 3D printing technology are distributed to consumers and other users, and those objects turn out to be defective and unreasonably dangerous? This article will provide an overview of a few of the major business sectors that are being impacted by 3D printing and the legal implications of this new technology.

BACKGROUND ON THE TECHNOLOGY

In August 1984, Charles Hull, co-founder and chief technical officer of 3D Systems (at that time, in Valencia, California), applied for a U.S. patent titled Apparatus for Production of Three-Dimensional Objects by Stereolithography, which was granted in March 1986. Hull's 1986 patent describes a process of photo-hardening a series of cross sections using a computer-controlled beam of light. Stereolithography utilizes an acrylic-based material known as a photopolymer. Expose the liquid photopolymer to an ultra-violet laser beam, and the polymer instantly changes phase to a solid piece of plastic making it possible to fabricate complex parts, layer by layer, in a fraction of the time it would normally take.

3D printing uses a machine to turn digital blueprints into physical objects. For 3D printing, physical objects reside in digital form in .amf format, or the older and more widely used .stl format. These files “can be thought of as the object equivalent of a .pdf file—they are universally printable by 3D printers and allow objects to be transferred digitally around the world.”

As noted above, the 3D printing process starts with a digital file. The computer aided design (“CAD”) file may be created with a CAD program on a computer, producing a virtual 3D model of an object. The CAD design process replaces the need for prototypes allowing a designer to create a model, freely manipulate a design, and save it as a file. In the alternative, a 3D scanner can create a CAD design by scanning an existing object. Regardless of which process is used to create it, once a CAD design exists it can be distributed like any other computer file.

Until 2009 3D printing was mostly limited to industrial uses, but then the patent for fused deposition modeling, one of the most common 3D printing technologies expired. As more and more manufacturers have entered the 3D market, what once cost hundreds of thousands of dollars suddenly became available for a few thousand dollars, and the consumer 3D printing market took off in 2009. Three-dimensional printer sales have been growing ever since, and as 3D printing patents continue to expire, more innovations can be expected in the years to come. It is estimated that over 455,000 3D printing units were shipped in 2016 and that 6.7 million units will be shipped globally in 2020. The 3D printing industry has seen a remarkable 21 percent growth as the industry is expected to exceed $7.3 billion in revenues in 2018.

Traditional manufacturers make the same standardized product to put on the market, but 3D printing allows products to be tailored to meet an individual's specific needs, tastes, and measurements. 3D printing is making unparalleled advancements in industries including healthcare, automobiles,
aviation, construction and even firearms. The impact of 3D printing in each of these five sectors is discussed below in greater detail to give context to the advances and challenges this technology is bringing forth.

AVIATION INDUSTRY

The aviation industry in Kansas employs over 77,000, roughly 4.1 percent of all jobs in Kansas, and the industry has an economic impact of $17.1 billion. Aircraft design and construction is changing rapidly and to maintain leadership, Kansas industry must invest in innovation. 3D printing’s suitability for complex parts, short production runs, weight reduction, and fewer tooling changes are reducing costs and turnaround times. 3D printing has enabled aviation companies to create complex components previously impossible with traditional techniques. The capabilities of 3D printing fosters innovation while reducing costs and turnaround times in a complex, highly-regulated environment.

Because of the limited number of parts fabricated in an aviation production run, the aviation industry is a prime candidate to benefit from 3D printing. The technology provides companies with the flexibility to print specific parts for short production runs without the substantial cost of tooling changes. While 3D printing has entered the aviation industry focusing on smaller-scale parts, it is possible that entire aerospace frames could be 3D printed in the future. This advancement is already underway in drones, such as the SoleonAgro. Intended for biological pest control in agriculture, the drone was developed using 3D printing for rapid prototyping, testing, and design verification to reduce the cost of product development.

There are challenges to further implementing 3D printing in the aviation industry. Aircraft components often need to be certified to meet rigorous standards and must undergo a First Article Inspection which is a design and design history verification and a formal method of providing a reported measurement for a given manufacturing process. A First Article Inspection Report (FAIR) requires among other criteria, printer and third-party material qualification. The FAIR evaluation requirements, not only applicable to 3D printing, consist of comparing supplier and purchaser results by measuring the properties and the geometry of an initial sample item against given specifications, such as a drawing. The rationale for this comprehensive testing of aircraft components is the need to meticulously document a process control methodology and the need to verify the stringent federal requirements for delivering a new product within such a heavily regulated space.

The FAA has understandably expressed concerns with 3D printing to include the potential for material defects in 3D printed parts which could lead to a part lacking in airworthiness; the unknown mechanical properties of metal 3D printed parts; a lack of understanding as to “failure modes” and their connection to key production parameters for 3D printed parts; and the susceptibility of 3D printed parts to environmental conditions. Likely only with the passage of time and the amassing of performance data will the FAA come to acknowledge the acceptability of 3D printing technology.

AUTOMOTIVE

3D printing is no stranger to the automotive industry when it comes to both prototypes as well as finished parts. Among others, many Formula 1 racing teams have been using 3D printing for prototyping, testing and ultimately, creating custom car parts that are used in competitive races.

3D printing also has the potential to revolutionize the auto repair industry, making it easier to obtain spare parts. 3D printing technology also allows automakers to affordable customize vehicles and develop stronger, more efficient, lightweight designs. It can simplify both complex and small production, enabling manufacturers to print a single component on demand. One machine can support unlimited product lines. Before long, local auto shops may be able to print parts for repairs. In fact, for years Jay Leno has relied on a sophisticated scanner and 3D printer to replace obsolete parts in his collection of antique cars.

HEALTH CARE

It is a good bet that no industry has embraced or benefited more from advances in 3D printing technology than the healthcare industry. The FDA has reviewed over 100 medical devices currently on the market that were made with 3D printers, including orthopedic and cranial implants, surgical instruments, dental restorations, and prosthetics. Many of these products are customized to fit each patient. The FDA has also granted emergency exemptions for devices not yet approved.
In 2012, the FDA granted an emergency exemption for the implant of a 3D-printed trachea into a six-week-old infant. A year later, the FDA again granted an emergency exemption for a man to have 3D-printed plates replace 75 percent of his skull. Analysts from iData Research estimate that the 3D-printed trauma device market will be worth $8 billion by 2020.

Pharmaceutical companies are using 3D printing technology to develop medications and the FDA has approved the first drug produced on a 3D printer. In 2015, the FDA approved Spritam®, a drug for treatment of epilepsy. The FDA website provides that “tailoring size, drug release profile and dosage form shape can be particularly useful for special populations with unique or changing medical needs.” In addition, the FDA provides that “children, for instance, may need special or smaller doses beyond what is conventionally available, or they may need unique dosage forms other than the standard pill, which can be difficult to swallow.” Due to certain illnesses or resulting from taking multiple medications older adults may have various physiological or metabolic conditions which may require alterations in doses or dosage forms and it may be possible to combine certain medications into one “polypill” using 3D designs and 3D printing processes. The FDA further provides that “3D printing of drugs offers these and other advantages because modifying a 3D digital design to control the performance of a drug product is easier than modifying physical equipment or process.

3D-bioprinting is the utilization of 3D printing to combine cells, growth factors, and biomaterials to fabricate biomedical parts that maximally imitate natural tissue characteristics. Bioprinting can produce living tissue, bone, blood vessels, and potentially, whole organs for use in medical procedures, training and testing. Bioprinted tissue may be a game changer for developing and testing how new drugs affect human cells. Although bioprinting is in the early stages of development, it shows immense promise for medical treatment, with the end goal of 3D printing of replacement organs.

CONSTRUCTION INDUSTRY

The 3D printing boom has reached the construction industry and will certainly impact the way construction projects are managed. 3D printers developed for the construction industry operate very similarly to robots. The 3D printer is not just printing a roof brace or a door frame that will later be installed by construction workers, although that capability certainly exists, it is effectively installing the printed component in-place.

The rise of 3D printers will translate into fewer workers on construction sites, as printers will be automated and largely autonomous. Projects will be completed faster, as 3D printers become more capable of working at all hours, and will not require overtime pay. Exemplary of this transition are the concrete-injection 3D printers developed by WinSun Decoration Design Engineering, in China. These printers have the capacity to print small houses, including walls and roofs, at a pace of up to 10 in a twenty-four-hour period.

Experts predict that 3D printing can cut the cost of building materials by 60 percent and reduce manpower requirements 50-80 percent. 3D-printing also significantly reduces the amount of waste material created in production and 3D-printing offers new opportunities to accelerate delivery and reduce risk. By operating 24/7 and by reducing onsite mishaps, 3D printers can reduce construction times by as much as 50-70 percent.

FIREARMS

3D printers can even create firearms. Until a late August 2018 ruling by Federal District Court Judge Robert Lasnick to extend a temporary restraining order against Defense Distributed, plans outlining how to make 3D guns were widely available on the internet at file sharing websites like Github. Federal law mandates the licensing of individuals and companies engaged in the business of selling firearms. The typical finished firearm has a unique serial number, which is engraved in several places on the gun, that must be registered with the government. A 3D printed gun is virtually untraceable and contains no serial number. A 3D-printed gun requires no background check, no mental health disclosures and no age restrictions.

The Undetectable Firearms Act of 1988, however, makes it illegal to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm with less than 3.7 oz (105 g) of metal content or with major components that do not generate an accurate image before standard airport imaging technology. This law was renewed in 2013 for another ten years. On April 6, 2017, Representative Ruben Khuen from Nevada introduced H.R. 2033 titled the Undetectable Firearms Modernization Act. The bill sought to amend the Undetectable Firearms Act to “revise what are prohibited firearms to include any firearm: (1) that, after removal of all parts other than major components is not as detectable by walk-through metal detectors as the Security Exemplar (an object fabricated
for the testing and calibration of metal detectors); or (2) any major component of which, if subjected to inspection by the types of detection devices commonly used at airports for security screening, would not generate an image that accurately depicts the shape of the component. The Undetectable Firearms Modernization Act if passed would ban all undetectable weapons. Crucial functional components must be made of detectable metal. The legislation, if passed, would make a working, fully 3D printed gun essentially impossible to legally produce. As of November 2018, H.R. 2033 has not passed the House.

Although the current state of desktop 3D printing doesn’t necessarily allow high-quality firearms to be manufactured at home, this could change as the technology advances. For instance, as metal 3D printing capabilities advance, the ability to create higher-grade weapons could grow. While it is purportedly easy to produce a plastic firearm with the proper 3D files and desktop printer, the typical homemade 3D printed gun is not as functionally reliable as one might anticipate. Police testing has shown that a 3D printed gun is as much a danger to the user as it is to the intended target. A firearm produced with ABS material could break apart or even potentially explode in the hands of the user when fired. Softer PLA will likely cause the parts to bend or deform after firing. While most plastic 3D printed guns are made using ABS, chances are only a single shot will be able to be fired before the plastic experiences stress fractures. Nonetheless, efforts are underway to develop a gun that can be 3D printed in carbon fiber, a material that has a higher strength-to-weight ratio than aluminum.

LEGAL IMPLICATIONS

Copyright Issues

3D printing creates copyright issues for many players in industry. Traditional manufacturers of products may wish to protect against infringement by 3D printed products, as well as those who wish to use 3D printing to manufacture new products. Subject matter that is eligible for copyright protection is afforded only to “original works of authorship fixed in a tangible medium of expression.” Copyright protection is also expressly reserved only to aesthetically separable portions of a work, and does not extend to a work’s functional features. It is unlikely that a common object such as a cup or a plate is protectable under the copyright statute unless there is some ornamentation that is aesthetically separable from the object. Consequently, copyrightable subject matter likely does not exist for a 3D printed version of a basic cup or plate but may for those same objects with some level of ornamentation.

A copyright attaches to a computer program’s human-readable source code and screen displays, but not its basic functions, because the source code and displays contain expressive content. The creator of a copyrightable CAD file has the sole right to sell or share the file. If someone else obtained a copy of the file and made it available for download without permission, the downloader would be infringing the creator’s exclusive right to distribute copies of the work. If the downloader made changes to the CAD file to improve or build on the existing design, he could be infringing the copyright owner’s right to create derivative works.

There are two ways to create digital design files: (1) scanning, and (2) as discussed immediately above, creating (programming) a computer design file. While there is currently limited case law, scans of useful objects have not warranted independent copyright protection. The justification for this is that “scans are not sufficiently ‘original’ to qualify for copyright protection.” A useful object created in CAD software, however, may warrant protection if independent artistic elements are added to the otherwise useful object via the CAD process.

Therefore, websites aggregating CAD files for download and use in personal 3D printers may be liable for making copyrighted designs available for download (copying) by users of 3D printers. The copyright statute defines a copyright infringer as anyone “who violates any of the exclusive rights of the copyright owner.” Copyright owners can use the procedures outlined by the Digital Millennium Copyright Act (DMCA) to have infringing files removed such as by filing take-down notices.

While the legal framework for addressing 3D printing is rapidly advancing, some manufacturers are pursuing measures to protect their 3D printed goods from others. One option is to encrypt the 3D model so that it is difficult to copy. Another option is to embed QR codes, barcodes, or other microstructures to reveal and verify the part’s origins. There are; however, limits to what can be imaged from the product.
if the source code for the 3D model is unavailable. If the microstructures cannot be accurately imaged, they will not be included as part of the copy. Importantly, customs agents at the border, an intermediate seller, or the customer themselves must be able to recognize and authenticate the microstructures.

There are benefits to this form of intellectual property protection. One such benefit is that copyright is automatic and attaches at the time of the creation of the work. In addition, the Berne Convention on International Copyrights provides protection throughout most of the world. While 3D printing has greatly expanded the capacity for infringement and counterfeiting, it has also expanded licensing opportunities. Copyright protection can often be obtained faster than patent protection, lasts much longer, and is obtainable at a lower cost. Whereas patent infringement damages must be separately proven at trial, copyright damages are statutory and the copyright owner may recover statutory damages of an amount between $750 and $30,000, or up to $150,000 if the infringement was willful.

To that end, intellectual property owners should evaluate any copyrights they own in their products, including creative artistic works, useful objects (which may include separable protectable design elements), and the electronic files and source code underlying the works. Going a step further, those seeking to protect useful articles should consider adding design elements to useful articles, such as a raised emblem or ornamentation, to create an additional layer of intellectual property protection.

Trade Dress and Trademarks

With the increased risk of trademark and trade dress infringement through 3D printing, it will become increasingly important to file applications for trademark and trade dress registrations as soon as the manufacturer has an intent to use the mark or trade dress, and before the manufacturer begins to use the marks. Manufacturers will ideally want their trademark applications accepted and the marks registered promptly to discourage would-be infringers from placing the mark onto unauthorized 3D printed products, advertising, or packaging.

For any brand management strategy, it is important to understand how to protect a brand in light of new technological developments. There are strategies companies can employ to protect their brand assets in this rapidly evolving environment. As discussed above, useful articles are not protectable under U.S. copyright laws. As a result, goods that are printed without brand authorization, while possibly infringing patent rights, may not infringe any copyright or trademark rights unless they contain a separate copyrightable design element or a registered or recognizable signifier of the brand itself. The simplest way to include a brand signifier is to include a registered trademark on the product at issue.

Including a trademark on a product, however, comes with its own limitation, as it only protects the use of the mark itself and does not protect the design or appearance of the item on which the trademark is printed. To address this loophole, brand owners should also consider utilizing trade dress to identify their products. This type of branding is particularly useful when it is not easy, or not preferable, to place product logos and other marks on the products themselves. It also means that brands can claim trademark protection outside of pure unauthorized use of their “marks.”

Historically, trade dress referred only to the way a product was dressed up to go to market with a label, package display card and similar package elements. The modern view of trade dress is much more expansive than the traditional view. Now, trade dress is defined as a product’s total image or overall appearance and may include features such as size, shape, color, texture, graphics or even certain sales techniques. “Trade dress is a complex composite of features and “[t]he law of unfair competition in respect to trade dress requires that all of the features be considered together, not separately.” Thus, a party may claim protection for a unique combination of features, even though all of the features, individually, may have been used previously by others. An important aspect of the trade dress right is that it goes on indefinitely while utility and design patents expire.

Patents

Patent office statistics reveal the 5-year growth rate for published patent applications for 3D printing grew at a compound annual rate of 35 percent from 2013 to 2017. The only technology with a higher 5-year growth rate was e-Cigarettes at 45 percent. Machine learning took third place at 34 percent and autonomous vehicles came in fourth and had a 27 percent compound annual growth rate. The enterprises with the greatest number of 3D printing published applications for 2017 are General Electric with 89 applications, Xerox with 78 applications and Boeing with 50 applications. This information is included purely to convey that this technology is advancing rapidly and is seen as a critical technology sector by some of the largest manufacturing companies in the world.

Each 3D printed copy of an invention is a lost potential sale to the patent holder. But, to sue for infringement, the patent owner would need to be aware that someone is using a 3D printer to make the patented invention. And that is a very challenging prospect since these printers are widely dispersed across households and businesses. Alternatively, patent owners could go after the people facilitating the infringement. The Patent Act permits a patent holder to sue parties who induce others to infringe. Potential inducers of patent infringement could be the sellers of the 3D printers, someone providing CAD files of the patented device, or websites that sell or share various CAD files that instruct the 3D printer to make the patented invention.
As a practical matter, the electronic files required for 3D printing are often easily converted to drawings for inclusion with design patent applications. A design patent protects only the appearance of the article and not structural or utilitarian features. Design patents can be drafted inexpensively and can generally be prosecuted to allowance and issuance within about a year of filing. Utility patents, which are directed to an invention or discovery of a new and useful machine, manufacture, composition of matter, or process typically require years before allowance and issuance. Many industries are already utilizing design patents to cover replacement parts that can easily be made with 3D printing to protect the market for original equipment manufacturers. Design patents are useful to keep up with the pace of innovation and quickly acquire intellectual property rights.

Utility patents should be considered when evaluating how to protect functional aspects of additive manufacturing and the resulting products. Inventors may obtain utility patents for new, non-obvious, and useful inventions that are functional or structural aspects of a technology. After the filing of a patent application at the U.S. Patent and Trademark Office, several years can pass before a patent is issued. Inventors of 3D printable designs may want to consider expediting this process by paying an extra fee to the USPTO at the time of filing the patent application to request “Track One” prioritized examination of the application. Doing so enables the patent application to receive a final decision regarding patentability from the USPTO within 12 months.

**Trade Secrets**

The Defend Trade Secrets Act of 2016 provides trade secret owners with a private, federal, and civil cause of action to assert claims for misappropriation of trade secrets. The Kansas Uniform Trade Secrets Act provides similar protections to the holder of a trade secret in the state of Kansas. A trade secret is confidential, commercially valuable information that provides its owner with an ongoing competitive advantage. In order for a trade secret to remain protected, a business must take steps to maintain it. In other words, it must restrict access, it must guard against its disclosure and it must not be publicly available.

Once information is published in a patent, for example, it can no longer be the subject of a trade secret. Thus, when deciding whether to pursue a patent, some consideration should be given to maintaining the information as a trade secret. For example, a process that cannot be reversed-engineered lends itself to trade secret protection. Once a trade secret becomes public, even if by unlawful means, it is no longer a trade secret.

For 3D printing purposes, source code or blueprint designs kept as a trade secret provide manufacturers with the ability to assert a claim for misappropriation of trade secrets against the owners of websites that host 3D model data.

**Food and Drug Administration Guidance**

In December 2017, the Food and Drug Administration issued final guidance applicable to prescription drugs and medical devices manufactured with 3D printing technology. The guidance suggests extensive device testing for 3D printed products and internal checks to prevent the operator from exceeding pre-established device specifications. It also recommends that users archive device files in standardized 3D specific formats and that they document materials used extensively.

The FDA guidance provides technical considerations that should be addressed as part of fulfilling Quality System requirements for a regulated device made in whole or in part by 3D printing. These recommendations are particularly helpful for patient-matched device designers and manufacturers, or manufacturers that customize devices to match a patient’s anatomy. The FDA guidance also recommends that designers and manufacturers compare the desired feature sizes of the finished printed product to the minimum possible feature sizes of individual 3D printing machines. In making this recommendation, the FDA cautions designers to ensure that the particular 3D printer being used is compatible with the design of the device.

For custom devices, the FDA guidance recommends that designers set clinically-relevant parameters within which a particular device design can be altered to fit a patient’s anatomy without resulting in a change that would render the device defective. Consequently, when users other than the designers seek to customize a device, they will know what parts of the design can be customized, and what parts of the design cannot be reconfigured. The FDA guidance also notes that the designer of medical devices based on anatomical images should pay attention to image quality and resolution, any smoothing or image-processing algorithms that may alter the dimensions of the image, the rigidity of the anatomic features being imaged, and the clarity of the anatomic image. The objective would be to ensure that the original design of the device or product is not altered in such a way that renders it defective.

The FDA also notes that given that the 3D printing process can involve interaction between several different types of software, designers should maintain and archive standardized digital formats as a precautionary procedure to avoid design defects that might result from file conversions. The guidance provides that designers and manufacturers would be wise to extensively document all aspects of the 3D printing process, from identifying CAD image file formats, to describing the software validation process and to documenting all materials used in the 3D printing process. Medical device designers and manufacturers are at considerable risk in the product liability context, where plaintiffs may bring claims against multiple parties under a theory of joint and several liability.
Product Liability

Product liability law in the United States generally provides that one “engaged in the business of selling or otherwise distributing products who sells or distributes a defective product is subject to liability for harm to persons or property caused by the defect.”84 Product liability principles are especially problematic in the 3D printing space because of the expansive supply chain. The parties involved in the 3D printing supply chain, any of whom might be implicated in the event of a potential product liability issue, include: (1) the manufacturer or supplier of the 3D printer; (2) the manufacturer or supplier of the 3D printing material; (3) the printer owner; (4) the person who designed or sold the original object upon which a 3D printing design is based; (5) the person who created or shared the CAD blueprint of the object; (6) the person who created the object using the printer; and (7) the person who sold the 3D-printed object.

Consequently, problems with 3D-printed products can develop in many ways. For instance, the fundamental design of the product may be defective including when the original product upon which the design is based is defective or the design may be defectively rendered in the CAD data file. Even when the design and CAD rendering are free from defects, the 3D printer may be defective such that it fails properly to implement the design in creating the product. The printing material also may be defective in a manner that in turn produces a defective product. Alternatively, the 3D printer and/or printing material may be free from flaws, but result in a defect due to human error at various points in the printing process.

Under the basic rules of product liability law in most jurisdictions, manufacturers are strictly liable for defects in their products. This includes defects in design, manufacture, or warnings that render a product unreasonably dangerous for its intended use.85 Adopted in 1981, the Kansas Product Liability Act (KPLA) applies to all Kansas product liability claims regardless of the substantive theory of recovery.86 In most jurisdictions, if the product is misused by the consumer, the manufacturer is still liable so long as the misuse was foreseeable to the manufacturer. That means that manufacturers must design, build, and develop warnings for their products that contemplate consumer behavior, even if that behavior includes using the product in ways the manufacturer did not intend. Plaintiffs, however, are likely to face at least two significant hurdles: first, whether the vendor is a product seller subject to strict liability; and, second, whether the object is a “product” subject to product liability standards.

A casual user of a 3D printer is unlikely to be strictly liable for injuries caused by a defective 3D-printed product, even if she occasionally sells products. A routine vendor of 3D-printed goods might very well be a “seller” within the meaning of the rule.89 One important question in the 3D printing arena is whether the computer aided design (CAD) rendering for a 3D-printed object is itself a product for the purposes of product liability. No case law was found which precisely ruled on this issue. However, courts have suggested that, as a rule, computer code used in 3D printing is not a product.90 Additionally, the CAD rendering arguably undergoes considerable change when it is converted into an object and is accordingly not likely a “product” itself.91 Another theory that might be available to a person injured by a 3D-printed product is to assert that the 3D printer caused her injury. This would require the litigant to establish that at the time the printer left the manufacturer, it was defective in design or manufacture or contained inadequate warnings, and that this defect ultimately caused the person’s injuries.92

Construction Defect Liability

3D printers will undoubtedly expose contractors to liability and claims that would typically be attributed to human error. Instead of human workers building a structure, a 3D printer will fabricate the structure from a pre-generated plan that is uploaded to the printer. How the liability will be allocated when the finished structure is found to have flaws such as cracked walls, leaking components or missing structural members is the primary issue of concern. Depending upon if the 3D printer is owned by the contractor, is being leased or is owned by the subcontractor will be part of the assessment as to who can be found liable.

Printer malfunctions that result in construction flaws will result in the contractor’s having warranty and indemnity claims against the manufacturer arising out of privity from purchasing or leasing the 3D printer. If the construction flaw was caused by a software malfunction, that could draw the developer into negligence and warranty claims for the reduced value of the project due to the defects introduced by the 3D printer. If there is a third party, serving as a subcontractor, loading digital files into the 3D printer, the subcontractor may also be liable if the defect was the result of improperly uploading those plans or faulty operation of the 3D printer.

The owner could arguably have claims against the manufacturer or software developer for economic loss, even in the
3D printing

absence of direct privity. Kansas law permits a qualified third-party beneficiary plaintiff to enforce a contract expressly made for his or her benefit even though he or she was not a party to the transaction.\textsuperscript{93} When confronted with a construction defect caused by a 3D printer used by the contractor or one of its subcontractors, the owner will have an argument that the manufacturer of the printer or developer of the software should have been aware that a malfunction of its hardware or software would, in turn, impact the owner's property.

The growing availability and utilization of this emerging technology will also have an impact on material suppliers. If 3D printers are to be used on a construction project, designers and contractors should provide precise specifications for compatibility of the construction material such as concrete with the specific 3D printer. Certification of construction materials for use with specific printers will undoubtedly become more common place with material suppliers. Insufficient attention to detail on compatibility of specified materials with the 3D printer could open designers and material suppliers to liability for construction defects.

The International Building Code is a model building code developed by the International Code Council (ICC).\textsuperscript{94} It has been adopted for use as a base code standard by most jurisdictions in the United States and provides for different types of inspections that are necessary before the government certifies a structure for use and occupancy. Chapter 17 of the International Building Code requires special inspection by a qualified individual and in some cases structural observation by a registered design professional to verify proper assembly of structural components and the suitability of the installed materials.\textsuperscript{95} The increased speed with which 3D printers can complete projects may be hampered by the current inspection requirements and inspection scheduling mandates.

An increased use of 3D printers at construction sites will likely require government agencies in charge of inspecting construction projects to adapt to the faster-paced construction offered. In the ideal scenario, governmental agencies would embrace the new technologies in the construction industry and, for example, invest in automated scanner drones that could inspect an automated 3D printer's work and, immediately thereafter, send the inspection's result to the governmental agency for certification. Such advances, however, may be difficult to achieve unless states, cities and counties make significant investments in infrastructure. As 3D printers/robots become more commonplace on construction projects, contractors should be mindful of including express warranty clauses in purchase and leasing contracts for 3D printers.

**Conclusion**

Just as with other cutting-edge technologies, such as block chain, artificial intelligence and autonomous vehicles, 3D printing is bound to disrupt society. This technology will provide greater manufacturing options which will only be limited by the imagination. 3D printing will facilitate rapid prototyping and increase manufacturing speed and likely reduce costs and the need for warehousing. In the not-too-distant future, one should expect to see customizable body parts and even organs produced with 3D printing. Some of the negative implications of 3D printing will be the need for fewer manufacturing jobs, the ease of counterfeiting parts for commercial or defense operations, the ability to disguise weapons in non-hazardous products and even that children could print dangerous items. While 3D printing will create opportunities for companies, it will also raise challenges especially concerning civil liability and intellectual property rights.

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3. Additive manufacturing file format (AMF) is an open standard for describing objects for additive manufacturing processes. The official ISO/ASTM 52915:2016 standard is an XML-based format designed to allow any computer-aided design software to describe the shape and composition of any 3D object to be fabricated on any 3D printer. Unlike its predecessor STL format, AMF has native support for color, materials, lattices, and constellations.
4. STL (an abbreviation of “stereolithography”) is a file format native...
to the stereolithography CAD software created by 3D Systems. This file format is supported by many other software packages; it is widely used for 3D printing.


13. Id.


16. Id.


18. Id.


22. Justin Cunningham, How 3D Printing is being used to develop F1 cars at the track, http://www.eurekamagazine.co.uk/design-engineering-features/interviews/how-3d-printing-is-being-used-to-develop-f1-cars-at-the-track/165843/, December 5, 2017.


26. 3D-Printed Windpipe Gives Infant Breath of Life, Marissa Fessen-
3D printing

57. 17 U.S.C. § 101 (1991). The Copyright Act defines “useful article” as those objects which have an “intrinsic utilitarian function.” The simplest definition of a “useful article” is what the lay person considers a “product,” the purpose or function of which goes beyond the product’s mere appearance. In other words, products having a “use” beyond aesthetic pleasure are “useful articles” having an “intrinsic utilitarian function.”
60. Thingiverse is an example of a website dedicated to the sharing of user-created digital design files. Providing primarily free, open source hardware designs licensed under the GNU General Public License or Creative Commons licenses, users choose the type of user license they wish to attach to the designs they share. 3D printers, and many other technologies can be used to physically create the files shared by the users on Thingiverse.
66. Id. Karlruher Instituti Fur Technologie (KIT) and Zeiss have suggested embedding tiny microstructures to foil 3D printed counterfeiters. Such microstructures are on the order of 100 microns and must be read by a machine because they are not visible to the naked eye.
67. U.S. Copyright Office – Information Circular No. 3 titled Copyright Notice.
74. Id.
75. Id.
76. Id.
77. 35 U.S.C. § 271(b).
78. See 37 CFR § 1.102(e) and the Manual of Patent Examining Procedures at § 708.02(b).
82. Id.
83. Id.
85. A strict liability claimant need only establish that the product was defective at the time it was supplied by the manufacturer, without regard to the manufacturer’s conduct. A product is “defective” if it has a manufacturing or design defect or is accompanied by inadequate warnings. See Restatement (3d) of Torts: Products Liability § 2 (1998).
87. The KPLA defines “product seller” as any person engaged in the business of selling products, whether the sale is for resale or for use or consumption. “Product seller” includes the manufacturer, wholesaler, distributor and retailer of the product. A product seller is not subject to liability if it can establish all of the following: (a) it had no knowledge of the defect, (b) it could not have discovered the defect exercising reasonable care, (c) it did not manufacture the product, (d) the manufacturer is subject to service of process in Kansas, and (e) any judgment against the manufacturer is “reasonably certain of being satisfied.” K.S.A. § 60-3306 (2017).
88. The KPLA defines “Product liability claim” to include any claim or action brought for harm caused by the manufacture, production, making, construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, storage or labeling of the relevant product. It includes, but is not limited to, any action based on, strict liability in tort, negligence, breach of express or implied warranty, breach of, or failure to, discharge a duty to warn or instruct, whether negligent or innocent, misrepresentation, concealment or non-disclosure, whether negligent or innocent, or under any other substantive legal theory. K.S.A § 60-3302 (2017).
89. See, e.g., Jaramillo v. Weyerhaeuser Co., 906 N.E.2d 387, 392 (N.Y. 2009) (differentiating “sellers in the normal course of business” from the occasional seller who is “not engaged in the sale of the product in issue as a regular part of its business”) (citation omitted); Agurto v. Guhr, 887 A.2d 159, 163 (N.J. Super. Ct. App. Div. 2005) (vendor is an “occasional” seller, not a commercial seller, if the good’s sale “is not part of the ‘purpose’ of the seller’s business”).
91. See K-Mart Corp. v. Midcon Realty Grp. of Conn., Ltd., 489 F. Supp. 813 (D. Conn. 1980) (architect’s design not subject to product liability law because the design was substantially transformed into physical plant).
94. Chapter 17 of the 2018 International Building Code is titled Special Inspections and Tests.
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Blockchain software technology has rapidly evolved from a few bitcoin software nodes ten years ago to a multi-billion dollar industry backed by Wall Street, Silicon Valley, and major banks. Blockchain software, which permits the maintenance of a public ledger secured by cryptography, can be used to increase the speed and lower the cost of consumer and business transactions.

Expect that within the next decade, small businesses which choose to utilize the technology will be able to purchase software to issue their shares of stock as digital tokens, rather than as paper certificates. Likewise, state and local governments which choose to implement the technology will be able to purchase software to permit real estate transactions to be instantly recorded through “smart contract” software. Smart contracts utilize electronic signatures and metadata, rather than physical filings. Banks will be able to permit their customers to utilize blockchain-based software that will enable instantaneous and irrevocable transfers of funds between bank accounts (rather than on a delayed basis using wire or ACH transfers).

This article will provide you with the basics of blockchain technology and an overview of the applicable laws and regulatory framework that apply to it.

Blockchain Technology

Blockchain software creates a transaction ledger database that is secured by cryptography and shared by a distributed network of computers. The blockchain software records and stores every transaction that occurs on the computer network. All of the computers on the network can view all of the blockchain records, with any change to the distributed ledger being visible to everyone.

Blockchain software can create a blockchain that is either decentralized or centralized. The differences between these two types of blockchains are as follows:
- **Decentralized.** Decentralized blockchain technology is used in the creation of cryptocurrencies (such as Bitcoin) and other digital assets. In a decentralized and public blockchain, anyone can download software to send and receive funds, without the need for a centralized financial institution (such as a bank) to process the transactions. Transaction processing is done through a decentralized mesh of computers located around the world, with anyone being able to operate a computer node to process transactions.

- **Centralized.** Centralized blockchain technology is used in the creation of secure and high-speed record-keeping by businesses and governments. A significant amount of centralized blockchain software development is being done using IBM’s Hyperledger Fabric software. Access to a centralized blockchain is restricted, with only known participants being permitted to process and view records on the blockchain. Centralized blockchains are usually distributed among fewer computer nodes. The advantage of centralized blockchains is that they can currently process records and transactions at a higher speed, and with a lower energy cost, than decentralized blockchains.

Here are some examples illustrating how blockchain technology is currently being implemented by businesses and governments:

- **Deed Recordation.** In the United States, the high-speed recordation of real estate deeds through the blockchain has been tested in Cook County, Illinois, and South Burlington, Vermont. In addition, deed recordation through blockchain software has also been tested internationally in Brazil, Dubai, Georgia, and Sweden.

- **Automobile Recordkeeping.** In May 2018, Ford, General Motors, BMW and Renault formed the Mobility Open Blockchain Initiative (MOBI). The intent of MOBI is to create common standards for blockchain software related to such data as vehicle identity, vehicle history, and supply chain tracking.

- **Higher Speed Funds Transfer.** In September 2018, two New York non-depository trust companies (Paxos and Gemini) launched FDIC-insured “stablecoins,” with each digital token backed by a stable $1.00 in value. In December 2018, Signature Bank, a New York bank, announced the launch of a blockchain-based digital payments platform to enable real-time payments for its commercial clients.

- **Food Safety.** In August 2017, IBM, Walmart, Nestle and other grocery companies began collaborating on the creation of a centralized blockchain food tracking system to increase the safety of food and reduce the spread of food-borne illnesses.

- **Healthcare Recordkeeping.** Estonia is currently implementing blockchain technology to better protect the security of over 1 million electronic medical records. Estonia has already issued smart cards to its citizens, which enable them to have online access to over 1,000 government services (including the viewing of their health records).

### Blockchain Law

The ownership and sale of cryptocurrency and other digital assets are subject to a complex patchwork of federal and state laws and regulations. Below is a summary of the significant areas of law

**Taxation.** At the time of this writing, tax planning for the 2018 filing season is underway. So, be aware that Federal income taxes are owed on any realized gains in the value of cryptocurrency upon the following events:

- the sale of cryptocurrency for cash;
- the purchase of goods and services with cryptocurrency;
- the exchange of one cryptocurrency for another cryptocurrency.

Ordinary income tax is also owed for the “fair market value” of any cryptocurrency that has been mined by the taxpayer. To the extent, mining of cryptocurrency is done as a hobby activity, then the value of the cryptocurrency on the date of mining would be reported in the “other income” line of the taxpayer's Form 1040.

IRS Notice 2014-21, *Guidance on Virtual Currency* (March 25, 2014) details that, for tax purposes, “virtual currency” (such as Bitcoin and other cryptocurrency) is treated as “property”. This means that taxes are owed on any realized gains on sale. For an individual filing a federal income tax return, the gains or losses from a sale of virtual currency that was held as a “capital asset” (i.e., for investment purposes) are reported on (1) Schedule D of IRS Form 1040 and (2) IRS Form 8949 (Sales and Other Dispositions of Capital Assets).

On Form 8949, the IRS requires, that the following information be disclosed for each virtual currency transaction: (1) a description of the amount and type of virtual currency sold; (2) the date acquired; (3) the date the virtual currency was sold; (4) the amount of proceeds from the sale; (5) the cost (or other basis); and (6) the amount of the gain or loss. It should be noted that the recordkeeping requirements of IRS Form 8949 can be particularly onerous for those who have
used cryptocurrency to make numerous small purchases of goods or services throughout the year. Any realized gains on cryptocurrency held for more than one year as a capital asset by an individual are subject to capital gains tax rates. Any realized gains on cryptocurrency held for one year or less as a capital asset by an individual are subject to ordinary income tax rates.

It should be mentioned that, as of this writing, the IRS has not yet provided specific guidance as to whether or not it is a taxable event for a taxpayer to retrieve, through wallet software, a free “fork” or “airdrop” of cryptocurrency. For example, individuals who held Bitcoin in certain types of software wallets as of Aug. 1, 2017, are able to use software to retrieve an equal amount of Bitcoin Cash. If the IRS specifically determines that cryptocurrency retrieved from a fork is not a taxable event, then taxable gain will not be realized until the forked cryptocurrency has been sold or exchanged. If the IRS determines that cryptocurrency received from a fork or airdrop is a taxable event, it is possible that the IRS could deem ordinary income to be realized for the “fair market value” of the coin on the date of retrieval of the cryptocurrency.

**Securities.** The Securities and Exchange Commission (SEC) has regulatory authority over the issuance or resale of any token or cryptocurrency that has the characteristics of an “investment contract.” Under Securities Act § 2(a)(1) and Securities Exchange Act § 3(a)(10), a security includes “an investment contract.” An “investment contract” has been defined by the U.S. Supreme Court as an investment of money in a common enterprise with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.²

In making a determination as to whether a token is an “investment contract,” both the SEC and the courts look at the substance of the transaction, instead of its form.

In 1943, the U.S. Supreme Court determined that “the reach of the [Securities] Act does not stop with the obvious and commonplace. Novel, uncommon, or irregular devices, whatever they appear to be, are also reached if it be proved as matter of fact that they were widely offered or dealt in under terms or courses of dealing which established their character in commerce as ‘investment contracts,’ or as ‘any interest or instrument commonly known as a ‘security.’”³ In 1990, the U.S. Supreme Court determined that “Congress’ purpose in enacting the securities laws was to regulate investments, in whatever form they are made and by whatever name they are called.”⁴ On September 11, 2018, the U.S. District Court for the Eastern District of New York held that a digital token can be deemed to be a security under the Howey test.⁵

The Chairman of the SEC has taken the position that even if a cryptocurrency token issued in an initial coin offering (ICO) has “utility,” the token can be still be deemed a security that is regulated under the Securities Act. On Feb. 6, 2018, in written testimony to the U.S. Senate Banking Committee, the chairman of the SEC stated as follows: “Tokens and offerings that incorporate features and marketing efforts that emphasize the potential for profits based on the entrepreneurial or managerial efforts of others continue to contain the hallmarks of a security under U.S. law.”

**Commodities.** On Sept. 17, 2015, the Commodities Futures Trading Commission (CFTC) ruled that “virtual currencies” are commodities subject to CFTC regulation. The Commodities Exchange Act (CEA) provides the CFTC with enforcement jurisdiction to investigate and conduct civil enforcement action against fraud and manipulation in both cryptocurrency derivatives markets and in underlying cryptocurrency spot markets.⁶

On March 6, 2018, a U.S. district court upheld the authority of the CFTC under 7 U.S.C. § 9(1) to take enforcement action against a contract of sale of a virtual currency in interstate commerce.⁷

**Anti-Money Laundering.** Under the Bank Secrecy Act (BSA), a money services business (MSB) is subject to the federal anti-money laundering regulations of the Financial Crimes Enforcement Network (FinCEN). In addition, the Internal Revenue Service (IRS) has the authority to examine MSBs with respect to their compliance with FinCEN’s anti-money laundering regulations. A “money transmitter” is a type of MSB that is regulated by FinCEN.

On March 18, 2013, FinCEN deemed a “money transmitter” to include a virtual currency exchange and an administrator of a centralized repository of virtual currency who has the authority to both issue and redeem the virtual currency. FinCEN issued guidance that stated as follows: “An administrator or exchanger that (1) accepts and transmits a convertible virtual currency or (2) buys or sells convertible virtual currency for any reason is a money transmitter under FinCEN’s regulations, unless a limitation to or exemption from the definition applies to the person.”⁸

An MSB that is a money transmitter must conduct a com-
prehensive risk assessment of its exposure to money laundering and implement an anti-money laundering (AML) program based on such risk assessment. FinCEN regulations require MSBs to develop, implement and maintain a written program that is reasonably designed to prevent the MSB from being used to facilitate money laundering and the financing of terrorist activities. The AML program must (1) incorporate written policies, procedures and internal controls reasonably designed to assure ongoing compliance; (2) designate an individual compliance officer responsible for ensuring day-to-day compliance with the program and Bank Secrecy Act requirements; (3) provide training for appropriate personnel that specifically includes training in the detection of suspicious transactions; and (4) provide for independent review to monitor and maintain an adequate program. FinCEN requires a money transmitter’s anti-money laundering program to identify its customers, report suspicious activities for transfers in amounts of $2,000 or more in a day, retain detailed records for transfers by a single customer in one day of $3,000 or more, keep records for at least five years, and file a Currency Transaction Report for single customer transactions that are more than $10,000 a day.

State Money Transmitter Regulation. Currently, in most states, a virtual currency exchange is deemed to be a money transmitter that is subject to the same state licensing and regulation requirements as other money transmitters. The State of Kansas has certain exemptions from licensing for certain types of limited virtual currency exchange activities. A virtual currency exchange that desires to be licensed in all 50 states is subject to the following expensive licensing requirements: (i) minimum surety bond requirements that range from $1,000 to $500,000 per state, (ii) application fees that range from $0 to $5,000 per state, (iii) licensing fees that range from $0 to $3,750 per state, and (iv) minimum net worth requirements that range from $5,000 to $1,000,000. In addition, a money transmitter is required to comply with the financial disclosure and consumer compliance requirements of each state in which it does business.

Conclusions

Blockchain technology made a public debut about a decade ago in the form of virtual currency. There continues to be an immense potential for further innovation and harnessing blockchain technologies in our professional, business and personal lives. Practitioners and users can expect regulatory compliance issues to continue to arise with the continued expansion of blockchain technology uses and the adoption of its benefits by industries and the general public.

About the Authors

The authors, Dave Berson and Susan Berson, are co-founders of Berson Law Group LLP (banktaxlaw.com). They represent entrepreneurs, blockchain and tech startups, businesses, their boards and owners, along with financial institutions. More detailed information about blockchain law can be found at: blockchainlawguide.com. Susan is also the author of “Federal Tax Litigation” (Law Journal Press 2001—updated twice a year) and served on the ABA Tax Section’s Virtual Currency Subcommittee, which provides comments to the IRS about issues arising from IRS and U.S. Department of Treasury regulation and treatment of blockchain-based currencies.

Susan: sberson@banktaxlaw.com,
Dave: dberson@banktaxlaw.com.

6. See 7 U.S.C. § 9(1) and (3).
8. See FIN-2013-G001, Application of FinCEN’s Regulations to Person’s Administering, Exchanging or Using Virtual Currencies (March 18, 2013).
10. See Kansas Office of the State Bank Commissioner, Regulatory Treatment of Virtual Currencies Under the Kansas Money Transmitter Act (June 6, 2014).
I’ve heard and read many jokes about New Year’s resolutions, the gist of which is usually that they are made to be broken. One such joke is: “My New Year’s Resolution is to break my New Year’s Resolution—that way I succeed at something!” Another is: “May all your troubles last as long as your New Year’s resolutions.” A third is: “My New Year’s resolution is to keep last year’s resolutions.” Everyone wants to improve their lives but they often fail to live up to their expectations, get discouraged and give up. Although New Year’s Eve 2018 has come and gone, it is not too late to make a New Year’s resolution for 2019.

Many of our resolutions (goals we set for ourselves) are unreasonably difficult to achieve. We must learn to walk before we run. I suggest the best way to keep a New Year’s resolution is to choose a resolution over which we can have some control and which may be accomplished in incremental steps. Although we each have our own levels of fitness and health challenges, all of us can take steps to be healthier.

If we are healthy physically, emotionally and spiritually, we are more likely to meet daily challenges in every aspect of our lives, including the challenges associated with the practice of law. “Wellness” is defined by the Merriam-Webster Dictionary as: “To actively seek good health as a goal.” To focus on our personal “wellness” is a worthwhile resolution that can positively affect every aspect of our lives. I suggest we “keep it simple” when we resolve to improve our wellness.

We can keep it simple as we pursue wellness by focusing on those things over which we have control. So, what are some of the things over which we have control? There are many, but I suggest we focus on just a few. We can, among other things, focus on the following 8 steps to increase wellness:

1. Get a good night’s sleep; get to bed no later than 10 pm and be up at 5-6 a.m.
2. Eat a good breakfast each morning—go on-line for ideas for healthy breakfasts that can be prepared the night before or within a reasonable time in the morning.
3. Exercise, even if it is just taking a walk or using inexpensive exercising bands—expensive gym memberships or home workout machines are not needed.
4. Be “mindful” by taking time to meditate or pray (or both)—be still—listen to your heartbeat—listen to your breathing—commune with your higher power. This can be done throughout the day to help reduce stress.

5. Organize your time at work—be intentional and not reactive.

6. Be kind and thoughtful to others—be generous with your time and resources—volunteer. Helping others can give us a sense of well-being.

7. Share your thoughts and concerns with your best friend (get things off your chest)—listen to your friend’s thoughts and concerns.

8. Share your time with friends and family—don’t isolate.

We don’t have to accomplish all the above steps at once. Remember, “keep it simple.” Focus on the 1st step and get a good night’s sleep each night until it is a regular part of your daily routine. Then move to step 2, and then 3 and then 4, and then take the other steps as you strengthen your ability to keep your “wellness” resolution. Simply put one foot in front of the other. If you take a step or two back, regroup and refocus, then move forward again. You can’t get to the top of the stairs in one giant leap. We can improve our wellness if we keep it simple and take one step at a time.

However, because of one or more impairments, some of us cannot improve our wellness without help. Asking those who are suffering from physical and/or mental impairments by telling them to just “focus on wellness and try harder” is like expecting someone to walk through water without getting wet. The Kansas Lawyers Assistance Program was created pursuant to Kansas Supreme Court Rule 206 to help Kansas attorneys and law students struggling with impairments associated with alcohol, drugs, stress, depression, aging and other issues. All participants in the KALAP program are assured complete confidentiality. All persons who let us know someone may need KALAP’s help also are guaranteed strict confidentiality.

So what can be done to help our ourselves and our colleagues who are having trouble helping themselves? You can make and keep a New Year’s resolution to contact KALAP to get help for yourself or for a friend and/or colleague. The first step is to pick up the phone and call us at (785) 368-8275. That call will be one simple step in the right direction. Making such a call is within your control. KALAP can and will be your partner to assist you to take additional steps. We are waiting for you to take that first step—we are waiting for your call to help you keep your New Year’s resolution to pursue “wellness.”

About the Author

Lou Clothier was appointed the Kansas Lawyers Assistance Program Executive Director in July 2018. He graduated from the Washburn University School of Law in 1981. He practiced law in Leavenworth, Kansas for 37 years prior to his appointment, focusing on school law and domestic relations law. Lou is a member of the ABA, KBA and Leavenworth Bar Associations.
Congratulations to our newest partner!

Goodell Stratton Edmonds & Palmer is pleased to announce that David P. O’Neal has joined the partnership of the firm, effective January 1, 2019. He has been Special Counsel since 2016, when he joined the firm from his previous position as Senior Vice President of Claims for a major malpractice insurer.

Mr. O’Neal began his career as an insurance claims investigator, which led him to attend South Texas College of Law, from which he graduated in 1994. Since then, he has worked extensively in the intersection of law and insurance, especially in the areas of medical malpractice and insurance defense litigation.

Law professionals in Kansas can participate in the pro bono community through clinics, posted projects, or by volunteering to take on specific cases displayed on the site. Opportunities are regularly updated by Pro Bono Coordinators in the 11 statewide KLS field offices.

https://klsprobono.org

Please check back often for new and exciting ways to put your skills, experience and training to good use by helping your fellow Kansans.
Choosing to attend law school at the University of Kansas was an easy decision. Despite my anxiety in the months leading up to fall orientation about the difficulties I knew I would face in my 1L year, I was hopeful that the skills I attained as an undergraduate Division I student-athlete would assist me as I began my legal education. As a student-athlete, I became skilled at balancing my time between the academic demands of my private Jesuit university and the physical demands of spending several hours a day playing volleyball and training in the gym. By the end of my senior year—which culminated in a third consecutive conference championship and third trip to the NCAA tournament, along with acceptances and scholarship offers to a handful of great law schools—I finally felt I had perfected that balance. Yet, I was often anxious before beginning law school about how well I would adapt to the life of a law student. I was particularly concerned about the considerable increase in workload, as well as having to start over away from the close support network I had developed at my undergraduate university in Connecticut. However, at the conclusion of my first semester of law school, I am already comfortable in saying that many of my early fears were unfounded. In many ways, law school has not been completely new. I have found that because of my experiences as a student-athlete, I already possessed many of the same skills needed to succeed in law school.

The workload of law school has not been surprising. I knew I was heading into a year full of endless hours of reading and class preparation, anxiety about the infamous “curve,” and the massive stress of final exam periods. Many past students had warned me of just how mentally and emotionally grueling the first year would be. However, at the end of my first semester, I have realized that though the workload of law school has indeed matched my expectations, I have felt better equipped to balance this sudden increase because of the transferrable skills I developed through balancing what were essentially two full-time jobs as an undergraduate student-athlete.

Looking back at my volleyball career, it is tempting to think that finding success came easily—yet, I know that it was any-
thing but. It was the result of a careful and disciplined approach, which I have already found to benefit me greatly at KU. While my first semester of law school has been just as demanding as I anticipated, thankfully, it certainly has not been unbearable. I know that this is largely attributable to the discipline I exercised as a student-athlete, allowing me to develop permanent healthy time management strategies and stress-coping mechanisms. I am grateful to my younger self for developing such a disciplined approach, because these traits have become foundational for my success in adapting to the new stressors of law school.

In addition to anxieties about the increased workload, I had smaller, perhaps sillier, fears about having to start over with an entirely new group of people and make new friends. For me, this fear felt magnified by the fact that as a lifetime volleyball player, I have always had built-in, automatic friendships in my teammates. From middle school through college, I had always had a core group of girls who had my back, understood the demands of being a student-athlete, and with whom I spent the majority of my time. Dozens of hours a week were spent at daily practices, weight room sessions, team dinners and weekend matches and road trips with the close group of girls who inevitably became my very best friends. Realizing that law school would not provide me with this same comfort was intimidating, because I had never known anything else. While I have always considered myself an outgoing person, I found the horror stories of the harshly competitive and cutthroat environment in law school alarming. The thought of being on my own for the first time—without the ease and comfort of being a part of a team—added to the overall anxiety I felt before beginning law school.

Now I can only laugh at myself as I look back at my early fears. I have found that many of the students at KU Law are among the friendliest, warmest, brightest and most genuine classmates I have ever known. I have yet to experience the aggressive or cutthroat atmosphere about which I had been so gravely warned. Many of the people I sit next to in class every day have quickly become close friends, and I truly feel that the students here hold a lot of respect and understanding for one another. I used to think that the conclusion of my final season of collegiate volleyball meant that my time of being a part of a team had come to a close. However, in the past few months, I have realized that that is untrue; rather, I’ve simply become a part of a new kind of team. Maybe this new “team” is a bit untraditional (since we thankfully aren’t forced into daily group exercise); but we are very much a team in the sense that we are all driven, focused and kind towards one another as we struggle with the seemingly endless demands on our time.

That is not to say, however, that this newfound “team” setting at KU hasn’t come with its own unique set of challenges. Volleyball is a team sport; everything you do is to benefit the team. Law school is different. Though I have found the environment at KU to feel much more like a “team” than I originally anticipated, at the end of the day I am working toward a very individualized personal goal. I no longer act with the intent to benefit the group. Rather, everything I do is to ultimately benefit (or hurt) myself. This has added a new layer of pressure because I no longer have teammates to fall back on. Instead, if I fail, it is solely because of my own shortcomings. This very new and seemingly daunting challenge has been surprisingly empowering. I alone control the outcome, and I have complete control over my own goals and my own process. Though I will bear the full burden of experiencing failures as an individual, because of my long-cultivated, disciplined approach developed during my years as a student-athlete, I know I will also find ways to succeed. And, when I do achieve those proud moments of success, I know they will be all the more sweet.

About the Author

Sydney Buckley is a 1L from Kansas City, Missouri. She received a Bachelor of Arts in political science from Fairfield University in Fairfield, Connecticut. At Fairfield, she was a four-year member of the women’s volleyball team where she helped her team capture three consecutive conference championships and NCAA tournament appearances in 2015, 2016, and 2017. During her first year at KU, Sydney has attained a role as a Student Ambassador, and is also active in the Christian Legal Society. She is the first in her family to attend law school, and she is grateful to her family for their continued support in her studies.
Where Does the Money Go?
Our designated charities for 2019 are:
• CASA (Johnson/Wyandotte Counties)
• Safehome and Hope House (domestic violence programs)
• Metropolitan Organization to Counter Sexual Assault (MOCSA)
• Kansas Bar Foundation
• FosterAdopt Connect
• In addition, we will fund Ethics for Good scholarships to each of the KU, Washburn and UMKC Law Schools and the Johnson County Community College paralegal program.

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Jim Griffin, Scharnhorst Ast Kennard Griffin, P.C.
Mark Hinderks, Stinson Leonard Street L.L.P.
Todd LaSala, Stinson Leonard Street L.L.P.
Hon. Steve Leben, Kansas Court of Appeals
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Parking: $10 museum non-member parking fee; carpooling encouraged

Wednesday, June 26, 2019, 2:30 – 4:10 p.m.
The Nelson-Atkins Museum of Art, Atkins Auditorium
4525 Oak St.
Kansas City, Mo.

Friday, June 28, 2019, 2:30 – 4:10 p.m.*
Polsky Theatre, JCCC Carlsen Center
12345 College Blvd. (College & Quivira)
Overland Park, Kan.

*Reception afterward sponsored by the JCCC Foundation

Parking: $10 museum non-member parking fee; carpooling encouraged
New Positions

Frank Basgall was elected partner at Sinson Leonard Street LLP, effective Jan. 1, 2019. Basgall is a member of the firm’s business litigation division; he counsels clients on commercial litigation matters as well as tax appeals and other oil and gas industry issues. A graduate of the University of Kansas School of Law, Basgall is also a regular presenter at conferences and seminars on topics related to expert witness cross-examination, lender liability and ethical use of social media.

Clay Britton was selected by Governor Laura Kelly to serve as her chief counsel. Britton has worked as an assistant U.S. attorney in Kansas since October 2016, and previously was an assistant Kansas attorney general and an attorney in private practice.

John McNish of Marysville/Clay Center McNish and Bolton Law Firm has been appointed to serve as a municipal judge in Clay Center, filling the vacancy created when Susan Carlson was elected to the Kansas House of Representatives in Nov. 2018. McNish's law firm has operated out of Marysville for 41 years and extended the practice to Clay Center five years ago. McNish earned his JD from the University of Kansas School of Law.

New Locations

Post Anderson Layton Heffner, LLP is pleased to announce its change of name, address and web address. The firm’s new name is Sage Law, LLP. Its new offices are located at 12980 Metcalf Ave., Suite 500, Overland Park, Kansas 66213. The new web address is www.sage.law. The partners continue to be Keenan Post, Steve Anderson, Tad Layton, Matthew Heffner, Carl Radom, Mathew Warren, Kelly Jurgensen, Mary Nan DuPont and Jeff King.

Notables

Tim Barker, President and CEO of Ag Astra, will present “Becoming a Self-Directed Grain Marketer” during the 65th Annual 3i SHOW, scheduled for March 21-23 in Dodge City. Ag Astra is an ag-centric organization based in Pratt, Kan., that provides farms across the country with products and services that include grain marketing, risk management, education, accounting and legal services. Barker is a licensed Series 3 Commodity Trading Advisor, a 6th generation farmer and a member of the KBA.

Hollis Law Firm has been recognized by the American Institute of Personal Injury Attorneys as one of the 10 Best Personal Injury Law Firms for Client Satisfaction for 2018.

Levi Morris, the new Barton County attorney has already begun streamlining the process for filing criminal charges. His efforts to save time and money and to make the process more efficient were profiled in a Jan. 1, 2019 article in the Great Bend Tribune.

Dave Rebein, Dodge City trial lawyer, was chosen by then Gov.-Elect Laura Kelly to chair the nominating committee for the Appellate Court vacancy. The committee was established to review, interview and recommend applicants to the governor following her swearing-in on Jan. 14th. Others ap-
pointed to the committee include Jennifer Cocking, VP and Assistant General Counsel for Capitol Federal Savings Bank, Topeka; Eloy Gallegos, owner of Gallegos Law, LLC, in Garden City; former State Senator Thomas C. “Tim” Owens of Overland Park; and Linda Parks, managing partner of Hite, Fanning & Honeyman LLP in Wichita.

Richard Samaniego, the Attorney General’s pick to serve as chair of the state’s Crime Victims Compensation Board, was given initial approval by the Senate Confirmation Oversight Committee; the preliminary approval allows Samaniego to begin serving in that role before the final vote of the full state senate once the 2019 Legislative Session is underway. He is an attorney with Gibson Watson Marino where he practices family law, estate planning and probate law and represents municipalities in South Central Kansas. He previously was a lobbyist, representing several organizations before the Kansas Legislature.

Bradley Schlozman of the Hinkle Law Firm is on the defense for Ford County Clerk Debbie Cox in a lawsuit filed by the ACLU for allegedly attempting to restrict voting in the 2018 general elections. Cox moved Dodge City’s only polling place to a site that was a mile from the nearest bus stop; she blamed the move on construction at the usual polling place location.

Obituaries

Kathleen Ambrosio (1-14-2019)

Kathleen Ambrosio died on January 14, 2019, after waging a courageous and inspiring 10-month war against cancer. Kathleen was a criminal defense lawyer who insured that constitutionally guaranteed legal rights were zealously protected - even in the most problematic circumstances and was described by friends as "a truly great legal talent." Whether she was retained or appointed, Kathleen was a passionate and worthy attorney who treated her clients with kindness and respect. She was an avid lover of 80’s rock music, good wine, bourbon, all cuisine, European travel and snow skiing. While excelling in her legal career, she also rocked on the tennis court, even though she only started playing competitively 5 years ago. Kathleen truly enjoyed all of her tennis family, both partners and opponents.

Kathleen married John J. Ambrosio on January 31, 1999, in Aspen, Colorado. They practiced law together at their firm of Ambrosio & Ambrosio, Chtd. prior to joining the law firm of Morris, Laing, Evans, Brock & Kennedy, Chtd. She was a doting mother and best friend to her daughter, Brooke Ambrosio, and her stepson, Michael, his wife Yumi, and grandchildren, Emma and Max, all of Japan.

Kathleen will be profoundly missed by all who knew her. Honoring Kathleen’s requests, a cremation was planned with no services, but a Celebration of Life will take place in the Spring.

Dove Cremations & Funerals - Southwest Chapel assisted the family. To leave a special message for the family online, visit www.DoveTopeka.com

John J. Jurcyk Jr. (1930 - 2018)

John J. Jurcyk Jr., 88 years of age, passed into eternal life the morning of December 29, 2018 at Lakeview Rehabilitation Center. John was born on April 15, 1930 to John and Ann Kordash Jurcyk in Kansas City, Kansas. After graduating from Rockhurst University in 1952, he served in the 13th combat Engineer Battalion in the US Army in Korea. He then attended the University of Kansas Law School where he served as Editor-in Chief of the Kansas Law Review. After a Federal Court Clerkship, he began his long association with the McAnany, Van Cleave & Phillips P.A. Law Firm.

He received numerous professional awards during his long career as civil trial attorney practice for his zealous and ethical conduct. He was a fellow of the American College of Trial Lawyers. He was president of the Wyandotte County Bar Association and the President of the Kansas Bar Foundation. Always active in his community and politics--especially "beautiful, historic and sunny downtown Kansas City, KS"--John
served as Senior Policy Advisor for Mayor Joe Reardon before returning to his firm where he remained until his death. He was the chairman or board member of at least seventeen different civic organization including six years of service on the Providence Medical Center, Chairman of the Board of Education for Bishop Ward High School, president of the Wyandotte County Guidance and Mental Health Center, Chairman of the KCK area Chamber of Commerce, President of the Board for Vila St. Francis, Chair for the United Way of Wyandotte Country, Inc. As a lifelong Roman Catholic and a parishioner of St. Patrick’s Parish in Kansas City, KS, John was active in the Knights of the Holy Sepulcher and the Serra Club where he was part of the Board of Governors.

John is survived by the love-of-his life of 61 years, Rita Marie Menghini, who he married on July 13, 1952. Five children were born of the marriage: children, Jeff Jurcyk of Kansas City, KS; John David Jurcyk (Sarah) of Fairway, KS; Amy Benitz (Jerry) of Harvard, MA; Alison Schieber (Keith) of St. Joseph, MO, Annie Jurcyk-Borders of Kansas City, MO and a sister Mary Cameron of Kansas City, MO and eleven grandchildren, Jordan (Patti), Seth, Christopher, Maria, John, Max, Emma, Joe, Clare, Edmund and Leonardo and two great grandchildren, Eloise "Lulu" and Winslow. John is preceded in death by his parents and by a son-in-law Nate Borders.

John was quoted in the KBA Journal following an award for Professionalism which serves as good advice for attorneys and even others and demonstrates how he lived. "Be professional courteous and truthful always. Remember we practice the law; no one is perfect. Work hard, but work as a team. Love what you do, be passionate about it. Have fun and welcome creative solutions. Respect history’s lessons. Love your family and make time for them. Give back to the community in service and profits. Forget insults. Have a sense of humor. Keep brewed coffee on the warmer. Keep beer in the refrigerator. Keep popcorn in your drawer. Honor the law."

A visitation and Rosary preceded the Funeral Liturgy Saturday, January 5, at St. Patrick Catholic Church, Kansas City, KS. Burial followed at Gate of Heaven Cemetery, Kansas City, KS. In lieu of flowers memorial contributions were made to: Catholic Charities or to St. Patrick School. (Condolences may be expressed at: www.porterfuneralhome.com

Positive Ways to Honor the Memory of a Loved One, a Mentor, a Treasured Friend or a Valued Co-Worker:

1. Donate blood;
2. Make a financial contribution to that person’s favorite cause or charity;
3. Give time to a cause or a charity in the name of the person you lost;
4. Organize a memorial event to bring together others who have experienced the same loss,
   Encourage those who attend to
   --bring a non-perishable food item to donate in the deceased’s name, or
   --bring a small donation to put together and contribute to that person’s favorite charity or cause;
   --bring a written memory or anecdote about the person who has died, compile them into a little notebook, make copies for the family and friends who participate
5. Spend a day volunteering in a soup kitchen or community storehouse or animal shelter with others who share your sense of loss.

“When you part from your friend, you grieve not; For that which you love most in him may be clearer in his absence, as the mountain to the climber is clearer from the plain.”

Khalil Gibran, The Prophet
ATTORNEY DISCIPLINE

ORDER OF DISCHARGE FROM PROBATION
IN THE MATTER OF SUSAN L. BOWMAN
NO. 109,512—JANUARY 9, 2019

FACTS: The court suspended Bowman's license to practice law in Kansas on October 18, 2013, for a period of 12 months. Bowman was required to undergo a reinstatement hearing prior to consideration being considered. After the hearing, Bowman was reinstated and placed on probation. Bowman filed a motion for discharge from probation in November 2018, along with affidavits demonstrating compliance with the terms of probation. The Disciplinary Administrator did not object.

HELD: After reviewing the motions and affidavits, and the response of the Disciplinary Administrator, the court grants Bowman's motion for discharge from probation.

ORDER OF DISBARMENT
IN THE MATTER OF LAURENCE M. JARVIS
NO. 01,012—JANUARY 8, 2019

FACTS: In a letter addressed to the Clerk of the Appellate Courts, Laurence M. Jarvis voluntarily surrendered his license to practice law in Kansas. At the time of surrender, Jarvis' license was indefinitely suspended, and he faced an additional formal hearing on allegations of misconduct.

HELD: The Court accepted the surrender of Jarvis' license and ordered that he be disbarred.

ORDER OF DISBARMENT
IN THE MATTER OF JOHN M. KNOX
NO. 119,254—JANUARY 11, 2019

FACTS: The Disciplinary Administrator filed a formal complaint against Knox which alleged violations of KRPC 1.1 (competence); 1.3 (diligence); 1.4(a) (communication); 1.5(d) (fees); 3.2 (expediting litigation); 4.1(a) (truthfulness in statements to others); 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); 8.4(d) (engaging in conduct prejudicial to the administration of justice); (8.4)(g) (engaging in conduct adversely reflecting on a lawyer’s fitness to practice law); and Rule 207(b) (failure to cooperate in a disciplinary action). The matter arose after Knox was retained to represent clients in a personal injury matter. He failed to perform any of the duties for which he was hired and failed to communicate with his clients. Knox failed to respond once the formal complaint was filed.

HEARING PANEL: The panel determined that although Knox failed to appear he was given appropriate service and notice of the formal hearing. There was adequate evidence to show that Knox committed the violations as alleged in the complaint. The hearing panel found a number of aggravating circumstances, including the vulnerability of the client and Knox’s patterns of misconduct. Knox’s failure to participate in the disciplinary proceeding meant there were no mitigating circumstances to consider. The Disciplinary Administrator recommended that Knox be disbarred and the hearing panel agreed.

HELD: Knox did not appear at the hearing before the Kansas Supreme Court. The court determined that there was clear and convincing evidence that Knox violated multiple rules of professional conduct. The Disciplinary Administrator continued to recommend disbarment and the court agreed. Knox is disbarred.

ORDER OF DISBARMENT
IN THE MATTER OF THOMAS J. ROBINSON
NO. 13,609—JANUARY 15, 2019

FACTS: In a letter dated December 25, 2018, Thomas J. Robinson voluntarily surrendered his Kansas law license. At the time of surrender, Robinson’s license was temporarily suspended because of convictions in Arizona for aggravated assault and domestic violence.

HELD: The criminal conviction is conclusive evidence of both commission of a crime and a disciplinary violation. Because surrender was made while a complaint was pending, Robinson is disbarred.
CIVIL

CONDEMNATION—STATUTORY INTERPRETATION
NAUHEIM V. CITY OF TOPEKA
SHAWNEE DISTRICT COURT—REVERSED AND REMANDED
COURT OF APPEALS—AFFIRMED
NO. 114,271—JANUARY 11, 2019

FACTS: The City of Topeka negotiated with business owners to purchase land in order to build a drainage system for city property. The negotiations resulted in the City’s purchase of the property and the businesses’ relocation without the use of eminent domain power. After the move, the business owners sued the City for relocation costs under K.S.A. 26-518, which allows for costs when real property is acquired by a condemning authority through negotiation in advance of a condemnation action. The City countered that it never intended to condemn the property and also noted that the business owners were not "displaced persons" under the statute because the property was actually owned by a landlord. The district court granted the City’s motion for summary judgment, holding that the business owners were not displaced persons and that the property acquisition was not made in advance of a condemnation. On appeal, the court of appeals reversed, finding that the business owners were displaced persons. The panel remanded for further factual findings on the question of whether the purchase negotiations were conducted in advance of a condemnation. The business owners appealed the question of whether a displaced person must prove that a condemning authority had an intent to condemn in order to receive statutory relocation assistance.

HELD: Nothing in the statute requires the City to pay relocation benefits as part of any public project. Whether a negotiation occurs "in advance of" a condemnation action is a question of fact that must be proven by a preponderance of the evidence.


GARNISHMENT—INSURANCE
GEER V. EBY
COWLEY DISTRICT COURT—REVERSED
COURT OF APPEALS—REVERSED
NO. 115,948—JANUARY 18, 2019

FACTS: Geer and Eby were involved in an auto accident. Geer’s insurance company—State Farm—paid a claim for her car and then sought subrogation from Eby’s insurer—Key Insurance. Key offered to pay policy limits, which were significantly less than the total amount of the claim, as long as Geer agreed to release Eby from any future liability. State Farm refused the offer, so Geer sued Eby. Eby did not respond and Geer moved for default judgment. The district court granted that motion and entered judgment against Eby for the total amount of Geer’s claim. It was at that time that Key first learned of the lawsuit, as State Farm failed to notify Key prior to filing suit and Eby didn’t tell Key about the suit after it was filed. Geer filed a request for garnishment seeking money owed by Key to Eby. Key responded that it did not owe Eby any money because he failed to comply with the notification requirements found in his insurance policy. Key sought judgment arguing that Eby’s failure to notify it of the lawsuit bars any recovery on Key’s policy by Eby or Geer. The district court disagreed and entered an order of garnishment in favor of Geer and State Farm. The court of appeals affirmed that decision, finding that Key could not show prejudice from the lack of notice of suit. Eby’s petition for review was granted.

ISSUE: (1) Whether lack of notice allows Key to deny coverage

HELD: It is undisputed that Eby breached his duty to inform Key of State Farm’s lawsuit. The district court erred when it found that Key was not prejudiced by this lack of notice. Although Key had notice of the claim it did not have notice of the lawsuit, and that lack of notice prejudiced its ability to defend itself. Under the clear terms of Eby’s insurance policy, his failure to give notice of suit absolves Key from having to provide coverage. The garnishment order must be reversed.

STATUTES: K.S.A. 2017 Supp. 60-738(b); K.S.A. 2015 Supp. 60-729(a); K.S.A. 60-724(2), -732(c)(1)

HABEAS CORPUS—PROCEDURE
NGUYEN V. STATE
FINNEY DISTRICT COURT—REVERSED
AND REMANDED
COURT OF APPEALS—REVERSED
NO. 112,851—DECEMBER 21, 2018

FACTS: Nguyen was convicted of multiple high-level felonies; his conviction was affirmed on direct appeal. Over the years, Nguyen filed three K.S.A. 60-1507 motions challenging various aspects of his convictions. The third motion, filed in 2012, was summarily denied by the district court as
both untimely and successive. On appeal, the court of appeals
agreed with Nguyen that manifest injustice required an excep-
tion to the one-year time bar on the motion. Two of Nguyen’s
co-defendants had one of their convictions reversed, and it ap-
peared that Nguyen was similarly entitled to relief. Notwith-
standing that fact, the panel determined that Nguyen failed
to establish any exceptional circumstances that warranted ac-
cepting a successive motion. And although the panel appeared
to agree that the district court’s findings of fact and conclu-
sions of law were insufficient, it held that Nguyen waived any
insufficiency by failing to object. The summary denial was af-
firmed, and Nguyen’s petition for review was accepted.

ISSUES: (1) Compliance with Supreme Court Rule 183(e);
(2) successive motion; (3) adequacy of findings of fact and
conclusions of law

HELD: Nguyen’s K.S.A. 60-1507 motion substantially
complied with Supreme Court Rule 183(e). All of the re-
quired information could be obtained simply by reading
Nguyen’s attachments. Nguyen’s motion showed exceptional
circumstances which justified his failure to raise these issues in
a prior 1507 proceeding. And trial counsel failed to raise an
issue that was successful for Nguyen’s co-defendants. Justice
requires that Nguyen’s conviction for conspiracy to commit
kidnapping be reversed as multiplicitious. Nguyen’s status as
a pro se litigant, combined with the district court’s summary
denial of his motion, made it difficult for him to object to
the district court’s inadequate findings of fact and conclu-
sions of law. Nevertheless, he filed a motion to alter or amend
a pro se litigant, combined with the district court’s summary
denial of his motion, made it difficult for him to object to
the district court’s inadequate findings of fact and conclu-
sions of law. Nevertheless, he filed a motion to alter or amend
the judgment which specifically raised this issue. The district
court’s order was conclusory and did not comply with Su-
preme Court Rule 183. This case is returned to the district
court for further proceedings.

STATUTE: K.S.A. 60-1507

CRIMINAL

CRIMINAL PROCEDURE—SENTENCES—STATUTES
STATE V. AYERS
WYANDOTTE DISTRICT COURT—AFFIRMED IN PART
VACATED IN PART, AND REMANDED
NO. 117,654—JANUARY 11, 2019

FACTS: Ayers was convicted on guilty pleas to multiple fel-
onies related to a murder. Sentencing court imposed consecu-
tive sentences consecutive to a life sentence without possibility
of parole, and assessed BIDS fees. Ayers appealed claiming
the district judge failed to consider on the record Ayers’ ability
to pay the assessed BIDS fees. He also claimed the district
judge abused its discretion by ordering most of the on-grid
sentences to run consecutively to a life sentence with no poss-
ibility of parole.

ISSUES: (1) BIDS fees; (2) sentences

the BIDS fee assessment must be vacated and case remanded
for reconsideration of that fee. Court rejects State’s argument
that there is no additional fact-finding any court must do to
resolve the issue of BIDS fees, and that the BIDS fee assessed
was “unworkable” as found in restitution statute.

No abuse of discretion in district court’s sentencing in this
case. Recognized purposes of sentencing go beyond pure in-
capacitation, and include retribution for Ayers’ other crimes.
Also, sentencing defendants to terms of imprisonment they
are unlikely to serve is common.

STATUTES: K.S.A. 2017 Supp. 21-6604(b)(1); K.S.A.
2005 Supp. 22-4513, -4513(b)

CONSTITUTIONAL LAW—EVIDENCE—FOURTH
AMENDMENT—SEARCH AND SEIZURE
STATE V. DOELZ
LEAVENWORTH DISTRICT COURT—
REVERSED AND REMANDED
COURT OF APPEALS—REVERSED
NO. 113,165—JANUARY 11, 2019

FACTS: Investigating a recent bank robbery by two black
males, the officer stopped a vehicle in which Doelz was a pas-
senger. Officer seized a box he observed on the back seat.
When opened, the box contained a digital scale. Metham-
phetamine was then found in search of the vehicle. Doelz
arrested and convicted on drug charge. He appealed, claim-
ing district court erred in denying motion to suppress evi-
dence obtained in an unlawful search. Doelz argued in part:
(1) the investigatory detention was unlawfully extended once
officer discovered all in the car were white males; (B) officer
unlawfully seized the digital scale without a warrant or a valid
exception to the warrant requirement; and (c) officer lacked
probable cause to search the whole vehicle. Court of appeals
affirmed in unpublished opinion. Doelz’s petition for review
granted.

ISSUE: (1) Lawfulness of vehicle search

HELD: Under totality of the circumstances which included
a report the bank robbery car was driven by a white male,
reasonable suspicion for the investigatory detention was not
unlawfully extended. However, the search of the box retrieved
from the back seat was unlawful. Plain-view exception did
not permit further search of the box without a warrant or an-
other established exception. Absent consideration of this al-
leged drug paraphernalia seized from the vehicle at the time
of the stop, the remaining circumstances were insufficient to
establish a fair probability the vehicle contained contraband.
District court thus erred in finding the automobile exception
to the warrant requirement applied. Panel’s decision to affirm
the district court’s denial of the motion to suppress is reversed.
Matter is reversed and remanded for a new trial.

STATUTE: K.S.A. 22-2402
STATE V. GONZALEZ-SANDOVAL  
LYON DISTRICT COURT—AFFIRMED  
COURT OF APPEALS—REVERSED  
NO. 114,894—DECEMBER 21, 2018

FACTS: Gonzalez-Sandoval was convicted of aggravated indecent liberties with a child. During jury selection he raised a Batson challenge to State’s peremptory strike of one of three potential Hispanic jurors (T.R.). In response, State pointed to T.R.’s avoidance of eye contact and failure to disclose her involvement in two cases. District court found eye contact reason insufficient, but denied the challenge finding T.R. not being truthful was a race-neutral reason. During trial, State admitted discovering the case-specific reasons it cited were not factually correct, but said T.R. failed to disclose she was a witness in a third case. District court found T.R.’s untruthfulness was still a race-neutral reason for striking T.R., and found State honestly believed the factual basis first offered for its strike. Gonzalez-Sandoval appealed on issues including his Batson claim. A divided court of appeals panel reversed on that issue, finding circumstances showed the peremptory strike was not race neutral, and district court abused its discretion in denying the Batson challenge. 153 Kan. App. 2d 536 (2017). State’s petition for review granted.

ISSUE: (1) Batson challenge

HELD: Batson and U.S. Supreme Court cases applying it are reviewed. Here, Gonzalez-Sandoval satisfied Batson’s first step by making a prima facie showing that the peremptory challenge was based on race. Batson’s second step satisfied by trial court’s factual finding that T.R.’s lack of candor stated a race-neutral reason for striking T.R., and by trial court’s credibility determination that prosecutor honestly believed the information first presented to the court was true. But Gonzalez-Sandoval, by failing to provide any evidence or argument that State’s race-neutral justification was pretext, did not satisfy Batson’s third step. Judgment of court of appeals is reversed. Trial court’s judgment is affirmed.

STATUTES: None

CRIMINAL PROCEDURE—DISCOVERY—MOTIONS—STATUTES  
STATE V. ROBINSON  
SEDGWICK DISTRICT COURT—AFFIRMED  
NO. 116,650—JANUARY 11, 2019

FACTS: Robinson was convicted of capital murder and other crimes. Life prison term without parole imposed with a 247 additional months. Convictions and sentence affirmed in direct appeal. 293 Kan. 1002 (2012). He filed 2015 motion under K.S.A. 60-237 citing Brady v. Maryland, 373 U.S. 83 (11963) and Giglio v. United States, 405 U.S. 150 (1972), to compel exculpatory discovery of detective who had testified at his trial. District court denied the motion finding no rule of criminal procedure allowing for such a motion, and the State had asserted there was no such information to produce. Robinson appealed.

ISSUE: (1) Post-conviction motion

HELD: District court’s decision is affirmed. Nothing in K.S.A. 2015 Supp. 60-237 permits a postconviction motion to compel discovery in a criminal case.


CONSTITUTIONAL LAW—CRIMINAL PROCEDURE—MOTIONS—STATUTES  
STATE V. SAMUEL  
WYANDOTTE DISTRICT COURT—AFFIRMED  
NO. 116,423—JANUARY 11, 2019

FACTS: Samuel was convicted of second-degree murder. Nineteen years later, citing Miller v. Alabama, 567 U.S. 460 (2012), and Montgomery v. Louisiana, 136 S.Ct. 718 (2016), he filed motion to correct an illegal sentence and claiming his life sentence with mandatory 10 year terms violated the Eighth Amendment because he was 16 years old when he committed the crime. District court summarily dismissed the motion, holding a motion to correct an illegal sentence was not a proper vehicle to challenge a sentence as unconstitutional. Samuel appealed.

ISSUE: (1) Motion to correct an illegal sentence

HELD: District court’s judgment is affirmed. Samuel’s Eighth Amendment claims do not fit within the definition of an “illegal sentence.” They do not implicate the sentencing court’s jurisdiction, and a motion to correct an illegal sentence under the statute cannot raise claims that the sentence violates a constitutional provision.

STATUTES: K.S.A. 2017 Supp. 22-3504(3), -3601(b) (3)-(4); K.S.A. 22-3504, -3504(1); K.S.A. 1996 Supp. 21- 3402(a)
FACTS: Stephens and Lewis were long-timeclose friends who had several joint business ventures. One of those ventures was a partnership, although it was an oral arrangement with no partnership agreement. In 1995, they built a cabin together that was used for hunting and recreation. Both the cabin and the land around it were owned in both names as joint tenants with rights of survivorship. By the early 2000s the duo’s partnership was dissolved and the friendship was severely strained. Stephens died in 2013, and the hunting cabin was soon the subject of litigation as both Stephens’ and Lewis’ families claimed exclusive ownership. Lewis claimed ownership under the joint tenancy. Stephens claimed the cabin was partnership property that had previously been distributed solely to Stephens. A suit was brought, and the district court found that the cabin was never partnership property, meaning that ownership was governed by the deed. Because the cabin was owned jointly with a right of survivorship, it awarded sole ownership to Lewis. Lewis died in 2017, and Stephens’ estate appealed.

ISSUE: (1) Whether property was an asset of the partnership

HELD: Because there was no written partnership agreement between Stephens and Lewis, the Kansas Revised Uniform Partnership Act applies. There was conflicting evidence presented to the district court and sufficient evidence to support both sides of this debate. There was substantial competent evidence to support the district court’s finding that the cabin and all of the land were purchased with personal funds, triggering the statutory presumption that the property was separate from the partnership. This presumption was not sufficiently rebutted, which means the district court must be affirmed.

STATUTE: K.S.A. 56a-101(f), -204, -204(c), -204(d)

FACTS: Garetson Brothers owns water rights in Haskell County. It sought injunctive relief to prevent American Warrior, Inc.—the nearest junior rights holder—from impairing its water right. A referee found that American Warrior was substantially impairing Garetson’s senior right and entered a temporary and then a permanent injunction prohibiting American Warrior from exercising its junior water rights. American Warrior appealed.

ISSUES: (1) Subject matter jurisdiction; (2) scope of the notice of appeal; (3) grant of permanent injunction

HELD: The amendments to K.S.A. 82a-716 and -717, which require a party to exhaust administrative remedies before seeking an injunction, did not apply retroactively in this matter. The court has subject matter jurisdiction to hear the merits of this appeal because American Warrior was not required to exhaust administrative remedies. In this civil case, the court only has jurisdiction to consider rulings which were specifically listed in the notice of appeal. The notice of appeal did not contain any “catch-all” language that would permit the court to consider additional rulings. A senior water right is still impaired even if the right holder has permission to pull water from a third party. There is no requirement that economic conditions be considered when determining whether a senior rights holder’s usage is impaired. There is no evidence that Garetson had unclean hands in its prior water usage.

STATUTES: K.S.A. 2017 Supp. 60-102, -2103(b), 82a-701(d), -716, -717a; K.S.A. 82a-711(c), -716, -717a, -725

FACTS: Nash filed a medical malpractice action against Dr. Blatchford. Dr. Blatchford moved for summary judgment, claiming the district court lacked jurisdiction because Dr. Blatchford works for a municipal hospital, and Nash failed to file a written notice of claim, as required by K.S.A. 12-105b(d), prior to filing suit. Because the two-year statute of limitations had expired, Dr. Blatchford argued that Nash’s claim was time-barred. The district court granted the motion and Nash appealed.

ISSUES: (1) Did Nash’s claims fall under the Kansas Tort Claims Act, requiring him to file a notice of claim under K.S.A. 12-105b(d); (2) do the 2015 amendments to K.S.A. 12-105b(d) apply to Nash’s claim; (3) do the 2015 amendments deny equal protection to victims of medical malpractice committed by doctors employed at municipal hospitals

HELD: The notice of claim requirement in K.S.A. 12-105b(d) is jurisdictional. The health care provider exception found at K.S.A. 75-6115(a) excludes from liability claims
based upon the rendering of professional services by a health care provider. But subsection (a)(2) of the statute gives exceptions to the exclusion and includes claims made against a hospital owned by a municipality "and the employees thereof". It is undisputed that Dr. Blatchford works at a hospital owned by a municipality. Under the Knorp test, Dr. Blatchford is an employee of his hospital, not an independent contractor, and the notice of claim requirement applies. The prior version of K.S.A. 12-105b(d) did not apply to employees of municipalities. The amendments apply to Nash’s claim because he had a reasonable amount of time after the amendments’ effective date to comply with the notice requirements. There is a legitimate government interest in giving a municipal hospital notice of a claim against one of its employees.

CONCURRENCE: (Atcheson, J.) The majority reached the correct result but erred by giving too much weight to Dr. Blatchford’s employment contract. The panel should not have imposed a “gatekeeper requirement” on the equal protection claim by looking too closely at whether Nash was similarly situated to other malpractice plaintiffs.

STATUTES: K.S.A. 2017 Supp. 12-105a(h), -105b, -105b(d), 40-3403(h), 75-6102(d)(1), -6102(d)(2)(B), -6115(a), -6115(c)(3), -6115(c)(4); K.S.A. 12-105b(d), 40-3401(f), -3403(h)

JUDGMENT—LAW OF THE CASE IN RE MARRIAGE OF GERLEMAN DOUGLAS DISTRICT COURT—AFFIRMED IN PART, REVERSED IN PART, AND REMANDED NO. 117,913—DECEMBER 28, 2018

FACTS: After the parties filed for divorce, the decree addressed the division of marital property, including the difficult issue of Robert’s military retirement pay. That ruling was appealed, and the court of appeals remanded for clarification on the correct formula to use when dividing the amount between the parties. While the remand was pending, Robert filed for relief from the judgment by arguing that the divorce decree was void because there was no valid agreement between the parties. Robert also specifically challenged the maintenance award that was in the decree. The district court denied the voidness argument as barred by the law of the case. The district court denied Robert’s claim that maintenance should be modified, holding that the decree adopted the parties’ agreement on that issue. Because Robert was in arrears on maintenance, the district court held him in contempt. Robert appealed.

ISSUES: (1) Application of law of the case doctrine to a void judgment; (2) contempt finding; (3) modification of the decree; (4) ability to modify maintenance

HELD: Robert could have raised the issue of the validity of the judgment in the first appeal, but he did not. In order to avoid the bar of the law of the case doctrine, all issues—including voidness—that could have been raised in a prior appeal will not be considered in a later appeal. The maintenance and property settlement provisions of the divorce decree are valid, which means the contempt finding was also valid. The law of the case doctrine and the record on appeal show that Robert’s arguments about the division of his military retirement pay are not properly before the court. There is no mention in the divorce decree that the parties reached an agreement on maintenance. For that reason, the district court erred by denying Robert’s motion to modify solely on statutory grounds. The district court must consider the merits of Robert’s motion to modify maintenance.

STATUTE: K.S.A. 2017 Supp. 23-2712, -2712(b)

DIVORCE—JUDGMENTS IN RE MARRIAGE OF STROM RILEY DISTRICT COURT—AFFIRMED NO. 118,676—JANUARY 11, 2019

FACTS: The Stroms married in 1986 and divorced in 1995. At the time of the divorce, Eric was retired from the military and was receiving military retirement benefits. In the property settlement agreement, Eric agreed to give Christina a portion of these retirement benefits. Although the agreement was incorporated into the divorce decree, Eric never made any of the required payments. Almost 22 years later, Eric moved to have the district court declare this division of his military retirement pay a void and unenforceable judgment. He claimed the judgment was dormant because Christina failed to file a renewal affidavit within five years of the divorce and did not revive the judgment within seven years of the divorce. Christina countered by moving to enforce and revive the judgment. The district court agreed with Christina and held that any payment due after September 1, 2010, was revived and enforceable. Eric appealed.

ISSUE: (1) Ability to revive the judgment

HELD: Because Eric and Christina were not married for 10 years, she was unable to file a QDRO and obtain direct payment from the military finance center. The only way the judgment could have been fulfilled was by direct payment from Eric. These payments had to be treated like monthly installment payments. As such, the dormancy period for each individual payment started when it became due and collectable. Christina can now execute on the last five years of judgments and can revive the judgments for the two years preceding that.

DISSENT: (Buser, J.) Christina had an obligation to attempt to enforce her judgment. Because she didn’t, the judgment is unenforceable and should be extinguished.

STATUTE: K.S.A. 2017 Supp. 60-2403, -2403(a)(1), -2403(c)
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Overland Park/Corporate Woods Law Firm. Jones & McCoy, PA. seeking experienced associate attorney with 3+ years of civil litigation experience in business, estates and trust, family law, personal injury and other civil matters. Must have Kansas and Missouri licenses. Great opportunity for the right person to learn and grow their practice. Please send cover letter and resume to brant@jones-mccoy.com.

Part-Time Legal Assistant. A private law firm in Topeka has an immediate opening for a qualified Legal Assistant processing collections. Experience in general office administration required and legal office experience is preferred. Only applicants meeting specific criteria will be considered; please contact for duties and requirements. Please send resume and cover letter for consideration to the attn. of Alisia at info@probasco-law.com or via fax (785) 233-2384.

Wichita Firm Seeks Associate Attorney. Morris, Laing, Evans, Brock & Kennedy, Chtd. is seeking an associate attorney for our expanding Oil and Gas practice in our Wichita office. 1-5 years of experience in traditional oil and gas matters is preferred. Litigation experience is a plus. Strong academic credentials, excellent verbal and written communication skills, and an ability to initiate and support business development efforts is required. To apply, please send a cover letter and resume to Sarah Briley (sbriley@morrislaing.com).

Wichita Law Firm Seeks Associate Attorney. Downtown Wichita law firm seeks to hire an associate attorney to work on all aspects of family law cases. The associate may be given an opportunity to develop a practice outside of the family law area. Interested candidates are asked to send their resume and cover letter to tlegrand@slwc.com.

Attorney Services


Contract brief writing. Experienced brief writer is willing to take in appellate proceedings for any civil matter. Attorney has briefed approximately 40 cases before the Kansas Court of Appeals and 15 briefs before the Tenth Circuit, both with excellent results. If you simply don’t have the time to help your clients after the final judgment comes down, call or email to learn more. Jennifer Hill, (316) 263-5851 or email jhill@medonaldtinker.com.

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Need Experienced Help Meeting a Deadline? Have an experienced attorney (25+ yrs.), with superior writing skills, successful track record, and excellent work history (small and large firm), assist you on a contract basis. Available to prepare Dispositive Motions, other motions, trial court and appellate Briefs, pleadings, probate/estate planning documents; also available to assist
with Research, discovery requests and responses. Quality work; flexible. Experience includes litigation, wills/trusts, probate, debt collection, bankruptcy, contracts, domestic. Contact me at m-ksmolaw@outlook.com to discuss.

QDRO Drafting. I am a Kansas attorney and former pension plan administrator with years of experience in employee benefit law. My services are available to draft your QDROs, communicate with the retirement plans, and assist with qualification of your DROs or other retirement plan matters. Let me help you and your client through this technically difficult process. For more information call Curtis G. Barnhill at (785) 856-1628 or email cgb@barnhillatlaw.com.

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Office 1) Large window with large ledge; Office 2) Storage closet and large picture window. *Coffee bar, waiting area and receptionist/paralegal area. *Fax, Wifi and ground floor parking. Call Chris Fletcher: (913) 390-8555

Large office space now available at One Hallbrook Place in Leawood, KS. Two conference rooms, kitchen, high-speed internet, postage services, copier/fax all included. For more information or to schedule a viewing, contact Bryson Cloon at (913) 323-4500

Leawood Law Office. Two partner-size offices and interior office available for sublease. Conference room, phone system, internet, high-speed copier/printer, and lunchroom also available. Plenty of surface parking. In a great area in south Leawood—bright and modern space on second floor of bank building. Also willing to consider work-sharing arrangements. Contact Paul Snyder (913) 685-3900 or psnyder@snyderlawfirm LLC.com.

Office for Rent. 12’ x 15’ office space for rent at 1-435 and Nall Ave., Overland Park, Kansas. Receptionist provided. Internet access and conference rooms are available. Rent $850 per month, with the possibility of trading rent for work on some cases. Possibility for referrals from three other attorneys in the suite. For more information, contact Samantha Arbegast at 913-652-9937 or sc@theronanlawfirm.com.

Office space available on Ward Parkway in south Kansas City, Missouri. This is a great location for attorneys licensed in MO & KS. Large suite with 12 offices with two conference rooms. There are 3 available offices. Full services provided, including phones answered, internet, supplies, and copier. Contact Kevin Hoop at 816-519-9600 or k hoop@kevinhooplaw.com.

Office Space for Lease, Corporate Woods. Approximately 1,300 sf available on top floor of building with a view. Easy location to meet clients, with access to a conference room designed to impress. Comes with all the amenities of a working law firm; witnesses, notaries, fax/copy machine, internet, phone, etc. Please contact Tim Winkler at 913-890-4428 or tim@kcelderlaw.com.

Overland Park Law Office. Two offices available at 134 N. WYCO Office Suite available

Leawood Law Office. Two partner-size offices and interior office available for sublease. Conference room, phone system, internet, high-speed copier/printer, and lunchroom also available. Plenty of surface parking. In a great area in south Leawood—bright and modern space on second floor of bank building. Also willing to consider work-sharing arrangements. Contact Paul Snyder (913) 685-3900 or psnyder@snyderlawfirm LLC.com.

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