Cemetery Trusts: Law Changes to Address Impairment
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Protecting Humanity
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SAVE THE DATE

KBA Annual Meeting
June 20-21, 2019
Capitol Plaza Hotel
& Convention Center
Topeka

Hotel Reservation Information
The KBA has secured a room block with the Capitol Plaza Hotel from June 18 to June 22. Pricing for single/double occupancy is $107.

Please make your reservations at the link below:
https://go.ksbar.org/am19hotel-reservation

OR call the hotel directly at 785-431-7200
(please mention you are part of Kansas Bar Association or group code KBA19).

March...Spring...OPTIMISM

by Shelby L. Lopez
Executive Director

We all know that March is the month of leprechauns, shamrocks, spring coming in like a lion, setting clocks forward, International Earth Day and the first day of Spring. But did you know that March is also Optimism Month?

As I think about optimism, I am reminded of one core value that guides my interpersonal relationships at the KBA: “expect the best.” The spirit of this value is to remember that deep down everyone is trying to come from a positive place, and that even though we may not always agree with each other, it is an opportunity for further discussion and collaboration. I lean heavily on this core value to guide me through decisions and the way I regard people. This is more than “hoping for the best.” It’s about anticipating a better future, and it implies a certain amount of perseverance and a belief that a positive outcome is possible—even when things appear impossible.

I’m optimistic about the future of the Kansas Bar Association; I’m optimistic about our Board of Governors, our team, our members, our partners—and I’m optimistic about our ability to collectively meet the unique and evolving needs of the Kansas legal community.

I’m encouraged by the affirmation I have received as I have interacted with our community over the last two months. So many good people have reached out to share a connection or tell me how impressed they have been with a team member, a section leader, a young lawyer, etc. I’m coming in with the benefit of a tremendous foundation. The KBA has been very blessed to have a tremendous team of people who have remained steadfast in providing the highest level of service with passion and enthusiasm. My goal is to continue to help those individuals be in a position to succeed by applying three basic tenets going forward: inclusiveness, innovation and collaboration in programming and service to our members, our profession, and our community. By looking at ideas and issues with a positive eye and an open mind, we can see the good in things and people first, and foster an environment of optimism, even in the toughest of situations.

Yes, March is Optimism Month, but I plan to use the month as an opportunity to build my tendency toward grounded optimism, and reap the many benefits that come from this thinking throughout the year. I urge you to nurture your optimism as well. We are kind and conscientious people. However, we’re often too quick to criticize ourselves and our worthy organization. Of course, we have challenges—as all organizations do; but we can’t shy away from them. We must recognize our very real challenges as the first step in overcoming them, and practice optimism in envisioning a future that allows us to look at each situation uniquely and not assume the worst in both situations and people.

Let’s look toward the horizon knowing that all we encounter offers the chance to be optimistic. Let’s focus our conversations on optimistic subjects and turn challenging issues into opportunities. When we hear an optimistic story, let’s share it with others. Let’s encourage possibility thinking. And finally, let’s put our optimism on display for others; it’s delightfully contagious!

“A pessimist sees the difficulty in every opportunity; an optimist sees the opportunity in every difficulty.”
- Winston Churchill
Beware the Ides of March
Sign up for a CLE!

LIVE:
2019 Spring Oil, Gas & Mineral CLE
March 8, 2019
Hays, Kansas

Bankruptcy and Insolvency CLE
April 5, 2019
Robert L. Gernon Law Center, Topeka

Family Law CLE
April 19, 2019
Double Tree by Hilton, Lawrence

Elder and REPT Conference
September 26 & 27, 2019
Four Points by Sheraton, Manhattan

Webinars:
Lies, Damn Lies & Legal Marketing • 3/6/2019
If You Can’t Say Something Nice, Shut Up! • 3/12/2019
Don’t Try This At Home • 3/19/2019
How To Be Your Own Private Investigator
With Pay Investigative Research Databases • 3/20/2019
Using Free Public Records and
Publicly Available Information for Investigative Research • 3/22/2019
Legal Ethics Is No Laughing Matter • 3/26/2019
Microsoft Word Power Hour • 3/28/2019
Practice Management Tips for the
New and Not-So-New Attorney • 5/17/2019

To Register: www.ksbar.org/CLE
Immerse Yourself in the Kansas Bar

by Sarah E. Warner

The first time I attended an Annual Meeting of the Kansas Bar Association was almost two years into my practice. The meeting was located in Overland Park, and I went because the KBA had scheduled a “Meet the Justices” cocktail hour focused on introducing young lawyers to the Kansas Supreme Court. I talked a handful of attorneys who worked with me at the Court at the time into coming to the event, thinking it would be funny since we saw the justices every day.

What I didn’t expect was the thrill I experienced from being at the meeting itself. My professional circle at that time had been fairly close. I knew the attorneys and judges who worked at the Kansas Judicial Center in Topeka, and I was familiar with several attorneys who regularly argued cases and knew a handful of others. But the KBA Annual Meeting was my first opportunity to appreciate the strength of the Kansas bar. This was an event focused on bringing together lawyers from across the state—lawyers in big firms and solo practices, lawyers from Kansas City to Dodge City, Goodland to Pittsburg. I met people from areas of practice whose paths I would never otherwise meet: immigration lawyers, transactional and M&A professionals, adoption attorneys.

I’ll be honest. I don’t recall any of the programs I attended at that meeting (other than the justices meet-and-greet). But I will never forget feeling the magnitude—the buzzing excitement—of our profession. And many of the people I met at that first KBA Annual Meeting have become close friends—not to mention sounding boards on difficult issues and reciprocal professional referral sources.

Since that time, I’ve made it a point to put the KBA Annual Meeting on my calendar. Each year, it’s an excellent opportunity for me to revitalize my perspective and put my focused practice in broader context. Attendance at these meetings varies from year to year, but I know that I will always reconnect with friends and colleagues I only see at this event. I meet new colleagues, too, and catch up on news of friends who have retired, moved or passed away. In short, the meeting is a thumbnail of the entirety of Kansas practice, condensed into about 48 hours. I love it.

With this as perspective, I personally invite you to attend our KBA Annual Meeting this year—to be held June 20-22 in Topeka. Our planning committee, chaired by KBA Secretary/Treasurer Cheryl Whelan, has devoted countless hours to
making this the best meeting in recent memory, and I couldn’t be more proud. Marketing will start soon, but now is an excellent time to provide a sneak-peek at some of their efforts.

• With the meeting in our state capital, the Annual Meeting will showcase many of the lawyers and officials who help run our state. Over the course of the meeting, we’ll hear from legislators and cabinet members, justices and judges. We’ll learn from prominent lawyers who helped guide state policy, having held positions of Solicitor General and Chief Counsel. I’m confident that these presentations will inspire us, but also demonstrate our similarities and camaraderie as attorneys who counsel clients through difficult and complex choices.

• The meeting presents ample opportunity to network with other attorneys and celebrate our profession. Friday evening, we’ll be treated to the Bar Show—an evening of music and satire from the lawyers of the Topeka Bar Association, who ensure me the past year has provided ample fuel for creativity. Following the show, attorneys and their families are invited to spending the evening at The Pennant (thepennanttopeka.com), with its vintage arcade games, bowling alley, and great food and drinks.

• On Friday, you will choose from presentations in several tracks of programming designed by our KBA Sections—information that you can put to work on Monday when you’re back in the office. While the presentations feature perennial favorites such as case law updates and various ethics topics, you will also gain information relevant to your particular area of practice, or to another area of practice you want to develop, from experts in the field; topics from What General Practice Attorneys Need to Know about Immigration, to Legal Writing in the Era of Electronic Filing, to the Interplay of Civil and Criminal Practices, to what I know will be an animated discussion of Religion and the Law.

• For younger lawyers (or anyone looking to hone their practice skills), the programming will not be merely theoretical, but will include practice pointers and workshop training on how to more effectively represent your clients in court—training provided by attorneys who have tried and argued dozens of cases. In an era of shrinking court appearances and trials, this type of training is invaluable.

• We are bringing back traditionally popular events, such as a Golf Tournament on Thursday and the Foundation Dinner (with a new twist—at the Evel Knievel Museum) on Thursday evening—but we are also starting new traditions. For example, if golf isn’t your thing, your registration provides you the opportunity to attend two additional hours of CLE on Thursday, including another hour of ethics credit. On Thursday afternoon, everyone is invited to Hors D’Oeuvres with the Honorables, where—just as at the first meeting I attended—you’ll have the opportunity to get to know our appellate and federal judges. And you can also join me earlier on Thursday for [drum roll] yoga with baby goats! After all, one of the most important parts of being a lawyer is navigating the balance between the stresses of our professional lives and our personal wellbeing.

• The KBA Annual Meeting is family friendly. We know your time away from the office is precious, and we encourage you to bring your family to join us. There are a number of events in the evening geared toward the whole gang. And while attorneys attend the meeting’s programming, the KBA has organized tours of the Kansas State Capitol and the Brown v. Board of Education sites (2019 is the 65th Anniversary of that landmark decision). Families will also be encouraged to participate in a Scavenger Hunt featuring local Topeka businesses and other area locations.

If you have questions, or if you or your firm would like to know how you can support the 2019 KBA Annual Meeting through sponsorships, please don’t hesitate to contact me, Cheryl Whelan, or our Associate Executive Director Deana Mead. We’d love to talk with you about how you can get more involved. One particularly exciting opportunity to consider is paying $150 to sponsor a young lawyer whose firm or position will not pay for his or her attendance. (If you’re one of these young lawyers looking for a way to attend, contact your Young Lawyers Section President Sarah Morse to learn more.) After all, our meeting—our profession—is enhanced with every person who participates and adds their voice to the discussion.

I know this year’s Annual Meeting will be a fabulous experience—professionally and personally. Put the meeting on your calendar, and join us in Topeka in June. Come experience for yourself the excitement of immersing yourself in the Kansas bar. I can’t wait to see you.

About the KBA President

Sarah E. Warner is an attorney at Thompson Warner, P.A., in Lawrence, and teaches Conflict of Laws and Appellate Practice at Washburn University School of Law. She and her husband Brandon (an administrative patent judge with the U.S. Patent and Trademark Office) call Lenexa home with their dog Kolbe, who has serious concerns about who is going to herd all those baby goats.

sarah.warner@333legal.com
I begin this month’s column with a question: What is your legacy?

This is not a rhetorical inquiry.

Before you respond, carve out, if you can, your life’s contributions as a brother sister, mother or father.

My question is directed to your contributions as a member of this community we call the Kansas bar. Have you left a mark as you have traveled down the road of the billable hour? Have you made a meaningful difference in the life of a client? Of a cause? This is the question I am posing to myself on this bitterly cold, windswept February morning.

It seems that I am in a melancholy mood these days. I suppose it has to do with the fact that I have attended far too many funerals the past year and not near enough weddings, baptisms and first communions. I have spent too much time walking through cemeteries with a heavy heart and remembering the lives of those who left us.

I have also spent time driving between Johnson and Barton County and pondering my legacy and that of my dad, now in the twilight of his life.

So back to my question.

For context, consider how someone like Gene Balloun might reply. Gene has represented over a thousand children in adoption hearings—assisting them in finding permanent, loving homes. Or what would Kansas City attorney Cheryl Pilate, a 1990 KU Law graduate would say? Cheryl helped free Darryl Burton—a man who spent 24 years in prison for a crime he didn’t commit. Burton was convicted of capital murder in the City of St. Louis in less than an hour, in a case with neither physical evidence nor motive.

And then there is you, and there is me.

Even small achievements can move the needle in a material way. Legacies can be forged one day, one hour at a time. It may be a pro bono client or cause. It may be a change in the law, in the common law precedent to level the playing field.
Last month, while back in my hometown, I was staying in the house where I grew up; I came across a box of old letters. They were left in the corner of the basement, assembled in a large brown envelope. It included handwritten exchanges between my parents from the 1950s. Thoughtful notes none of my siblings had ever read. In the mix were letters from my mother’s Mennonite parents—Jacob and Olga Goering—who lived in Kingman. As I opened and read each one, the time passed. There were many more keepsakes, including a letter to the Office of the Registrar at Conception Seminary dated February 4, 1950, from Rev James Tainter, Pastor at St. Francis Xavier Church in Seward, Kansas, attesting to the good moral character of one of the parishioners who was answering “the call.”

That calling was short-lived, obviously. Dad left, and met one Ramona Goering.

And in the mix was a letter from the Williams family from Knoxville, Tennessee, directed to that former seminarian. For three years after law school, dad served in the JAG Corps. Stories of those years filled many dinner conversations at that house in Great Bend. It has also given me fodder for columns in this space like the story of the Solomon brothers. Identical twins where only one was charged. The other took a place at the defense table. Let’s just say there were issues with identifying the right defendant.

So I opened that letter from Mrs. Williams, read it slowly, read it again, and retreated upstairs to inquire of the now retired counselor.

“Back then, Fort Riley was sent court martial cases from a seven state area. Often our clients were young kids who just made a mistake. They did something stupid. But to be court martialed was a life-long stain. You often could not get a job anywhere. I don’t remember him specifically but it appears we had a good result. Your mom probably saved that letter because what we did was very meaningful to his family. And meaningful to your mother. I got letters like that from time to time.”

“I feel very indebted to you for the way you helped my son…”

To most of our clients, there are no small victories. Something to keep in mind in times like these.

About the Author

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

mkeenan@shb.com

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Of Counsel to Fisher, Patterson, Sayler, & Smith, LLP
Young Lawyers on the National Stage

by Sarah Morse

Each month, I try to showcase how the Kansas Bar Association (KBA) Young Lawyers Section (YLS) contributes to the practice of law in Kansas. Whether it is through organizing and hosting mock trial tournaments for high school students, helping law students find externships with judges across the state, or facilitating mentorship opportunities for Kansas’ newest attorneys, you have heard how the KBA YLS works hard to improve the profession for young attorneys and the entire Kansas bar. You may not, however, be aware of how many Kansas young lawyers represent our state in national bar association activities, particularly with the American Bar Association (ABA) Young Lawyer Division (YLD).

By attending ABA meetings and participating in ongoing committee activities, Kansas young lawyers are leaving their mark on the national bar association. At each ABA meeting, a Young Lawyer Division Assembly is held. Each state has delegates who are permitted to attend and debate and vote on various resolutions and initiatives that are proposed by committees. This year, Kansas has two delegates and, in addition, our district representative is from Kansas, effectively giving Kansas three votes at the Assembly.

While the individual delegates may change from meeting to meeting, our district representative is the same all year. Rick Davis, Overland Park, Kan., is the ABA YLD District 22 Representative, serving Kansas and Missouri. He also serves as the American Bar Association Liaison to the KBA YLS and, in that role, sits on the Executive Committee of the KBA YLS. Rick has done a tremendous job of highlighting opportunities for Kansas young lawyers to get involved at a national level. And Rick should know, because he also is the Young Lawyer Real Property Liaison to the Real Property, Trust and Estates Section of the ABA. Rick often reminds our YLS members that “they are always looking for volunteers!” If you know of any young lawyers who are looking to get involved in the ABA with either the young lawyers or a larger committee, be sure to have them contact Rick!
At the most recent ABA mid-year meeting in January in Las Vegas, Nev., the young lawyer delegation from Kansas, which included Rick and Josh Decker, Topeka, Kan., had opportunity to debate and vote on a variety of proposed resolutions. Debates were held for proposed resolutions addressing the following topics:

- Whether to urge state supreme courts to study and adopt proactive management-based regulatory programs to assist lawyers and law firms to develop and maintain ethical infrastructures;
- Whether to oppose laws that would authorize certain school personnel to possess a firearm in or near schools;
- Whether to concur with the Council of the Section of Legal Education and Admissions to the Bar in making amendments to the ABA Standards and Rules of Procedure for Approval of Law Schools;
- Whether to oppose the withholding by the Executive Branch of funds previously appropriated by Congress for disaster relief and recovery, or their diversion for other purposes, including but not limited to construction of a border wall with Mexico and reaffirming the ABA’s support for the Principles of Rule of Law in Time of Major Disaster.

Other resolutions voted on through consent agenda ranged from asbestos importation to encouraging Congress and other federal, state, and local entities to study the psychological impacts of racism, poverty, and high crime, to provide lactation areas in courthouses, and to allow a motion for continuance based on parental leave of either the lead attorney or another integrally involved attorney; among others. As this list demonstrates, the YLD Delegates grapple with some of the most current and hot-button issues facing our profession and government.

Participating at the YLD assembly provides the opportunity to contribute to these important discussions and debates. Young lawyers are able to get public speaking and debate experience in serving as the assigned Pro or Con speaker for a particular resolution, but there is also opportunity for other attendees to voice their support or opposition to a resolution. Perhaps one surprising side benefit to participating at the YLD Assembly is the exposure to parliamentary procedure and Robert’s Rules of Order. Additionally, networking opportunities at the ABA meetings abound from formal dine-arounds for young lawyers to receptions and other social activities.

Two other Kansas attorneys serve in national roles with the ABA. Jamie Davis, Mission, Kan., serves as the ABA YLD Assembly Clerk. The Assembly Clerk is an elected officer of the ABA YLD and ascends to the position of Speaker after she serves as clerk. Joslyn Kusiak, Independence, Kan., serves as the Kansas Bar Association Young Lawyer Delegate to the American Bar Association House of Delegates. Young Lawyer Delegates serve the same role as other delegates from Kansas, and vote on proposed resolutions which then establish the positions of the ABA. The ABA speaks for more than one million lawyers throughout the country, and Joslyn and the other Kansas delegates are helping the voices of Kansas lawyers be heard.

The KBA is fortunate to have so many dedicated young lawyers representing our interests on the national stage, and we would love to see more! The 2019 YLD Spring Conference is in Washington, D.C., May 2-4, so opportunities to get involved are approaching. If you have any interest in representing Kansas with the ABA as either a delegate or in another capacity, or if you know of a young lawyer who you think might have interest, please reach out to me or Rick to discuss possible options for national participation.

About the Author

Sarah Morse serves as the Kansas Bar Association’s Young Lawyer Section President. She is Corporate Counsel at FHL 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.

Sarah.Morse@fhlbtopeka.com
As the 2019 Kansas Legislature began, I found myself thinking about my status as a lawyer and what this means. For the first time since 2008, I am not working with the legislature. It also marks the first year since 2007 in which I am not actively practicing law. In some ways, my career change may not be surprising because I rarely heap praise on the legal profession. My critique most often comes not from what the profession is, but from its unmet potential. A lawyer’s training in reason and logic is most certainly fallible, but it is also critical for a nation of laws to work wisely.

I was reminded of the critical role of attorneys as I was reading Candice Millard’s book on the assassination of James Garfield, “Destiny of the Republic: A Tale of Madness, Medicine and the Murder of a President”. James Garfield was the unlikely GOP nominee for president who jumped from Ohio Congressman to the White House despite objecting to his nomination for the entirety of the six-day convention. Part of Garfield’s objection to the nomination was that he had already nominated Treasury Secretary John Sherman to fill the role. But during his speech for Secretary Sherman, Garfield so impressed the convention with his words, that he instead secured the nomination and the presidency.

Garfield, a lawyer by training, commented to the split and belligerent convention that “your present temper may not mark the healthful pulse of our people. When your enthusiasm has passed, when the emotions of this hour have subsided, we shall find below the storm and passion that calm level of public opinion from which the thoughts of a mighty people are to be measured, and by which final action will be determined.” It would not be long for Garfield’s words to prove prescient.

After the nomination, the country elected James Garfield to the presidency. The Republican Party of his era suffered a terrible split between the stalwarts and the half-breeds (I’m guessing the stalwarts selected the name of their GOP step-brothers). The stalwarts promoted the spoils system which rewarded government jobs to those with political connections. The half-breeds wanted reform for a merit-based system. Garfield was the latter, yet his unexpected presidency helped transform and unify a public that was still divided and
embittered after the Civil War just fifteen years prior to his presidency.

Unfortunately, Garfield’s unifying effect required not only the sacrifice of public service but also the sacrifice of his life. A man named Charles Guiteau was a stalwart who thought assassinating President Garfield would thrust him into an appointment as American Consul to Paris. Guiteau planned his attack, but the shot failed to kill Garfield on impact. Instead, President Garfield lingered from July 2, 1881 until his death on September 19, 1881.

In the interim, Guiteau resided in the United States Jail in Washington, D.C. There he was protected by General William Tecumseh Sherman, the famous brother of the Treasury Secretary. Many across the country were calling for a hanging or even burning at the stake for Charles Guiteau. Despite the widespread fury, General Sherman—perhaps pulling ideas from his family of lawyers—summed up what it means to be a nation of laws as he requested restraint:

For this man Guiteau I ask no soldier, no citizen, to feel one particle of sympathy. On the contrary, could I make my will the law, shooting or hanging would be too good for him. But I do ask every soldier and citizen to remember that we profess to be the most loyal Nation on earth to the sacred promises of the law. There is no merit in obeying an agreeable law, but there are glory and heroism in submitting gracefully to an oppressive one.

I offer this quote not as a discussion on the time and manner of submitting to oppressive laws. Instead, consider Sherman’s words in the narrow application to the public’s cry to wrench a man out of jail for hanging. Guiteau not only committed the heinous crime; he admitted it. It seemed everyone wanted a blood payment for the offense. Despite this—even amid a period of anger and dissension—the strength of the laws and reason won the day rather than the power of passion. The blood payment was exacted, but not before the due process of trial.

As before, our laws and processes have flaws, as does any human system. Yet lawyers possess a unique training that focuses on reason, logic, and working toward the aspirational goal of being a nation of laws. This sentiment is not to thwart passion but to serve as a check against letting passions run afoot of good sense, ideally developed when passions are not piqued. As Alexis de Tocqueville once observed, “[Democracies] have the propensity to obey the impulse of passion rather than the suggestions of prudence…” When the legal community is at its best, it can offer the voice of prudence amidst passion.

These observations bring me back to my original reflections on not being a part of the 2019 legislative session. Understanding the critical role lawyers play in the legislative process—particularly in a state where fewer attorneys hold office than nearly any state in the United States—gives me a depth of gratitude for those attorneys who continue in the trenches of public policy. The legislature is an environment of passion, and it should be. But it must also be one of reason, which is why the particular training of lawyers is so essential. Even though I am now watching the legislative process from afar, I watch in part to be a responsible citizen, but also to cheer on those who are serving, in hope that the legal profession does its part to help steer the passions of this state and nation toward upright and noble pursuits.

About the Author

Nathan P. Eberline is the Vice President of Operations for the Accreditation Council for Business Schools and Programs (ACBSP) in Overland Park. Eberline previously served on the board of the Young Lawyers Section from 2010-2018, most recently as Past President. Eberline and his wife, Tara (an employment lawyer and partner with Foulston Siefkin, LLP) live in Shawnee with their daughters, Lydia and Grace.
How did you begin to practice law?
My grandfather was an attorney in the State of Missouri. Growing up, I thought I would either be an attorney or a psychologist. Upon receipt of my undergraduate degree, I decided to go to law school and practice family law, allowing me to practice law while also dealing with the psychology of the issues and emotions surrounding this area of law.

How did you decide to focus your practice in family law?
In law school, I took a family law course along with several negotiation and problem-solving courses, concentrating around the psychology of helping others. When I graduated, I realized I wanted to continue with my love of helping others, which led me into the area of family law.

What aspect of the firm are you most proud of?
This Firm focuses its practice on helping others just as I decided I wanted to do at a young age. As part of this goal, we are involved in many charitable organizations, donating time and money to help others in need. To say the least, I am extremely proud of the generosity of this Firm and its involvement in community outreach programs.

Getting to the Merits
Kansas Appeals: Jurisdiction, Preservation and More
by James Latta

Are YOU interested in writing for The Journal? Please see our ad on page 37.
Ten Law Students Benefit from Twelve KBF Scholarships

The KBF expanded its scholarship program in 2019 with two new scholarships. Ten Kansas law students received assistance with costs related to attending law school. New for 2019 is the Equal Justice Scholarship created by former Kansas Bar Foundation president, Katherine L. Kirk, to recognize a female Kansas law student who is a single parent. In addition, the Bruce W. Kent Memorial Scholarship, established by donations from friends of the late Bruce W. Kent, was awarded to recognize a student who intends to practice in central or western Kansas. Kent, who served in numerous leadership roles for the Kansas Bar Association and the Kansas Bar Foundation, passed away on May 15, 2018.

“Providing scholarships to law students is one of the best ways we, as lawyers, can improve our profession. Our scholarships not only reward the hard work and accomplishments of the worthy recipients, but they stand as a testament to the donors’ commitment to encouraging these students’ achievements,” explained Amy Fellows Cline, KBF President and Scholarship Committee Chair.

Equal Justice Scholarship $1,500

This scholarship promotes the practice of law in the state of Kansas by awarding funds to a female student and single parent attending the University of Kansas School of Law or Washburn University School of Law. The recipient must intend to practice in Kansas and have demonstrated involvement in community activities and or law school activities.

Bruce W. Kent Memorial Scholarship $1,000

This scholarship promotes the practice of law in the state of Kansas by awarding funds to a student attending Washburn University School of Law. Applicants must have completed their first year of law school and rank in the upper 50% of their class. Preference is given to students who wish to enter private practice and or intend to practice in communities of central or western Kansas.

Emily J. Young/Washburn University School of Law

Originally from Syracuse, Kan., Young earned a B.S. in physics prior to attending law school. She previously clerked for ABS Legal Advocates in Lawrence, where she helped with veteran’s disability claims. This summer she will clerk for Unite Private Networks in Kansas City, Mo. Last fall, she participated on Washburn’s Negotiation Team at the regional competition. This May, she is expecting her first child and plans on practicing in Kansas following graduation.

“I am extremely grateful to be selected as this year’s recipient of the Equal Justice Scholarship and the Bruce W. Kent Memorial Scholarship. These scholarships ease the financial strain of law school and show the support Kansas Bar Foundation provides to Kansas law students. I am committed to staying in Kansas and hope to serve those that helped make my success possible.”
**Hon. Richard D. and Cindy Rogers Scholarship $1,000**

The scholarship promotes the practice of law in the state of Kansas by annually awarding funds to a student attending Washburn University School of Law to assist with the costs of tuition. The student must have been admitted to law school and must be a Kansas resident, preferably from a rural community. Preference is given to applicants who have displayed perseverance in the pursuit of a legal education, and who share the passion for the law with the late Judge Rogers, a passion as exemplified in community or pro bono service.

**Philip D. Depew/Washburn University School of Law**

Depew, of Neodesha, is in his second year at Washburn University School of Law. Depew graduated with honors from the University of Kansas with a Bachelor of General Studies in Psychology and minors in Business and Classical Antiquity. Depew was selected to participate in the Dane G. Hansen Foundation Rural Externship program at Washburn Law School and worked this past summer in Colby under the supervision of attorney Chris Rohr on a variety of legal matters. Depew serves as the Marshal for the Phi Alpha Delta legal fraternity at Washburn. After graduation and passing the bar exam, Depew is likely to join his father, Douglas D. Depew, in the practice of law in Neodesha, where both his grandfather, Harry Depew, and his uncle, Dennis D. Depew, also practiced law.

“I am honored and thankful to be selected by the Kansas Bar Foundation for the Hon. Richard D. and Cindy Rogers Scholarship. Judge Rogers set an outstanding standard for attorneys and judges in Kansas to follow.”

**Case, Moses, & Zimmerman P.A. Law Student Scholarship $1,000**

This scholarship is intended to go to a future Kansas lawyer attending a Kansas law school, Creighton University School of Law or Oklahoma City University School of Law. This award is specifically given to a second-year student who intends to practice law in the state of Kansas.

**Susan M. Locke/Washburn University School of Law**

Originally from Idaho Falls, Idaho, Locke moved to Kansas to work on a master’s degree in Leadership. In the spring of 2019, she will compete on the TYLA Trial Advocacy Team and Moot Court Team as well as mentor incoming students as a study group leader. She plans to clerk for Hinkle Law, LLC. in Wichita this summer. When not in Topeka attending classes, she enjoys spending time with her husband and two sons on her ranch in Butler County.

"I am immensely grateful to the Kansas Bar Foundation for its support and advocacy of the legal profession. The Foundation recognizes the importance of quality education as well as financial well being. Being awarded the Case, Moses, & Zimmerman Scholarship is not only an honor for me, but is also a reflection of the support I have received from my family, friends, and Washburn University School of Law. I hope I am able to reciprocate the generosity and support to law students in the future.”
The Justice Alex M. Fromme Memorial Scholarship Award $1,000

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

Jeff Pike/Washburn University School of Law

Pike was born and raised in Great Bend, Kan., and earned a B.S. in Business Administration from Kansas State University. A third-year student at Washburn University School of Law, Pike spent both of his summers in law school clerking at Martin Pringle in Wichita and has accepted an offer to work at Martin Pringle after graduation.

“So many people have helped make my success possible and almost all of them have one thing in common—they’re Kansans. I am proud to be a born and raised Kansan, and I look forward to the chance to make a positive impact on this state as a member of the legal community. Thank you, Kansas Bar Foundation, for your generous support during my time in law school.”

Hinkle Law Firm Student Scholarship $2,000

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

Alexander Rindels/University of Kansas School of Law

Rindels grew up in Pittsburgh, Penn., before moving to Oklahoma City prior to high school. He graduated in 2014 with a B.S.B.A. from Oklahoma State University. Following graduation, he worked as a financial planner in the Washington, D.C. area. Rindels is a 3L in the JD/MBA program at the University of Kansas. He currently lives in Wichita with his wife and will work as a law clerk for the Hon. Eric Melgren following graduation.

“I’m very grateful to the Kansas Bar Foundation for awarding me the Hinkle Law Firm Student Scholarship. I cannot express enough how much your financial support means to me. It will have a tremendously positive impact on my life. I plan to emulate your generosity in the future.”
Lathrop Gage Student Scholarship $2,000

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

Maxine S. Thompson Memorial Scholarship $1,000

This scholarship promotes the practice of law in the state of Kansas by awarding a law student, originally from Kansas and attending the University of Kansas School of Law or Washburn University School of Law an annual scholarship. The award recipient must have completed no less than 60 hours toward a law degree and must plan to practice in a rural Kansas area, preferably western Kansas.

Elias Underwood/Washburn University School of Law

Underwood, a 3L, grew up in Lenexa, Kan. He attended the University of Kansas, graduating with a Bachelor of Science in Accounting in 2012. Afterward, Underwood obtained his CPA and worked for PricewaterhouseCoopers in Kansas City for close to four years before returning to school at Washburn Law. Following graduation, Underwood will be joining Foulston Siefkin LLP as an associate in their Wichita office.

“I am honored to have been selected as the recipient of multiple Kansas Bar Foundation scholarships. This generosity will significantly reduce the financial burden of my final semester of law school. I want to thank everyone who made these awards possible and I look forward to joining such an esteemed legal community in the near future.”

Frank C. and Jeanne M. Norton Scholarship Award $2,000

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

Taylon Sumners/Washburn University School of Law

Sumners was born and raised in Aurora, Mo. She earned her Bachelor’s of Science at Nebraska Wesleyan University in Lincoln, Nebraska, then came back to Missouri to work as a legal assistant at the Law Offices of Dee Wampler and Joseph Passanise. She started law school last January, and became involved with Women’s Legal Forum as the Outreach Coordinator and studied abroad with five of her J-Section classmates the following summer. She also studied abroad in Nuremberg, Germany where she learned about international criminal law and the impact of the holocaust on the law by visiting the International Criminal Court, Courtroom 600, and Auschwitz-Birkenau. After volunteering to teach inmates in a maximum security state penitentiary, studying abroad, and working at a firm that specialized in criminal law, she became passionate about criminal law. Sumners plans to pursue a career in criminal law upon graduation.

“I cannot fully express how grateful I am to have been chosen as a recipient of the Frank C. and Jeanne M. Norton Scholarship. Additionally, thank you to the Kansas Bar Foundation and all of the donors whose financial support will do wonders for all recipients in furthering their legal careers.”
Capitol Federal Foundation Diversity Scholarship $1,000

This scholarship promotes the practice of law in the state of Kansas by awarding funds to a third-year law student attending Washburn University School of Law or the University of Kansas School of Law. Each scholarship will be awarded to a law student who has demonstrated a bona fide intention of practicing in the state of Kansas. Applicants must exhibit exemplary leadership in promoting diversity and inclusion in the law student’s school and broader legal community.

Sussana Ampem/Washburn University School of Law

As a non-traditional law student, Ampem moved to Kansas from Virginia after working for a few years as an adjunct and then a legal assistant. She values the variety of experiences and opportunities that have helped direct her career path in Kansas. This includes a legal internship at Kansas Public Employees Retirement System as well as judicial externships with the Hon. Kathryn A. Gardner and the Hon. Anthony J. Powell of the Court of Appeals. She was also a legal intern at the Washburn Law Small Business and Nonprofit Transactional Law Clinic where she received a student practice permit and provided legal services to members of the community who are engaged in starting non-profits and small businesses.

"I am incredibly honored to be a recipient of the Capitol Federal Foundation Diversity Scholarship. I would like to thank the Capitol Federal Foundation and the Kansas Bar Foundation for this generous award. This scholarship goes beyond financial assistance. It provides me with the opportunity to participate in the KBA Diversity Committee and contribute an article to the KBA Journal regarding diversity and inclusion matters in the legal profession. I am particularly grateful for the support and encouragement I have received as a student and look forward to becoming a practicing member of the Kansas Bar Association."

The Frank M. Rice Scholarship $6,000

The Frank M. Rice Scholarship promotes the practice of law in the state of Kansas by annually awarding funds to a student attending the University of Kansas School of Law or Washburn University School of Law to assist with the costs of tuition. The scholarship is intended to help law students become lawyers in the mold of Frank M. Rice who was “among the finest…in the Bar. He was at the top of his class…and always applied the highest level of legal scholarship to any legal matter in which he was involved.” The recipient must have been admitted to law school and must be a Kansas resident.

Jennifer Salva/Washburn University School of Law

Originally from Sugar Creek, Mo., Salva and her family moved to Olathe, in 1999 so her sister—who has profound disabilities and deafness—could have better educational resources and attend Kansas School for the Deaf. Salva became an advocate for her sister’s social, educational and employment needs, and plans to share those skills in her career as an attorney. She is a graduate of the University of Kansas, a 3L at Washburn University School of Law and former editor of the Kansas Bar Association Journal. She has enjoyed her federal judicial externships with the Hon. Julie A. Robinson (U.S. District Court for the District of Kansas) and the Hon. Nancy Moritz (United States Court of Appeals for the Tenth Circuit) and will serve as a term clerk with Judge Robinson in 2019-20. Following her clerkship, Jennifer will join the business litigation practice group with Lathrop Gage, Kansas City.

"Kansas Bar Foundation scholarships have been an incredible honor and tremendous blessing during my career as a law student at Washburn Law. The support of the Kansas Bar Association and Foundation have helped open doors for me in my legal career. I look forward to becoming more involved with the KBA and KBF as I begin my practice to help open doors for future law students, too."
The John E. Shamberg Memorial Law Student Scholarship $2,000

This scholarship is provided for a student attending Washburn University School of Law. Preferred candidates have an interest in plaintiff's work, a bona fide intention to practice law in Kansas, and exhibit professionalism and high character in their academic and personal lives by participation in school and community activities.

Kacey Scott/Washburn University School of Law

Scott, a 3L at Washburn University School of Law, was raised in the rural town of Stockton. She attended Fort Hays State University where she earned a B.A in Political Science with a minor in Psychology. After her 1L year, Scott was a legal extern in Hays for Herman Law Office, P.A., as a part of Washburn Law’s Dane G. Hansen Rural Externship Program. Last summer, Scott was a law clerk for Triplet Woolf Garretson, LLC, in Wichita. Currently, Scott is the executive editor of the Washburn Law Journal.

“I am incredibly honored to be this year’s recipient of the John E. Shamberg Memorial Law Student Scholarship. My educational pursuits would not be possible without the generous contributions from scholarship sponsors, such as John Shamberg, who has gone above and beyond with his service to the legal profession and Washburn Law. I am exceptionally thankful to the Kansas Bar Foundation for its continued support of Kansas law students.”

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KBA members who establish scholarships provide a gift that keeps on giving. Through annual scholarship awards to law students, everyone benefits by an investment in the profession and the people who may eventually establish a scholarship.

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Cool Tech Gadgets for 2019

by Larry Zimmerman

2019 Consumer Electronics Show

The 2019 Consumer Electronics Show has just wrapped, and media accounts of the technology displayed throughout the 2.9 million square feet of exhibit space reveal a continued push to make televisions larger, brighter and clearer. Truly exciting stuff, but not immediately relevant to most lawyers and firms. Regardless, some items stand out as potentially interesting.

Samsung Space Monitor

Despite its name, this category of computer monitor still works adequately for terrestrial tasks and reintroduces an idea from the early 1990s. The monitor itself is available in either 27- or 32- inches and either QHD or 4K respectively. The “space” moniker references a now unique mounting arm that clamps to the edge of a desk. When clamped down, the monitor can either swing forward for regular use, or be pushed back, so that the arm lifts the monitor off the desk and flush against the wall. Integrated cable management tidies things up and provides up to 40% more clear desk space. ($400-500.00)

Samsung CRG9 Monitor

While the Space Monitor clears your desk, the CRG9 threatens to claim every inch of desktop. This mammoth 49-inch-wide monitor is aimed at providing an immersive experience for gamers. The ultra-wide screen provides dual QHD resolution and superfine detail in the brightest and darkest parts of an image. It can accept two video sources with multiple input connector options. Just imagine editing a brief front and center with windows of statutes, research, online docket, and a Chiefs game arrayed on one continuous image with no alt-tab to switch. (No announced price yet but its less-capable predecessor was $1,500.)
Airplay SmartTVs

Many law offices use Apple’s Airplay to broadcast laptop or table screens to TVs, monitors, or projectors. Apple has now decided to join Google in licensing its technology to TV manufacturers to integrate Airplay into the devices direct from the factory. Supported models are expected this year from makers including Samsung, LG, Vizio, and Sony. (Recent revelations in the tech press indicate these so-called smart TVs are incentivized to collect and resell user data so lawyers might want to keep an eye on the issue.)

Huawei MateBook 13

The MateBook 13 was a big hit as a practical, capable and ultralight laptop ready for business use. The super-thin (just over half an inch) machine actually provides 6 percent more screen real estate while weighing in at under 3.75 pounds. It packs in an 8th generation i7 processor with 8GB RAM and either a 256 or 512GB SSD helping with a whopping 10-hour battery life. Added features include Dolby Atmos stereo and a fingerprint reader. The sleek machine is offered in two sedate shades of gray appeasing the firms that think color betrays weakness. (Starts at $1,000.)

Withings Move ECG

Fitness trackers and wearable smart devices are still hugely popular despite growing privacy and national security concerns. (Secret military bases have been disclosed and partially mapped with data from service members’ trackers.) The Withings Move provides traditional step and activity tracking with an electrocardiographic sensor to give real-time alerts on heart rate. Sure, the Apple Watch does that too, but not for $130, and the Apple Watch looks like an overgrown Chiclet while the Move looks like a traditional analog watch. Heart rate trackers are handy to users trying to manage stress or lose weight and may even provide advance warning of heart attack in some cases. ($130)

Impossible Burger 2.0

While trying to stay ahead of heart disease, enjoy a hearty burger—made from plants. The Impossible Burger looks like a real meat burger that “bleeds” and sizzles when cooked just like the real Angus thing. They are tasty, hearty and utterly convincing. I loved version 1.0 but all critics agree that 2.0 tastes and looks better and shifts from wheat-based to a gluten-free soy-base. The Impossible Burger consumes fewer resources than beef, while being healthier.

Widex EVOKE Battery Free Hearing Aid

The median age of lawyers continues inching up past 50, so hearing aid technology is closely followed by many of my peers. Apparently, the Widex EVOKE line is a favorite with great fidelity and a host of customization available from smartphone apps. Tiny batteries are still a fiddly nuisance, however. Widex has developed a tiny fuel cell that creates power through an electrochemical reaction between oxygen and methanol. The cell can be re-energized in just 20 seconds for 24 hours of use. (No pricing released yet.)

LG HomeBrew

Methanol alcohol may charge high tech hearing aids, but many lawyers still run on old-school ethanol alcohol tech like beer. The LG HomeBrew is a Keurig-like machine for home brewing. Pop in a capsule for one of five styles of beer, fill the tank with water, and the HomeBrew carefully monitors temperature and pressure to produce a gallon of beer—TWO WEEKS LATER. It does clean itself, though. (No pricing announced yet.)

Mophie Juice Pack Access

This phone case provides wireless charging for the Apple Xs, Xs Max or XR. The wireless charging feature keeps the Lightning port free so you can take a call while your phone gets a boost. The Juice Pack Access provides anywhere from 21-31 hours of additional talk time and is wirelessly chargeable itself. Available in four colors early this year. ($120)

Gillette Heated Razor

Advertising is not the only hot topic at Gillette this year as they release a razor that heats to 122° F in one second. A hot towel type shave for just $160.

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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Todd LaSala, Stinson Leonard Street L.L.P.
Hon. Steve Leben, Kansas Court of Appeals
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Cemetery Trusts
Law Changes to Address Impairment
by William Stalter
As with most states west of the Appalachian Mountains, Kansas allows for-profit companies to own and operate a cemetery. But Kansas was among the first states to require for-profit cemeteries to fund a maintenance trust with proceeds from grave sales. In 1901, the Kansas Legislature passed the Cemetery Corporations Act and thereby mandated privately owned cemeteries to establish permanent maintenance funds. “It must be remembered that defendants operate as a business venture, for profit, and there are many possibilities whereby money received from the sale of lots might be diverted without adequate provision for maintenance and care of the cemeteries, which is exactly what the statute seeks to prevent.”

By 1901, cemetery care and maintenance was already a significant problem for the Northeastern United States. Cemeteries in the country’s largest cities no longer had graves to sell. New York passed the Rural Cemetery Law in 1847 to foster a new era of cemetery operations. New York City cemeteries were full, and had become a source of public health concerns. Multiple burials in a single grave were common, and accidents frequently exposed bodies. Local governments saw the need for more burial grounds, but wanted to avoid the liabilities that accompanied burial grounds.

Outside of the east coast cities, population density was not an issue, and land was plentiful for cemetery use. The burgeoning death care industry thought itself to be immune from business cycles. Families would always need to bury their dead, and cemeteries could reliably predict future business from local demographics, mortality rates and available “inventory.” Acreage was often set aside to provide grave “inventory” that would last in to the next century. Cemeteries would forecast interment revenues not by years, but by decades.

However, the cost to develop and establish a cemetery can be significant. Beyond the purchase of land, Kansas law required a cemetery company to subdivide the land according to a plat that must be recorded with the county recorder of deeds. The cemetery is required to install roads and lot boundary pins before the first grave can be sold. The prospect of receiving income from a maintenance trust could be many years away for the operator of a new cemetery. As a profit venture, the cemetery corporation must recoup its up-front costs through grave sales.

The Kansas Legislature did not address oversight of the Cemetery Corporations Act until 1968. The vulnerability of cemetery trusts was first discussed in State Ex Rel. v. Anderson, and again in State Ex Rel. v. Commemorative Service Corp. In 1965, the Kansas Attorney General first sought to enforce the Act with a lawsuit against the owner of a Texas corporation that controlled nine Kansas cemetery companies. The Texas business venture established an aggressive sales program that sold graves and burial services using long-term installment contracts. The cemetery corporations deferred making deposits to the maintenance trusts until the installment contracts were paid in full. Per the terms of their pre-need contract, the cemeteries also promised to deposit the wholesale costs of burial merchandise to a trust. The Supreme Court decision provided detailed ex-
Cemetery trusts

Planations of pre-need cemetery sales, and their potential for fraud and deception. The 1965 decision was followed by the 1968 amendment of the Cemetery Corporations Act, whereby cemetery companies were then required to register with the Secretary of State and to file an annual statement on the condition of their care funds. The 1968 law also gave the Secretary of State authority to examine a cemetery corporation's books and records for compliance with the care fund requirements. However, the Act did not provide the Secretary of State any source of funding for enforcement.

Compliance with the cemetery Acts became an issue again in 2004. Efforts to audit Memorial Park Cemetery in Lawrence and West Lawn Memorial Gardens in Topeka became protracted when the secretary of state sought trust fund records from the cemeteries’ Texas owner, Mike Graham & Associates. The Texas company was unresponsive to the state’s requests for records; after 4 years, both cemeteries were taken over by their local municipalities. Substantial amounts of care funds and consumer pre-need funds were found to be missing. Shortly after the failure of Graham cemetery companies, the Kansas cemetery industry was also dealt a serious financial blow.

The Great Recession of 2008 caused an unforeseen acceleration in societal acceptance of cremation. Many families could no longer afford to spend $12,000 for a funeral that included a casket and a grave space. Families cited the economic downturn as justification for spending $2,000 on a cremation and taking Mom’s ashes home in an urn. Crematory operations allowed funeral homes to salvage some revenue from cremation services, but cemeteries were frequently left completely out of the family’s decisions about the disposition of cremated remains.

The Great Recession also undercut cemeteries’ reliance on trust revenues. Both pre-need merchandise trusts and permanent maintenance care fund trusts had been income oriented, and invested primarily in fixed income securities. Kansas law permitted cemeteries to withdraw income from merchandise trusts once the funding requirement was met. Mortgage-backed securities were an investment staple for both types of trust, and most cemeteries were accustomed to pulling all net income from their trusts. This resulted in many cemetery trusts being maintained at their minimum statutory requirement. When the home mortgage bubble burst, many cemetery trusts experienced a decline in value. Bond rates also dropped dramatically when the Federal Reserve stimulus plan reduced interest rates to below one percent. The financial impact on cemeteries and their trusts was immediate.

In 2010, Fairlawn Burial Park, a Hutchinson cemetery, was found to have used more than $600,000 of trust assets to fund day-to-day operations. The cemetery owner had obstructed the secretary of state’s investigation, was eventually convicted of fraud and served time in prison for embezzlement from the cemetery’s trusts. The secretary of state used public response to the Fairlawn Cemetery failure to lobby the cemetery industry and the legislature for reforms to the Act. While the first reform bill was blocked, the legislature amended the Act in 2011 with House Bill No. 2240, and again in 2012 with House Bill No. 2172, to establish new reporting requirements for both cemetery corporations and their trust fiduciaries. The cemetery corporation’s reporting was expanded significantly, and changed from annual reports to quarterly reports. To confirm the accuracy of the cemetery reports, the Act also requires quarterly trustee reports. The new reporting requirements will enable the secretary of state to more quickly identify noncompliant cemeteries and trustees, and take the appropriate enforcement actions. This article will next review which cemetery corporations are subject to the Act and its reporting requirements.

Cemetery Corporations Subject to the Act

Kansas cemeteries maintain two types of trusts: pre-need merchandise and permanent maintenance care funds. While each is governed by different chapters of Kansas law, both chapters rely on the same definition of “cemetery corporation.” K.S.A. 17-1301c(a) defines cemetery corporation to mean “any individual or entity required to maintain permanent maintenance funds under the provisions of K.S.A. 17-1312f...” K.S.A. 17-1312f states that it shall apply to “every individual, firm, partnership or other organization hereafter selling or conveying land for cemetery purposes....” The section exempts four classes of entities from the Act:

1. Municipalities and quasi-corporations with the power to issue bonds are the first class of exempt cemetery corporations.
2. Cemetery corporations that are nonprofit organizations formed primarily for religious purposes and that constitute an established church are exempt if the cemetery restricts grave sales to church members and their relatives.
3. Nonprofit corporations that own and operate a cemetery in a county designated as an urban area on or before March 1, 1968.22

4. Small cemeteries that were organized prior to January 1, 1900, have operated continuously from such date and have a care fund of less than $10,000.23

From a practical perspective, few cemeteries other than those owned by churches, municipalities, townships and counties qualify for exemption from the Act. With regard to ‘church cemeteries’, practitioners should confirm whether the cemetery is owned by the entity that ‘constitutes an established church’. It is common for churches to establish a separate corporation for purposes of owning and operating the cemetery.

The third exemption class is a grandfather clause intended to shelter secular nonprofit corporations that have operated a cemetery in a county that was designated urban in 1968. Johnson County is the only Kansas county that was designated as an urban area prior to 1968. Wyandotte, Shawnee, Greeley and Sedgwick counties were each designated as urban areas subsequent to 1968. The fourth exemption class is also a grandfather clause for small cemeteries that have operated continually since before the original 1901 law and have maintained a care fund of less than ten thousand dollars. Typically, this exemption is applied to family cemeteries.

Cemetery corporations claiming to be exempt from the Act must obtain and file an assertion of exemption with the secretary of state. The assertion of exemption must be approved by the secretary of state. If the exemption assertion is rejected, the cemetery corporation is required to maintain a permanent maintenance care fund trust and comply with the Act. If the cemetery sells burial services such as opening and closings, or merchandise such as markers and vaults, on a pre-need basis, then the cemetery must also maintain a pre-need merchandise trust pursuant to Cemetery Merchandise Contracts Act.29

**Trustee Qualifications and Trust Agreement**

A major change made by the 2011 Act amendments was the requirement that a Kansas fiduciary be used for both types of cemetery trusts. Each Act uses the following definition:

(i) “Trustee” means:

1. (1) a bank, savings and loan association, savings bank or credit union organized under the laws of this state with the authority to provide trust services;

2. (2) a federally chartered bank, savings and loan association, savings bank or credit union having a physical location within the state of Kansas and the authority to provide trust services; or

3. (3) a trust company organized under the laws of this state.30

The Kansas fiduciary requirement was motivated in part from difficulties the secretary of state encountered with Michael Graham & Associates, the Texas cemetery corporation discussed above.31 That cemetery corporation moved its cemetery trusts from a Kansas trustee to an out-of-state trustee that was slow to respond to the secretary of state’s record requests. While a foreign trustee may no longer serve as sole trustee, both cemetery acts allow the Kansas trustee to engage a foreign fiduciary in a co-trustee capacity for purposes of providing administrative or investment services.32

Both cemetery laws also now require the trust agreement to be submitted to the secretary of state for approval. Pre-need merchandise trust agreements must comply with KSA 16-322, and permanent maintenance trust agreements must comply with KSA 17-1312(c). Each cemetery Act authorizes the secretary of state to require an affirmation from the cemetery trustee, which serves to summarize to the trustee the duties and responsibilities imposed by the applicable act.33 Each Act also requires secretary of state approval of trust transfers and trust agreement amendments.34

For cemetery corporations with a maintenance care fund with a value of less than $100,000, KSA 17-1312(a) provides an exception to the trust requirement and instead allows the cemetery corporation to place the care funds in a certificate of deposit or depository account at a Kansas financial institution that provides FDIC coverage.

The Act also provides a trust exception to secular non-profit cemetery corporations with care funds in excess of $100,000. KSA 17-1348 allows non-profit cemetery corporations to maintain care funds in a joint custodial arrangement with a bank that has its principal office in Kansas. Kansas Attorney General Opinion No. 2000-24 has interpreted Section 17-1348 and 17-1349 as also excluding such custodial arrangements from the Act’s more restrictive investment requirements.
Reporting

Cemeteries

Another major change enacted by the 2011 Act amendments was the frequency and scope of reporting required of both cemetery corporations and cemetery fund trustees. Under the 1968 amendments, a cemetery corporation was required to file with the secretary of state an annual statement on the condition of its care fund. Now, cemetery corporations must file “Form CQ” quarterly reports of grave and pre-need sales in formats provided by the secretary of state. The report forms seek information that reflects the monthly trust deposit liability for the cemetery corporation’s maintenance trusts and pre-need merchandise trusts. The trust liability reflected on the Form CQ must then be received by the trustee within 15 days of the reported month end.

The cemetery corporation’s deposit liability to the permanent maintenance trust differs by the type of interment right sold. Burial lots are to be funded at 15 percent of the purchase price, with a minimum deposit requirement of $25. When cemeteries make a gift of a burial lot, a minimum $25 deposit is still required. The funding requirement for community mausoleum crypts is 10 percent of the purchase price, with a minimum deposit of $100. Garden mausoleum crypts have a funding requirement of five percent of the purchase price, and a $50 minimum deposit.

Trustees

With the 2011 and 2012 Act amendments, trustees were then required to file quarterly reports on both permanent maintenance funds and pre-need merchandise trusts. Each type of trust has its own report form that seeks certain transaction summaries and is due within 30 days after each calendar quarter end.

Permanent maintenance fund trustees are required to use a Form TPD to report: i) principal deposits; ii) principal withdrawals; iii) interest income; iv) dividend income; v) total income; vi) capital gains/losses; vii) taxes paid from capital gains; and viii) distributed income. The care fund trust files a hybrid complex tax return, and the Form TPD contemplates the trust will distribute all interest and dividend income. Such distributions will provide the trust an offsetting tax deduction for all income but capital gains. Because the Act requires the permanent maintenance trust to accrue capital gains, Form TPD contemplates tax liabilities from capital gains and requires the reporting of such taxes.

Pre-need merchandise trustees are required to use a Form TMD to report: a) deposits made by the cemetery corporation; b) trust distributions to the cemetery corporation; c) receipts of interest income; d) receipts of dividend income; e) total income; and f) capital gains (or losses). The functions of Forms TPD and TMD are to reconcile the trust liabilities reported by the cemetery corporation on the Form CQ to those funds received by the trustee and deposited to the trust.

With regard to trust distributions, the permanent maintenance trustee is required to use a Form TI to report each income disbursement made to the cemetery corporation. Income distributions can be made periodically or annually, but a Form TI must be filed with the secretary of state within 30 days of each distribution.
The Pre-need Merchandise Contract Act contemplates the unique tax reporting required of pre-need trusts and requires trustees to report each allocation of “distributable income” to consumer accounts. Distributable income must be computed and allocated at least annually, but such computations and allocations may be done more frequently. Distributable income allocations are reported with a Form DE. This report requires a listing of the trust's pre-need contracts and the allocation made to each item of merchandise or service.

Enforcement

Enforcement of both acts is vested with the secretary of state, and each act authorizes the secretary of state to examine or audit the cemetery corporation’s trusts. When an audit discloses problems or misconduct, each act provides similar enforcement authorities to the secretary of state. One of the main enforcement tools is the authority to institute a proceeding for the appointment of a receiver for the cemetery corporation. The secretary of state can initiate a receiver proceeding under the following circumstances:

1. When either the cemetery corporation or the trustee fails for a period of 180 days to file required quarterly deposit reports;
2. When any officer of the cemetery corporation refuses to submit books and records for examination, or obstructs or interferes with the examination; and
3. When a cemetery corporation fails to satisfy within 60 days a secretary of state demand to establish or correct a cemetery trust fund.

When a cemetery corporation fails to correct a deficiency in a trust fund, the secretary of state also has authority to seek criminal prosecution of such cemetery corporation by the county attorney or district attorney. The secretary of state relied upon this authority when it sought a 2009 criminal embezzlement proceeding against an owner of a Hutchinson cemetery.

Under less serious circumstances, the secretary of state may initiate an action for an accounting of a trust. When it is determined through the accounting that the trust has a deficiency because the cemetery corporation has failed to make required deposits, or received unauthorized trust distributions, the secretary of state may require the cemetery corporation to propose and implement a plan for correcting the trust deficiency.

The secretory of state's enforcement actions are funded by fees charged on the sales of interment and pre-need merchandise contracts. All fees are payable to the secretary of state, and due with the Form CQ, 30 days after the calendar quarter being reported.

For each exam or audit, the secretary of state is also authorized to assess a $100 per-day expense when conducting an audit on either the permanent maintenance trust or the pre-need merchandise trust.

Summary

Prior to the law changes made in 2011 and 2012, the $100 per diem was the secretary of state's main source of funding for enforcement of the two cemetery trust Acts. The annual statement provided little information to put the secretary of state on notice of whether the cemetery corporation was complying with the cemetery acts. Enforcement of the acts was dependent upon audits conducted by secretary of state staff at the offices of each cemetery corporation. The audit budget was too small to examine cemetery corporations on a regular basis. So, the law changes provided the secretary of state a crucial source of funding and a better means to spotting non-compliance. The quarterly reporting requirements provide the secretary of state a more reliable method of identifying those cemetery corporations that are either failing to make the required trust deposits, or receiving inappropriate distributions. The audit budget can then be used more efficiently by examining 'problem' cemeteries before their trusts become impaired.

About the Author

Bill Stalter has been representing death care companies and their trust fiduciaries since 1986. Mr. Stalter received his law degree and an MBA from the University of Oklahoma in 1986, and immediately went to work for a Kansas City law firm representing a large, multi-state death care company. Following a recommendation from a fiduciary client, Mr. Stalter established The Preneed Resource Company in 1999, a third party administrator and compliance firm serving funeral homes, cemeteries and fiduciaries with death care accounts in more than twenty states.

wastal@swbell.net
1. Laws 1901, ch. 102, §5.
4. Cemeteries divide their property into grave lots or construct mausoleums that subdivided into crypts. Cemeteries then sell limited rights that permit the use of the grave lots and mausoleum crypts for the interment of human remains. These interment rights are referred to as a cemetery’s inventory.
5. K.S.A. 17-1308.
6. Anderson, *supra* note 2, 408 P.2d at 8. ...
14. K.S.A. 16-321(d) allowed the cemetery corporation to withdraw from the merchandise trust funds all funds in excess of the wholesale cost of the merchandise described in the pre-contract contract.
18. Chapter 94, Sec 5; L. 2011.
19. Chapter 78, Sec 19; L. 2012.
22. K.S.A. 17-1312f(c), see Chapter 59, Sec. 1; L. 2018.
23. K.S.A. 17-1312f(d).
28. Chapter 59, Sec. 1; L. 2018.
29. K.S.A. 16-320 et seq.
31. See end notes 11 and 12.
32. See K.S.A. 16-322(a) and K.S.A. 17-1312(b).
33. See K.S.A. 16-322(c)(7) with respect to merchandise trusts and KSA 17-1312(c)(8) with respect to permanent maintenance trusts.
34. K.S.A. 16-322(c) and K.S.A. 17-1312(c).
35. K.S.A. 17-1312a, L.1968, ch. 330, sec 5. The cemetery corporation was required to prepare and file an annual statement describing the care fund’s corpus and accumulated income as of the preceding year end. The statement was required to set out the cost and market value of securities held by the fund trustee, and all income distributions made during that calendar year. The cemetery corporation was not required to make a similar report for any pre-need merchandise trust. No reporting was required for cemetery trustees under either the Cemetery Corporations Act or the Cemetery Merchandise Contracts Act.
37. K.S.A. 17-1311(a).
38. K.S.A. 17-1301(c).
39. A community mausoleum is an above ground building that is intended to inter multiple bodies where the crypts are on the inside of the building. Community mausoleums have an entrance and space for visitors within the structure.
40. A garden mausoleum is an above ground structure where crypt openings are on the outside of the building. There is no indoor space in these structures.
41. K.S.A. 16-320(e).
43. I.R.C. § 642(i).
44. K.S.A. 17-1311(b).
50. Permanent maintenance trust audits are authorized by K.S.A. 17-1312b. Pre-need merchandise trust audits are authorized by K.S.A. 16-325.
51. K.S.A. 17-1366.
52. K.S.A. 17-1312c (permanent maintenance trusts) and K.S.A. 16-330 (pre-need merchandise trusts).
53. K.S.A. 17-1312d (permanent maintenance trusts) and K.S.A. 16-331 (pre-need merchandise trusts).
54. K.S.A. 17-1312a(c) (permanent maintenance trusts) and K.S.A. 16-326 (pre-need merchandise trusts).
55. Truesdale, J. (2009). One day after the owner of a Hutchinson cemetery was arrested and charged with stealing more than $800,000 from the facility’s trust funds, authorities have released a few more details about the case. [Available at: http://www.hutchnews.com/article/20090320/News/303209779] [Accessed 27 Dec. 2018].
56. K.S.A. 16-1319a.
57. K.S.A. 17-1312a(g). The fee may not exceed $30, and is currently set at $20. K.A.R. 7-16-1.
59. K.S.A. 75-442.
Surviving the Government Shutdown

by Whitney Novak

On December 21, 2018, federal judiciary employees in the District of Kansas were left with an encouraging message from Clerk of Court Tim O’Brien as they prepared for an extended holiday weekend—the judiciary would not be immediately impacted should Congress fail to pass a continuing resolution to fund the government.

“The Judiciary has historically been able to sustain paid operations through the use of our fee authority and no-year appropriations for the first two to four weeks of a government shutdown...Happy Holidays to everyone.” O’Brien wrote in an e-mail to District of Kansas employees.

At midnight on December 22, 2018, what would become the longest government shutdown in American history began after Congress failed to pass a continuing resolution. Thanks to O’Brien’s assurances, most District of Kansas employees could celebrate the holidays with little concern about the shutdown. And business remained as usual when the court reopened after Christmas and New Year’s Day.

Of course, business was not usual for many other non-judicial agencies whose operations are closely intertwined with the judiciary. The Anti-deficiency Act, "prohibits federal agencies from obligations or expending federal funds in advance or in excess of an appropriation, and from accepting voluntary services.” Pursuant to the Act, federal employees are prohibited from:

1. Making or authorizing an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation,
2. Involving the government in a contract or obligation for the payment of money before an appropriation is made.\textsuperscript{4}

3. Accepting voluntary services for the United States or employing personal services exceeding that authorized by law;\textsuperscript{5} and

4. Making obligations or expenditures in excess of an apportionment or reappropriation, or in excess of the amount permitted by agency regulations.\textsuperscript{6}

The government may “accept voluntary services or employ personal services exceeding that authorized by law” only in “emergencies involving the safety of human life or the protection of property.”\textsuperscript{7} The U.S. Government Accountability Office is responsible for investigating violations of the Anti-deficiency Act. Violations of the Act are subject to both administrative and penal sanctions.\textsuperscript{8}

The Department of Justice, as employer of United States attorneys and assistant United States attorneys, was one of the federal agencies immediately impacted by the shutdown. According to the DOJ’s contingency plan for operations during a lapse in appropriations, all criminal litigation continues during a government shutdown as an excepted activity to maintain the safety of human life and the protection of property.\textsuperscript{9} Criminal assistant U.S. attorneys, therefore, continued working without pay throughout the 35-day long shutdown. Most civil litigation is postponed, but only to the extent that it can be done without compromising the safety of human life or the protection of property.\textsuperscript{10} Many civil assistant U.S. attorneys found themselves subject to furlough and many civil cases sat untouched, although the U.S. attorney’s office tried to keep cases on schedule as best they could with the limited resources available.

The United States Marshals Service, also a component of the Department of Justice, was deemed excepted from furlough because of their duties related to the protection of life and property. U.S. Marshals working in all areas, including judicial security, were also working without pay throughout the shutdown.

Judicial employees in the District of Kansas—and federal public defenders who are funded by the court—faced week-to-week uncertainty during the month of January. Initial estimates from the Administrative Office of the U.S. Courts anticipated funding for court operations to last through January 11, 2019. As the January 11 date approached, employees were informed that funding would last until January 18. The January 18 date was later extended to January 25, and then February 1. Further extensions beyond February 1, however, were not possible. Leading up to January 25, the court began making preparations for operating without funds.

Chief Judge Julie Robinson and clerk’s office staff worked hard to keep employees apprised with updates from the administrative office regarding paycheck issues. Besides employee pay, many issues arose concerning basic court operations in light of the shutdown. A civil jury trial was scheduled to begin on January 14, 2019 in Judge Carlos Murguia’s chambers. Operating under the assumption that funding would run out on January 11, chambers staff notified counsel that the trial may have to be rescheduled due to lack of funds for jury compensation. After funding was extended past January 11, the trial was held as usual and jurors were paid, yet questions remained about the status of future trial dates.

As February 1 approached, courts were prepared to operate under the terms of the Anti-deficiency Act, conducting “essential work” such as “activities to support the exercise of the courts’ constitutional powers under Article III, specifically the resolution of cases and related services.”\textsuperscript{11} With the announcement on January 25 that the President and Congress had agreed to a three-week funding measure, the court’s ability to operate during a lapse in appropriations was never tested. But with funding scheduled to lapse again on February 15, the court is not yet in the clear.

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\textbf{About the Author}
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\caption{Whitney Novak graduated from the University of Kansas School of Law in 2014. She clerked for Judge G. Gordon Atcheson on the Kansas Court of Appeals and is currently clerking for Judge Carlos Murguia in the District of Kansas. She is on the board of the Federal Courts Advocates Section of the Kansas City Metropolitan Bar Association and the Earl E. O’Connor Inn of Court. She also serves as Secretary for the District of Kansas/Western District of Missouri chapter of the Federal Bar Association.}
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10. \textit{Id}.
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Protecting Humanity

by Rekha Sharma-Crawford

The safety of the people shall be the highest law\(^1\): principles of United States immigration laws

Worldwide, “there are approximately 25.4 million refugees” today.\(^2\) Every year, some come to the United States seeking protection; protection from harm, protection from persecution and protection from civil unrest in countries they once called home. Often leaving everything they own behind, these individuals arrive at unknown shores in search of safety and security and a new place to call home. The notion that humans must sometimes be protected from a place where they are forced to flee is a notion deeply sowed in history. From René Descartes to the Dalai Lama to Edward Snowden, history is filled with individuals who sought refuge in a foreign land for fear of persecution.

United States asylum laws inherently derive from international imperatives governing humanitarian crisis and the urgent needs of individuals facing persecution; it is, of sorts, a union of domestic laws and international accords.\(^3\) International treaties, United States statutes, federal regulations, and agency and court decisions provide legal authority upon which individual rights and sovereign responsibilities are balanced.

Enshrined in the 1948 United Nations Universal Declaration of Human Rights\(^4\) is the guiding principle\(^5\) that every person who fears persecution has the right to seek asylum in other countries. Building on this agreement are the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 United Nations Protocol relating to the Status of Refugees, which provided the basic definition of a refugee—a definition incorporated in United States law through the Refugee Act of 1980\(^6\) (“Refugee Act”). Answering the call to meet its legal obligations to provide protections to eligible refugees, the Refugee Act set out a systematic procedure, which allowed refugees to either enter the United States
as a resettled refugee or seek asylum from within the United States as an asylum seeker.

Contained within these doctrines are not only the rights of refugees but also the responsibility of sovereign nations to not expel, deport, or extradite someone back to a home country, that poses a risk to their life—the legal concept of non-refoulment.7 The principal provisions of the Refugee Act, which relate to asylum applicants, are found as part of the Immigration and Nationality Act (“INA”),8 a comprehensive codification of United States immigration laws.

Although the term asylum, colloquially, is used to define a group of non-citizens9 who are afforded protections from persecution, the law breaks down this form of relief into nuanced shades. Contained within the asylum classification are also the provisions to address non-refoulment concerns: Withholding of Removal and protections under the Convention Against Torture (CAT).10

As part of a greater immigration overhaul, the Illegal Immigration and Immigrant Responsibility Act of 1996 (IIRAIRA) amended the definition of refugee found in the Refugee Act to specifically include individuals fleeing coercive population control measures11 and exclude individuals who, themselves, had been involved in the persecution of others on account of race, religion, nationality, membership in a particular social group, or political opinion,12 or had been convicted of certain crimes, namely aggravated felonies.13

Perhaps the single most complicating factor with respect to immigration laws is that federal court decisions, agency decisions, by precedential decisions or by rule changes, and even the United States Attorney General, acting on certification authority, can and often do change the trajectory of the case law relating to asylum at speeds not common in most practice areas.

A Rose by any Other Name14: the thorny world of immigration definitions

United States immigration law is full of terms of art, which create nuanced differences between categories of individuals all seeking safe harbor from the perils they left behind. Refugees and asylees are two groups of people fleeing persecution. Both groups begin at the same point of legal analysis, however, a refugee is a person who is physically located outside the United States and is petitioning the United Nations High Commissioner for Refugees (UNHCR) or other similar organizations for protection from their persecution.15 Conversely, an asylee is a person who comes to the United States, either lawfully or unlawfully, and then asks for legal protections for harms they have already suffered or ones they reasonably fear in the future.16

Specifically, the INA defines a refugee as “[a]ny person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling”17 to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”18 Contained within this one definition are several other terms, which outline the parameters for asylum eligibility. Specifically, the applicant must show that they are unable or unwilling to return to their home country because they have either been persecuted or have a well-founded fear of future persecution on account of one of the enumerated grounds.19

“Persecution” refers to the “infliction of suffering or harm upon those who differ…in a way that is regarded as offensive.”20 Under this description, threats to life or freedom are generally accepted as forms of persecution. Moreover, physical abuse, even where it is not life-threatening, has been found to be persecution under the asylum laws.21 So too have severe forms of economic deprivation been found sufficient to amount to persecution.22 However, mere harassment or discrimination which is not severe does not generally rise to persecution.23 If the applicant establishes that they have suffered actual past persecution, there arises a presumption of future persecution.24 This presumption, however, relates only to fear of harm based on the original claim of persecution and not to fear of harm based on a new ground of eligibility.25

Additionally, a “well-founded fear” has been interpreted to mean that a reasonable person in the applicant’s circumstanc-
“Race” in the asylum context is defined in the broadest of terms and includes ethnic and tribal membership.

“Religion” based persecution may include physical harm, or severe mistreatment based on one’s faith—this category includes conscientious objectors.

“Nationality” as contemplated in asylum law is inclusive of not only citizenship but also “to membership of an ethnic or linguistic group” and may involve “adverse attitudes and measures directed against a national (ethnic, linguistic) minority”; and

“Political Opinion” as explained by the UNHCR Handbook, involves more than simply holding a political view different from those of the applicant’s government. Instead it requires showing that the applicant’s “opinions [are] not tolerated by the authorities, which are critical of their policies or methods and…that such opinions have come to the notice of the authorities or are attributed by them to the applicant.” This protected ground may include beliefs, actions or inactions.

The final category involves a “membership in a particular social group (PSG)”. The UNHCR Handbook indicates that this criterion “normally comprises persons of similar background, habits or social status.” Since Congress never defined the term as a matter of law, in 1985 the Board of Immigration Appeals—the administrative appellate body charged with the interpretation of immigration laws—in a seminal case first laid out the basic standards for determining whether an applicant has demonstrated membership.

The Board, relying on the doctrine of ejusdem generis—a legal concept which means that general words used in a list with specific words should be construed in a manner consistent with the specific words—determined that in the context of the definition of a refugee, PSG meant “persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic.” The Board explained that “the shared characteristic might be an innate one such as sex, color, or kinship ties, or in some circumstances it might be a shared past experience such as former military leadership or land ownership.” The Board, however, also found that in particular this protected ground was subject to determination on a “case-by-case basis,” a conclusion that has made this particular ground one that remains evolving in nature and often a source of uncertainty.

With the passage of time, the Board included additional requirements to satisfy a PSG claim. In 2006, the Board added the additional requirements of “particularity” and “social visibility.” Relying on the plain language of the definition, the Board determined that “the essence of the ‘particularity’ requirement, therefore, is whether the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.” In narrowing this ground, the Board attempted to ensure that those basing their claim on
membership in a PSG established an “adequate benchmark for determining group membership.” Likewise, the Board, in addressing the “social visibility” requirement, relied on the 2002 guidelines of the UNHCR and determined that a valid PSG must establish whether the group’s shared characteristics subject its members to harm and must consider the group’s visibility in society. Thus, the Board, although not specifically providing a definition for the term “social visibility,” indicated only that a PSG’s shared characteristic “should generally be recognizable by others in the community.” This lack of a concrete definition, in practical terms, often creates a layer of uncertainty for applicants. Perhaps recognizing the confusion over the term “social visibility,” the Board in 2014 rebranded the term as “social distinction.” The Board instructed that “an applicant for asylum or withholding of removal seeking relief based on “membership in a particular social group” must establish that the group is composed of members who share a common immutable characteristic, defined with particularity, and socially distinct within the society in question.”

Some valid PSG claims include groups such as family, young women of the tribe who had not undergone, and opposed the practice of female genital mutilation, and homosexuals. Likewise, in 2014, the Board, in a landmark decision ending years of uncertainty, determined that survivors of domestic violence were considered a proper PSG for asylum purposes. Turning back the clock on nearly 15 years of legal developments in the area of domestic violence, however, on June 11, 2018, the Attorney General issued a precedential decision that overturned the protection to domestic violence survivors that was at the heart of the Board’s ruling. In so doing, the Attorney General specifically determined that “El Salvadorian women who are unable or unwilling to leave their domestic relationships where they have children in common,” is likely not cognizable claim.

Claims which have generally failed to be recognized as a valid PSG for asylum relief include persecution based on gender, persons resistant to gang membership, and confidential informants.

**Extraordinary Claims require extraordinary evidence**: Burdens of Proof

Applicants, as a matter of law, bear the burden to establish that they in fact meet the definition of refugee. The applicant can establish they meet the definition by proving they have suffered past persecution or have a well-founded fear of future persecution. To this extent, the applicant must testify under oath regarding the truth of their claim, and this testimony, if credible, persuasive and refers to specific facts sufficient to demonstrate the refugee status, is sufficient to support the claim. Yet, on March 15, 2018, on another case certified to himself, the Attorney General determined that asylum seekers seeking relief before an Immigration Court as a defensive form of relief from removal are in fact not to be fundamentally guaranteed the right to a full hearing, a notion that deviates from nearly three decades of recognized policy and practice.

Further, since 2005 and the passage of the Real ID Act, asylum applicants may also be required to produce other evidence to corroborate otherwise credible testimony “unless the applicant does not have the evidence and cannot reasonably obtain the evidence.” In practice, a failure to produce corroborating evidence may result in a lack of credibility finding under the totality of the circumstances standard. If alleging past persecution, the applicant must establish that the treatment they suffered rises to the level of persecution, that the persecution they experienced was on account of one or more protected grounds, and that the persecution was committed by the government, or by forces that the government was unable or unwilling to control. If the applicant establishes past persecution, they are entitled to the presumption that they also have a well-founded fear of future persecution. From an evidentiary perspective, the Supreme Court has long determined that an applicant seeking asylum protections is only required to make a ten percent showing that the applicant will suffer persecution. Upon the applicant meeting the requisite burden, the burden shifts to the government to prove by a preponderance of the evidence that either there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution, or that the applicant could avoid future persecution by relocating to another part of his or her country.

Additionally, an applicant can be denied asylum if the government can show that the applicant is ineligible for asylum in the United States because they had firmly re-settled in a safe third country prior to their entry into the United States. The government must first show prima facie evidence of an offer of firm resettlement. This evidence may either be direct proof, such as an offer for the applicant to remain in the third country indefinitely, or indirect proof, such as the immigration laws from the country, the length of the individual's
stay in that country and the circumstances under which the individual may have remained in the third country. If the government provides prima facie evidence of firm resettlement, the burden again shifts to the asylum applicant to rebut that evidence by demonstrating “by a preponderance of the evidence that such an offer has not, in fact been made or that [the applicant] would not qualify for it.” This determination is made under the totality of the evidence standard.

Finally, if it is determined that the evidence shows, or the law of the third country establishes, that the applicant resettled in a third country, the applicant then must prove by a preponderance of the evidence that one of the exceptions applies. These exceptions are either that they entered the third country on a limited basis as part of their flight from persecution or that their liberty was substantially restricted while they were in the third country. If the applicant cannot establish eligibility for an exception, the applicant must be denied asylum.

Lions and Tigers and Bears, oh my: The road to the Emerald City

Asylum, Withholding of Removal, and Protections under the Convention Against Torture (“CAT”), while all forms of humanitarian relief, are not the same in procedure or in benefits. Asylees (those granted asylum) are granted the greatest level benefits. However, since the United States is under an obligation to protect those who have been or may be persecuted, grants of withholding of removal, and CAT relief, are utilized to overcome certain impediments to eligibility, such as delayed filings and criminal convictions.

Asylum

Applications for asylum may be sought either affirmatively (with United States Citizenship and Immigration Services (“USCIS”)) or defensively (before an Immigration Judge (“IJ”)). Any individual who is “physically present” in the United States, regardless of how the individual entered, is eligible to seek asylum relief. Generally, an application for asylum must be filed within one year of the applicant’s last arrival into the United States, and the applicant must establish “by clear and convincing evidence” that they complied with this requirement. The law authorizes two exceptions to the one-year filing deadline, and the application can still be deemed timely filed if there is “...either the existence of changed circumstances which materially affect the applicant’s eligibility for asylum or extraordinary circumstances relating to the delay in filing an application...”

Changed circumstances has been recognized in the regulations to include conditions such as changed country conditions, changed personal circumstances, changes in applicable United States law, and loss of derivative status. Extraordinary circumstances include serious illness, legal disability, ineffective assistance of counsel, maintenance of status, attempted but defective filing and death or serious illness of the applicant’s legal representative or family.

The one-year filing deadline is applicable to both affirmative and defensive filings. Even still, if outside the one-year deadline, but an exception is applicable, the filing must be made within a reasonable time after the qualifying exception. For asylum purposes, the date of filing is determined by the date the application was mailed, not when it was received by USCIS. If the noncitizen fails to make a timely application, they will not be eligible for asylum relief even if they can establish a valid claim.

Other than the one-year filing deadline and the resettlement issue, there are also other barriers to asylum relief under certain circumstances. These include having a prior application for asylum denied, having assisted in or been involved with the persecution of others, having engaged in terrorist acts, or having been convicted of a “particularly serious crime,” that may include an aggravated felony (as defined by statute) or a non-aggravated felony (as determined by the facts of the crime).

Affirmative asylum is triggered one of two ways: the applicant may present themselves at a port of entry and declare their intent to seek asylum or if not at a port of entry, an application may be filed directly with USCIS within one year of entry. Despite the legal authority to seek asylum at a port of entry, noncitizens presenting themselves or encountered by CBP at ports of entry are subject to expedited removal processes. Under this process, if an individual has no valid entry documents, they may be administratively removed from the United States with no additional process. To safeguard compliance with international laws, asylum requested at the port of entry by individuals subject to expedited removal provisions are given a credible fear interview—the initial determination of whether there “is a significant possibility” that the noncitizen can establish eligibility for humanitarian relief.
toms and Border Patrol (“CBP”), the division of the Department of Homeland Security that is responsible for the orderly admission of individuals at ports of entry, will contact USCIS for an asylum screen. After an interview, regardless of whether the individual has been deemed to have a credible fear or whether an adverse credible fear determination has been made, the matter is referred to the immigration court for further review. The main differences between a favorable credible fear determination and a negative one is the custody status of the noncitizen while awaiting review, the level of review the Immigration Judge will have, and what appeal rights the applicant will be allowed.

Defensive asylum is the result of an applicant being placed in removal proceedings as a result of having been found in the United States without status, or having violated the terms of their visa conditions and then seeking asylum as a form of relief from removal. In such cases, the applicant's request for asylum is deemed to include not only a request for asylum protections but also for withholding of removal.

If an individual is granted asylum, they are referred to as an asylee and will be able to remain in the United States. They are authorized to work in the United States, able to obtain certain social benefits like Medicaid, are able to request permission to travel to any place except their home county, and are able to petition to bring certain family members to the United States. After a year of being on asylee status, the asylee may apply for lawful permanent resident status and subsequently, after an additional four years, for United States citizenship.

The “reasonable fear process,” which is similar to the credible fear process, is conducted for individuals who are subject to reinstatement of removal, an abbreviated removal process whereby a pre-existing removal order is reinstated. This process usually involves individuals who have re-entered after having been previously removed, or individuals who are not lawful permanent residents and have been convicted of one or more aggravated felonies after being admitted to the United States. If an individual receives a favorable reasonable fear determination, the person is referred to the immigration judge. The immigration judge will then determine if the individual should be granted withholding of removal since asylum would be barred due to the prior removal.

The withholding provisions specifically prohibit the Attorney General from removing an individual to a country where their life or freedom would be threatened on account of one of the five protected grounds. The applicant must establish that “it is more likely than not that the [applicant] would be subject to persecution in the country to which [they] would be returned.” While a more difficult standard to meet than the asylum requirements, and unlike the discretionary component of asylum, if persecution is determined to be more likely than not, withholding of removal relief is mandatory, unless one of the statutory bars to withholding apply, including having a conviction for an aggravated felony or felonies where the applicant was sentenced to at least 5 years' imprisonment.

Moreover, withholding is distinct from asylum in that it only considers prospective threats to the individual’s life or freedom. Although past persecution may give the applicant the presumption that their life and freedom may be threatened in the future, that presumption may be rebutted where it can be shown that there has been a “fundamental change in circumstances” such that the applicant’s life or freedom would not be threatened on account of any of the five grounds upon the applicant’s removal to that country, or that “the applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so.”

A key difference between a grant of asylum and a grant of withholding of removal is that unlike an asylee, an individual granted withholding of removal may not seek permanent residency status and may not petition for family members. This is because in such cases, the Immigration Judge would enter a removal order and then “withhold” it from execution based on a showing of a likelihood of future harm. Likewise, unlike asylum, an individual granted withholding of removal remains at risk of being removed at the option of the government, to a third country other than the country from which removal was withheld.

Withholding of Removal

Withholding of removal is like asylum but an applicant for withholding is ineligible for asylum, most commonly because they have missed the one-year filing deadline, or have a criminal ground of ineligibility. Asylum officers lack the authority to review withholding-only claims and therefore, these claims are generally raised defensively in the removal context including “reasonable fear claims.”
Convention Against Torture Relief (CAT)

The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention” or “Convention Against Torture” or “CAT”) contains non-refoulement provisions. Under the Convention, in order to be granted deferral of removal under CAT there need not be a showing that the torture was or would be based on account of one of the protected grounds. It is, instead, the final humanitarian safety net of protection for those applicants where it is “more likely than not that [the applicant] would be tortured if removed to the proposed country of removal.”

Torture is defined in broad terms and includes “severe pain or suffering” which is “intentionally inflicted” in order to obtain a confession, punish, or discriminate, when such act is done by or at the instigation of or with the consent or acquiescence of a public official or person acting in an official capacity. “[T]orture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture.” Such actions may also include, in certain situations, “judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty,” as long as those sanctions are not contrary to the intent of the Convention Against Torture. Unlike asylum and withholding of removal, there are no bars to relief if a likely threat of torture upon removal is proven.

Terminating Asylum, Withholding of Removal, or CAT Relief

Even after an applicant is deemed to be an asylee or has been granted withholding, it is still possible to have such a status terminated under certain circumstances. If it can be shown that the individual did not merit the relief in the first instance or if they are no longer able to show that they remain a refugee, the status may be terminated.

Unlike asylum or withholding of removal, a grant of deferral of removal under the Conventional Against Torture is also much easier to terminate. Usually if the government can establish that relevant evidence bearing upon the decision to grant deferral of removal was not previously presented, and that the threat upon which deferral was granted has been extinguished, either by removal to the applicant’s country or a third country, the grant of deferral may be terminated.

Before an individual’s status may be terminated, the individual must be provided notice and an opportunity to address the government’s concerns. However, if the status of the principal asylee is terminated, derivative family members also lose their status. The same concern does not arise in the withholding or CAT scenario because there are no derivative benefits.

Children and Humanitarian Relief

While many asylum seekers are adults, a fair amount are children. A child traveling without their parents is referred to as an “unaccompanied alien child (“UAC”). Under the law, in order for a child to be classified as a UAC, the child must be under the age of 18, have no lawful status in the United States, and “with respect to whom (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.” By definition then, children traveling to the United States with their parents are treated differently than those traveling without; the former would not be classified as UACs while the later would. This somewhat arbitrary classification of a child as a UAC may provide that child with opportunities that are unavailable to children traveling with their parents; a difference which fails to recognize the overarching moral need to protect children regardless of the manner in which they enter.

In order to address the increasing number of children fleeing their home countries alone, and recognizing the unique vulnerabilities of children, Congress enacted the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”). Included in the protections for UACs was an exemption from expedited removal procedures, special asylum procedures giving USCIS initial jurisdiction over such applications regardless of the initiation of removal proceedings, exceptions to the one-year filing deadline for asylum, and most importantly, special detention provisions which are administered by the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) instead of DHS detention facilities.

While children seeking relief from removal before an Immigration Judge may be detained in ORR custody, that detention is governed, in large part by the settlement agreement in *Flores v Reno*. Under this agreement, the obligation of the government in the treatment of UACs includes the release of the children from immigration detention without unnecessary delay to a parent, other adult relative, or licensed programs willing to accept custody. Additionally, if the child is unable to be so placed, the government is mandated to find the “least restrictive” setting appropriate to the child’s age. Finally, according to the agreement, the government was required to implement standards relating to the care and treatment of children in immigration detention.

Apart from asylum, many children are also eligible for other special humanitarian relief designed to protect them based on injuries they have suffered or the conditions they have experienced. UACs are especially vulnerable to becoming victims of human trafficking. As such, they may be eligible for relief in the form of a T visa if they are able to demonstrate that they are victims of trafficking and that they would suffer extreme hardship involving unusual or severe harm if removed.
from the United States. It is also possible that these children are eligible for Special Immigrant Juvenile Status (SIJS). This is a form of relief available to noncitizen children who were abused, neglected, or abandoned by one or both parents. To be eligible for SIJS, the child must be under 21, unmarried, and the subject of certain dependency orders issued by a juvenile court. Finally, the child may be eligible for a U visa. These visas are reserved for victims of certain crimes who have suffered substantial physical or mental abuse and have cooperated with law enforcement in the investigation or prosecution of the crime.

Asylum and Politics: A cautionary approach

United States immigration laws have always been tethered to the country’s political climate and now is no different. It is likely that under the current climate the asylum laws will change and tighten in the years ahead. These changes will, however, be tested as human migration continues to face issues of upheaval across the globe. Author J.K. Rowling stated:

[the power of human empathy, leading to collective action, saves lives, and frees prisoners. Ordinary people, whose personal well-being and security are assured, join together in huge numbers to save people they do not know, and will never meet…Unlike any other creature on this planet, humans can learn and understand, without having experienced. They can think themselves into other people’s places…We do not need magic to change the world, we need the power to imagine better.]

In these uncertain and challenging times, these words may indeed provide the courage necessary to find the balance between humanity, morality and the law.

About the Author

Rekha Sharma-Crawford is a frequent instructor at the American Immigration Law Foundation Litigation Institute and speaker at the American Immigration Lawyers’ Association national conference. Rekha and her husband, Michael, established The Clinic at Sharma-Crawford to close the gap between low-income immigrants facing removal and the availability of qualified, affordable representation with the U.S. Immigration Court. Rekha received her Juris Doctor from Michigan State University College of Law and is licensed in three states. The Missouri Bar Association awarded the Pro Bono Publico Award in 2017 to Rekha and Michael, and Rekha was awarded the Courageous Attorney Award by the Kansas Bar Association in 2018.

Rekha@sharma-crawford.com
protecting humanity

42. Id at 235.
43. Id.
47. Id.
56. Safai v. INS, 25 F.3d 636 (8th Cir. 1994); Gamez v. INS, 947 F2d 660 (2nd Cir. 1991).
59. Carl Sagan.
60. 8 C.F.R. §1208.12(b)(1)(i-ii) and (b)(2).
61. 8 CFR §1208.13.
62. 8 CFR §1208.15.
63. 8 CFR §1208.15.
65. INA §208(b)(1)(B)(ii); 8 USC §1158(b)(1)(B)(ii).
66. INA §208(b)(3); 8 USC §1158(b)(3).
67. Bringas-Rodriguez v. Sessions, 850 F.3d 1051, 1062 (9th Cir. 2017) (en banc).
68. 8 CFR § 1208.13.
70. C.F.R. § 1208.15.
72. Id. at 502.
73. Id.
74. Id. at 503.
75. Id.
76. 8 CFR 1208.15(a).
77. 8 CFR 1208.15(b).
78. 8 CFR 1208.15.
79. Dorothy, the Wizard of OZ.
80. USCIS is a division of the Department of Homeland Security.
81. The Immigration Court is part of the Executive Office of Immigration Review, a division of the Department of Justice.
82. INA §208(a)(1); 8 USC §1158(a)(1).
84. 8 CFR §1208(a)(2)(B).
85. 8 USC. § 1158(a)(2)(D); INA §208(a)(2)(D).
86. 8 CFR §208.4(a)(4)(i)(A), (B), (C).
87. 8 CFR §208.4(a)(5)(i), (ii), (iii), (iv), (v).
89. 8 CFR §§ 208.4(a)(4)(ii), and 208.4(a)(5).
90. C.F.R. § 208.4(a)(2).ii.
91. 8 USC §1158(a)(2)(C).
92. 8 USC §1158(b)(2)(A)(ii).
93. 8 USC §1158(b)(2)(A)(i).
94. 8 USC §1158(b)(2)(A)(v).
95. 8 USC §1101(a)(43).
98. 8 CFR §208.30.
99. 8 CFR §208.30(e).
100. 8 CFR §208.30(f).
101. 8 CFR §1003.42.
102. 8 CFR §208.30(f) and (g).
103. 8 CFR §§ 208.2, 208.13-14.
104. 8 CFR 1208.3(b).
105. 8 USC §1522(c).
106. 8 USC §§ 1157; 1158(b)(3), (c).
107. 8 USC §§ 1159(b), 1427(a)(1); 8 CFR §209.2(f).
108. 8 CFR 208.16(a).
109. 8 USC § 1231(a)(5).
110. INA §241(a)(5).
111. 8 USC §1101(a)(43).
112. 8 USC. §1101(a)(13).
113. 8 CFR 208.31(e).
114. 8 CFR 208.16; 8 USC 1231.
115. INA §241(b)(3)(A).
117. Id. at 429.
118. 8 CFR 208.16(d)(2).
119. Id.
120. 8 CFR § 208.16(b)(1).
121. 8 CFR 208.16(b)(1)(i)(A).
122. 8 CFR 208.16(b)(1)(i)(B).
123. 8 CFR §208.16(f).
125. 8 C.F.R. §208.16(c)(4).
126. 8 CFR §208.16(c)(2) and 8 CFR §208.17(a).
128. 8 CFR §208.18(a)(2).
129. 8 CFR §208.18(a)(3).
132. 8 CFR §1208.24(a); (b).
133. 8 C.F.R. §208.18; 8 CFR §1208.24(f).
134. 8 CFR §1208.24(c).
135. 8 CFR §1208.24(d).
137. 6 USC §279(g)(2).
139. TVPRA § 235(a)(5)(D).
140. TVPRA § 235(d)(7)(B).
141. 8 CFR 1208.4(a)(5)(ii).
142. TVPRA § 235(b)(3).
143. Flores v. Reno, 507 US 292 (1993); 8 CFR §1236.3.
145. 8 U.S.C. § 1101(a)(15)(T); 8 CFR § 214.11.
146. 8 USC §1101(a)(27)(J); 8 CFR §204.11.
147. 8 USC § 1101(a)(15)(U); 8 CFR § 214.14.
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Please check back often for new and exciting ways to put your skills, experience and training to good use by helping your fellow Kansans.
Lessons Learned: How Teaching First Grade Prepared Me for Law School

by Katherine Lander

“Miss Lander,” my professor called. Any law student is struck with fear at their very first cold-call. I was too, but at the same time I also felt a strange sense of familiarity at hearing my name. I was sitting in one of my first classes of my law school career, but I had heard my name called out that way many times. I taught first grade for two years before I began law school, so I had heard “Miss Lander” a lot before I was cold-called and asked about the cases from last night’s readings.

There’s usually only one response when someone hears about my former job as a teacher. “First grade, huh? That’s a lot different from law school.” And it is, but in a lot of ways, it really isn’t different at all. There are many similarities between teaching first grade and law school, and I know my time spent teaching first grade helped prepare me for this journey.

First, studying law and teaching first-graders are difficult in different ways. My job as a teacher was more physically demanding, because I was moving around all day and never actually got a chance to sit down. Law school is more intellectually demanding than any other academic experience in my life. Both teaching and law school are emotionally demanding. Although there are differences in the demands of either, ultimately, both teaching first grade and being a law student take a lot of time and hard work.

This leads to the second major similarity—you need a solid support group to get you through the tough days. At the end of a challenging day teaching, I always knew I could go to my co-workers or teacher friends for a hug or a laugh. Law school is no different. Some days you laugh and cry and eat too much chocolate. Other days, you celebrate a good cold-call in class.
or making a moot court team. Either way, you need a support group that understands what you’re going through.

Third, both law school and teaching first grade are about taking something complicated and trying to simplify it. First grade is a critical year in elementary school: it’s when students really begin to read and write. Many of us don’t remember the days before we knew how to read, which can make it difficult to teach students who are just starting out. Most first-graders start by reading short sentences and sight words at the beginning of the year, and then advance to reading beginner chapter books by the end of the year. Students have to learn how letters make sounds, which combine to make words, which combine to make sentences. Those sentences joined together create a story. Not only do students have to learn to read those stories, but they must learn to understand the words they’re reading. Similarly, students have to learn how to use letters, words and sentences to create their own writing. The process of learning how to read and write is complicated; good teachers break down that difficult process and make it simpler for their students.

Similarly, you learn to read and write in law school. When you begin your first year, you must learn how to read a court’s opinion and break it down into its simplest form. The rule or holding of a case, applied to the important facts, gives law students an understanding of the law and how it can be applied. In legal analysis, research and writing class, law students learn to research a particular issue, derive the rule and apply it to specific facts. This is not an easy process—learning how to figure out a rule and explain it concisely in your own words takes time.

Finally, law school and teaching first grade both involve spending a lot of time with a small group of people. During the two years that I taught first grade, I had between 21 and 24 students in my class. I spent about eight hours a day with my students, so we all got to know each other pretty well. I also lived near my school, so I frequently saw my students at the grocery store or the gym. I knew their families, and they knew mine. We had our own classroom community, celebrating successes and helping each other when needed.

In my first year of law school, there were around 50 people in my section. We all had three classes together five days a week (the fourth class being a smaller group of 16 for legal analysis, research and writing). Since starting school together, I see many of my classmates seven days a week, studying at the law library or taking a break at a restaurant near campus. We have movie marathons, “family dinners,” and birthday celebrations (just a few other examples of how we support each other). Because we’re such a small group of law students going through the same experience at the same time, we know each other pretty well.

Even though there are many ways that law school and teaching first grade are the same, there’s one important way in which they differ: law school is only a short part of a hopefully long career in the legal profession, while teaching first grade can be a life-long career that many people truly love. Although teaching wasn’t for me, I have nothing but respect and admiration for my friends who wake up every day excited to teach their students. I know the many long and challenging days as a teacher helped prepare me for the many long and challenging days as a law student. I’m so grateful that teaching first grade was a part of my journey to law school.

About the Author

Katherine Lander is a 2020 J.D. Candidate at Washburn University School of Law. She is a Junior Staff Writer for the Washburn Law Journal, a Study Group Leader, and a Representative at Large for the Washburn Student Bar Association. When she’s not studying, Katherine enjoys baking for her friends and family.

katherine.lander@washburn.edu
Members in the News

New Positions

**Diane L. Bell** has been elected a member of Joseph, Hollander & Craft LLC. She joined the firm in 2014 and practices primarily in the areas of professional licensure and professional liability defense. Bellquist is president of the Topeka Bar Association and has been on its board since 2011. Bellquist is also a past president and member of the Women Attorneys Association of Topeka. A graduate of the University of Kansas School of Law, she is licensed to practice in both Kansas and Missouri. Bellquist, with 16 years of military service, holds the rank of Lieutenant Colonel with the Kansas Air National Guard.

**Courtney Boehm**, Marion County Attorney, was appointed to an 8th Judicial District judgeship by former Gov. Jeff Colyer before he left office. She succeeds Maritza Segarra whose resignation was effective Dec. 31. The 8th Judicial District includes Dickinson, Geary, Marion and Morris counties. Boehm earned her undergraduate degree from the University of Kansas and her Juris Doctor from the Washburn University Law School.

**Julie A. Carroll** became a partner with the newly formed firm of Bauer, Pike, Bauer, Wary and Carroll. Carroll graduated from Kansas State University and then earned her law degree from the University of Kansas School of Law. She has lived and practiced law in Great Bend since 2000. She practices in the areas of family law, criminal law, probate, civil and real estate matters.

**Joel Ensley**, a Salina public defender, was narrowly elected Marion County Attorney following the appointment of Courtney Boehm to the district court. Ensley, who was residing in Ellsworth, has a number of family ties to Marion, and was looking forward to being closer to family with the new position.

**Scott McPherson** was selected by the 30th Judicial District Nominating Commission to fill the magistrate judge vacancy in Harper County. McPherson is an attorney in Sterling, a former prosecutor and a one-time judge in Rice County. The 30th Judicial District is composed of Barber, Harper, Kingman, Pratt and Sumner counties.

**Nancy A. Midden** has joined the firm of McDowell Rice Smith & Buchanan, PC, as a shareholder. Midden’s practice focuses on governmental finance, including state and local governmental lease-purchase financing, both taxable and tax-exempt; general and limited tax obligation bonds and other tax-exempt or tax-advantaged obligations. A graduate of St. Mary’s College, Midden received her juris doctor from The University of Notre Dame Law School. She is licensed in Missouri, Kansas and Florida.

**Andrew Stein** was unanimously appointed in mid-December 2018, to serve as Bucklin City Attorney following the resignation of Mark Cowell.

NOTE: Members in the News items are largely gleaned from newspaper articles from across the state, provided by our clipping service. If there are questions or concerns regarding information printed here, please feel free to inquire through the following email: editor@ksbar.org
New Locations

As of Jan. 1, 2019, the firm of Bauer, Pike, Bauer & Wary, LLC, became Bauer, Pike, Bauer, Wary & Carroll, LLC. The office is located at 1310 Kansas in Great Bend. Phone is 620-793-7239.

Steve Bowe has opened a new law office at 107 South Main in Troy, Kansas. Having lived in Troy for 13 years, Bowe said he’d wanted to open an office there for some time. When the space became available, he bought the building and remodeled it. Bowe has a B.S. in accounting from Missouri Western State University, an M.B.A. from the Bloch School of Business at UMKC, a law degree from the UMKS School of Law and Master of Laws in Taxation from UMKC. Bowe is licensed in both Kansas and Missouri.

Christine Pina Rosengreen, Kansas City-area family law attorney, has merged her practice with that of Joseph, Holland & Craft LLC. Rosengreen's practice concentrates on divorce, paternity, custody and support modification, guardianship, and adoptions. A graduate of the University of Kansas School of Law, Rosengreen started her career in Iowa handling criminal and family law cases before returning to the KC area to clerk for the Honorable Vernon E. Scoville, III, in the Jackson County 16th Circuit Court of Missouri. She later worked as a staff attorney for Jackson County CASA. Rosengreen is a member of the KBA, the Kansas City Metro Bar Association and the Missouri Bar Association.

Notables

Jamie Brooksher, Pittsburg State University General Counsel, was recognized as a 2019 Woman of Distinction by the Pittsburg Area Chamber of Commerce. She and 11 others will be featured in a 2019 calendar being offered by the Pittsburg Area Chamber of Commerce. Brooksher is an alumna of Pittsburg State and also teaches business law in the PSU Kelce College of Business.

Hon. Jeffrey Jack, Sarah Warner and Marcia Wood were named the three finalists selected by the Court of Appeals nominating committee. Final selection is to be made by Governor Laura Kelly before March 15, subject to Senate confirmation. Jack has been a district court judge in Labette County since 2005. He holds a degree in anthropology from Harvard and a law degree from the University of Kansas School of Law. Judge Jack is a former state legislator and practiced law in Parsons. Sarah Warner is an attorney with Thompson Warner, P.A., in Lawrence. She is currently president of the KBA. A graduate of KU, Warner received her law degree from Ave Maria School of Law in Ann Arbor, Michigan. Marcia Wood is a partner with Martin, Pringle, Oliver, Wallace and Bauer LLP in Wichita. She previously clerked for U.S. District Judge Frank G. Theis. Wood received both her undergraduate and law degrees from the University of Kansas.

Scott J. Mann was profiled in a Hutchinson News story that chronicled his years as a lawyer in the community. The story outlined his career from practicing with another Hutchinson law firm, Gilliland and Hayes through his decision to set up his own practice. He has added attorneys and staff through the years; the firm is now known as Mann, Wyatt & Rice, LLC, located at 201 E. First Ave. in Hutchinson, with six attorneys (Mann, Mike Wyatt, Jesse Tanksley, Mitch Rich, Sam Schulte and Mason Lent) and offices in three states. Mann, Wyatt and Rice LLC was the Hutchinson/Reno County Chamber of Commerce Small Business of the Month for January.

Obituaries

Timothy Gene Elliott (12/5/1959 – 1/19/2019)

Timothy Gene Elliott, 59 of Overland Park, Kansas, died after a long-fought battle with brain cancer January 19, 2019, at Kansas City Hospice House. He was born December 5, 1959, in McPherson, Kansas, the son of Gene and Rhonda Elliott.

Tim grew up in Hutchinson, graduating from Hutchinson High School in 1978 as a State Champion wrestler. After living and working in Topeka for a bit, they settled in Overland Park. In addition to Stephanie's children Alicia and Jordan Billings, they grew their family by adding Megan (Elliott) Machen and Michael Elliott to the clan.

A lifelong KU fan, he enjoyed attending basketball and football games to cheer on the Jayhawks. He was also a passionate supporter of both the Royals and Chiefs. Tim married the love of his life, Stephanie Witt, in 1986. After living and working in Topeka for a bit, they settled in Overland Park.

He was diagnosed with an oligodendroglioma brain tumor in May of 2008. Mere months after his first surgery, he be-
Steven R. Smith (11/18/1948 – 1/21/2019)

Steven R. Smith, 70, died January 21, 2019. He was born November 18, 1948, in Hiawatha, Kansas, the youngest son of R.C. Smith and Hazel Smith. Steve graduated Hiawatha High School class of 1966, Kansas University class of 1970, Washburn Law School class of 1978, and served in the U.S. Army National Guard 1970-1978. After the Army, he became an attorney, beginning his practice in Wichita. He last practiced at Gates Shields Ferguson Swall Hammond P.A. in Overland Park. In 2010, the Kansas Supreme Court appointed Steve to the board of directors of the Kansas Lawyers Assistance Program. He is survived by his son, Robert Brady (Tanya) Smith; grandchildren, Robert Cameron (Shae) Smith, Haley Danielle Smith and Adam Cole Smith; his brother, William (Paula) Smith; sister, Sue (Menzie) Brown; and his beloved dog, Mattie. The family suggests donations in Steve’s memory to the KALAP Foundation, c/o The Kansas Lawyers Assistance Program, 515 South Kansas Avenue, Suite 202, Topeka, KS 66603.

Winton M. Hinkle (3/2/1942 – 1/12/2019)

Prominent Wichita attorney Winton M. Hinkle, 76, passed away peacefully on the morning of January 12, 2019, from Parkinson’s disease and Lewy-body dementia. Winton was born on March 2, 1942, the only child of Ralph and Mildred Hinkle of Garden City, Kansas. Winton was a member of the Garden City High School’s championship debate team. While in high school, he met his future wife Pauletta when he pumped gas for her at a local filling station. He and Pauletta then attended Emporia State University, where he continued his debate success, including a trip to a national tournament at West Point. The pair graduated with teaching degrees and moved to the Kansas City area before Winton chose to attend Washburn Law School in Topeka, Kansas. There they survived the 1966 Topeka tornado. Winton graduated top of his class in 1968 and served as editor-in-chief of the Washburn Law Journal. Upon graduation, he accepted a position with a prominent law firm in Wichita, and thus began what became a highly distinguished and respected 46-year legal career. He co-founded Wichita’s second-largest law firm, Hinkle Law LLC, and became what many considered to be the expert in municipal finance, bond law, and tax and securities codes. For 16 years, Winton served as Bond Counsel for the City of Wichita. Winton directly contributed to the growth and development of many important Wichita-area businesses, including Beech Aircraft, Cessna Aircraft Co., the Coleman Co., the Via Christi hospital system, Wesley Medical Center, and many, many others. He also maintained involvement with his law school through the Law Alumni Association Board of Governors, including serving a 3-year term as its President. In 2015, he was recognized with the Washburn School of Law’s Lifetime Achievement Award. When he wasn’t at work, Winton was an avid hobbyist. His enthusiasms included antique cars, model trains and airplanes, and woodworking. He was also a devoted family man, enjoying camping trips, cooking steaks, skiing, boating, family game nights, and bouncing around on jeep trails in Colorado. Winton retired in 2014 and moved to Anthony, Kansas, where he became a beloved resident of the Anthony lakeside community and an active member of the Anthony Methodist Church. He is survived by his wife of 57 years, Pauletta, their children, Brian, Neal, Greg, and Karen, several grandchildren, and one great-grandchild. The family intends to celebrate his memory at a small ceremony in Garden City, Kansas, in early spring. Information will be available through Wulf-Ast Mortuary at a later date. Because Washburn Law School always held a cherished place in Winton’s life and career, the family has established the Winton M. Hinkle Scholarship Fund to benefit future Washburn Law students. Gifts may be sent to: Washburn Law School Foundation (memo: Winton Hinkle), 1700 College, Topeka, Kansas, 66621.
ATTORNEY DISCIPLINE

SIX-MONTH SUSPENSION
IN RE TAMMIE E. KURTH
NO. 118,944—JANUARY 25, 2019

FACTS: As part of a diversion agreement, Kurth stipulated to violations of KRCP 1.3 (diligence), 1.4(a) (communication), 1.5(a) (fees), and 1.16 (d) (termination of representation). Kurth was unable to successfully complete the diversion. In general, Kurth did not dispute the legal conclusions on these violations, but she did contest the recommended discipline of suspension. Kurth abruptly left her practice in order to care for her adult daughter who became ill and later died. This left her clients without representation during the absence.

HEARING PANEL: The hearing panel found evidence to support all charged disciplinary violations. It considered several aggravating factors including Kurth’s inability to complete the diversion. The hearing panel also heard the mitigating factors of Kurth’s physical and mental health and her use of prescription medication. The panel had no doubt that Kurth’s mental disability contributed to the misconduct. But she showed no sustained recovery, and there was expert testimony that her medication could make it difficult for her to practice law. Kurth strenuously objected to the hearing panel evaluating her fitness to practice. However, a majority of the panel noted both Kurth’s history and her conduct at the hearing and concluded that she was not capable of representing clients. Accordingly, the panel proposed a two-year suspension.

HELD: The primary argument before the court centered on whether Kurth would be required to undergo a Rule 219(d) reinstatement hearing before being allowed to practice after a suspension. Kurth argued for discipline of published censure, claiming the hearing panel recommended harsher discipline than was warranted because of her unconventional appearance and communication style. Given the total weight of the evidence, the court imposed discipline of a 6-month suspension with the requirement that Kurth complete a Rule 219(d) reinstatement hearing before the suspension is lifted.
tenced to life without possibility of parole, should be extended to his life sentence with the possibility of parole. District court summarily dismissed the motion.

ISSUE: (1) Motion to correct an illegal sentence

HELD: District court's decision was affirmed. Donahue's Eighth Amendment claim does not implicate the sentencing court's jurisdiction, and Kansas Supreme Court has repeatedly held a motion to correct an illegal sentence under K.S.A. 22-3504 cannot raise claims that the sentence violates the United States Constitution.

STATUTES: K.S.A. 2017 Supp. 22-3504(3), -3601(b) (3); K.S.A. 22-3504, -3504(1); K.S.A. 1973 Supp. 21-3421, -4501(a), 22-3717(2)

CRIMINAL PROCEDURE—MOTIONS—SENTENCES—STATUTES

STATE V. JAMERSON

SHAWNEE DISTRICT COURT—AFFIRMED IN PART, VACATED IN PART, REMANDED
COURT OF APPEALS—AFFIRMED IN PART, REVERSED IN PART
NO. 115,629—JANUARY 25, 2019

FACTS: Jamerson was convicted of second-degree murder, robbery and conspiracy to commit robbery. Sentence imposed included aggravated robbery sentence to run consecutive to second-degree murder sentence, and the conspiracy sentence to run concurrent with both. He filed a motion to correct an illegal sentence arguing district court used an incorrect criminal history score in sentencing for second-degree murder. District court agreed and also noticed Jamerson's criminal history had been erroneously applied to non-base sentences of aggravated robbery and conspiracy. District court addressed all three errors at resentencing and ordered all sentences to run consecutive. Jamerson appealed, arguing district court lacked jurisdiction to modify the unchallenged aggravated robbery sentence. District court discerned the original sentences for second-degree murder and conspiracy were illegal, it had authority under K.S.A. 22-3504(1) to correct the illegality. Disagrees that K.S.A. 22-3504(1) invests a district court with discretion to modify the legal portions of a previously imposed sentence. Majority's incorporation of the entire KSGA into a plainly worded statute is contrary to basic statutory construction concepts. In changing concurrent conspiracy sentence to a consecutive sentence, district court was exercising discretion only available for sentencing under KSGA. Would hold the district court erred in resentencing Jamerson to serve his conspiracy sentence consecutively.

STATUTES: K.S.A. 2017 Supp. 21-6606(a), -6606(c), -6801 et seq., -6802, -6819; K.S.A. 21-4608, -4701 et seq., -4720, -4720(b), -4720(b)(5), 22-3504, -3504(1), 60-2101(b)
Kansas Court of Appeals

Civil

DIVORCE—MILITARY PAY
IN RE MARRIAGE OF BABIN
DICKINSON DISTRICT COURT—REVERSED
AND REMANDED
NO. 119,099—FEBRUARY 1, 2019

FACTS: Nickey and Roslyn married in 1994. For almost their entire marriage Nickey was an active-duty service member. After both spouses filed for divorce, they agreed to mediate. That mediation resulted in a property settlement agreement which, in part, gave Roslyn 43% of Nickey’s military retirement and disability pay. The district court issued a divorce decree but postponed a final property settlement agreement after disagreements arose. Specifically, Nickey claimed that the district court lacked the authority to divide his military disability pay. The district court disagreed and ruled that Nickey was bound by the mediation agreement. He appealed.

ISSUE: (1) Divisibility of military disability benefits

HELD: There are federal laws which pre-empt state courts from treating military disability pay as community property subject to division. These laws are strictly construed, most recently by the United States Supreme Court in Howell v. Howell, 581 U.S. __ (2017). For this reason, the district court could not force Nickey to contract away his disability pay and the property settlement agreement must be vacated. On remand, the district court may consider the financial impact of the disability pay when dividing assets and ordering spousal support.


TIME LIMITATIONS—WORKERS COMPENSATION
SCHNEIDER V. CITY OF LAWRENCE
WORKERS COMPENSATION BOARD—REVERSED AND REMANDED
NO. 119,340—FEBRUARY 8, 2019

FACTS: On two occasions, two years apart, Schneider injured his back while working as a firefighter. Schneider filed an application for hearing more than five years after the second injury. The City moved to deny the applications as untimely. Schneider responded that the application was timely because the City provided authorized medical care in 2012 and again in 2015, just a few weeks before the application was filed. The ALJ denied Schneider’s claim as time-barred and the Board affirmed. Schneider appealed.

ISSUE: (1) Timeliness of Schneider’s claims

HELD: The amendments to K.S.A. 44-523 are procedural and applied retroactively. The Board erred by using the 2008 version of the statute when addressing Green’s claim. The 2017 version of K.S.A. 44-523(f) requires the employer to request dismissal for lack of prosecution. The ALJ must then notify the claimant and set the matter for a hearing. This is very different from the 2008 statute, which mandated dismissal if finality is not reached within a certain time. Because Green did not receive the hearing to which he is entitled by statute, the case must be remanded. On remand, the Board must provide Green with an appropriate forum and determine whether dismissal is warranted.


LEGAL MALPRACTICE
POWER CONTROL DEVICES, INC. V. LERNER
JOHNSON DISTRICT COURT—AFFIRMED
NO. 117,705—JANUARY 25, 2019

FACTS: PCD hired Lerner to represent it in a federal breach of contract action. The case involved highly technical design and engineering work. PCD sued a contractor for allegedly stealing intellectual property. At the time he was retained, Lerner knew that the statute of limitations would be an issue since Kansas’ five-year limitation had already expired. Lerner filed suit in Massachusetts—the defendant’s home state—because it has a six-year limit for breach of contract claims. The defendant argued that the breach of contract occurred two years of the employer’s last compensation payment even if that payment was not voluntary. The Board read ambiguity into the statute where none existed. The legislature could have codified Graham during the overhaul of the workers compensation statutes but chose not to. Schneider’s application was timely filed, and this case is remanded.

STATUTE: K.S.A. 44-520a, -534(b)

DISMISSAL—WORKERS COMPENSATION
GREEN V. GENERAL MOTORS CORP.
WORKERS COMPENSATION BOARD—REVERSED
AND REMANDED
NO. 119,044—FEBRUARY 8, 2019


ISSUE: (1) Proper version of K.S.A. 44-523 to apply

HELD: The amendments to K.S.A. 44-523 are procedural and applied retroactively. The Board erred by using the 2008 version of the statute when addressing Green’s claim. The 2017 version of K.S.A. 44-523(f) requires the employer to request dismissal for lack of prosecution. The ALJ must then notify the claimant and set the matter for a hearing. This is very different from the 2008 statute, which mandated dismissal if finality is not reached within a certain time. Because Green did not receive the hearing to which he is entitled by statute, the case must be remanded. On remand, the Board must provide Green with an appropriate forum and determine whether dismissal is warranted.

earlier than Lerner contended. The district court agreed and granted the defendant's motion for summary judgment. The parties eventually settled the matter. PCD then filed a legal malpractice action against Lerner. After a trial, a jury found that Lerner was negligent for failing to provide timely legal services to PCD and that PCD's negligence action would have been successful but for the malpractice. Lerner filed a post-verdict motion for judgment as a matter of law. The motion was granted and the jury's verdict set aside after the district court determined that PCD failed to prove that the defendant breached the underlying contract. In the alternative, the district court also found that the jury instructions were improper and that PCD was not entitled to recover attorney fees spent in the underlying tort case. PCD appealed.

ISSUES: (1) Granting of judgment as a matter of law; (2) jury instruction on breach of contract

HELD: In order to prevail on its legal malpractice claim, PCD was required to prove that it would have prevailed in the underlying breach of contract claim. An attorney's opinion of the underlying case, or statements made by the attorney in pleadings, are not evidence of any of the claims made in the underlying lawsuit. PCD failed to present expert testimony in its malpractice case which left it without evidence to support its claim. In the absence of that evidence, the judgment as a matter of law was appropriate. Lerner's work for PCD was, in effect, an employment contract. But there is no evidence that Lerner made an express promise to timely file suit. In the absence of an express contract, the district court properly reversed the jury's verdict as a matter of law. PCD appealed.

STATUTES: K.S.A. 2017 Supp. 60-456(a)

HABEAS CORPUS—JURISDICTION
PCD V. STATE
SEDGWICK DISTRICT COURT—AFFIRMED
NO. 119,057—FEBRUARY 8, 2019

FACTS: Ponds was convicted of multiple felony charges in 2009. His conviction was affirmed on direct appeal. In 2017, Ponds filed a K.S.A. 60-1507 motion which raised issues that had been adversely decided on direct appeal. The district court summarily denied the motion. Ponds filed a timely motion for reconsideration, but before a decision was announced, he filed a notice of appeal. The district court denied the motion to reconsider, and Ponds did not file a second notice of appeal.

ISSUES: (1) Jurisdiction; (2) whether Ponds was entitled to a hearing on his motion

HELD: The appellate court only has jurisdiction over a final decision. K.S.A. 60-2103(a) requires the notice of appeal to be filed within 30 days of a final decision. That did not happen here, but Ponds filed a timely motion to reconsider which tolled the time in which to file a notice of appeal. Ponds’ notice of appeal was premature because it was filed before the district court ruled on the motion to reconsider, and the denial of Ponds’ motion was not announced from the bench. And Ponds did not file a second notice of appeal after the motion was denied. Case precedent shows that the appellate courts have taken an expansive reading of Supreme Court Rule 2.03 and applied it to situations like this. Under that precedent, the court has jurisdiction to consider the denial of Ponds’ K.S.A. 60-1507 motion but lacks the authority to review the denial of the motion to reconsider. The claims raised in Ponds’ K.S.A. 60-1507 motion are identical to the issues from his direct appeal. Any attempt to relitigate these issues is barred by the doctrine of res judicata.

STATUTES: K.S.A. 2017 Supp. 60-259(f), -2102(a)(4), -2103(a); K.S.A. 60-1507

CRIMINAL

CRIMINAL LAW—CRIMINAL PROCEDURE—EVIDENCE—JURIES—JURY INSTRUCTIONS—MOTIONS—STATUTES
STATE V. SHAY
MIAMI DISTRICT COURT—AFFIRMED IN PART, REVERSED IN PART, REMANDED
NO. 118,303—FEBRUARY 8, 2019

FACTS: Shay was convicted of rape and aggravated criminal sodomy. On appeal, he claimed both convictions should be reversed because the State presented insufficient evidence the victim was unconscious or physically powerless, one of the alternative means of committing both charges. He also claimed the district court erred in overruling his objection to jury instructions that discouraged jury power of nullification.

ISSUES: (1) Sufficient evidence of alternative means—rape; (2) sufficient evidence of alternative means—aggravated criminal sodomy; (3) jury instructions on nullification

HELD: Rape conviction was affirmed. Direct evidence the victim was sleeping when the rape occurred is sufficient evidence that Shay raped the victim while she was unconscious or physically powerless.

Aggravated criminal sodomy conviction is reversed. No evidence that Shay committed this act while the victim was sleeping, and victim’s testimony of being too scared to move does not satisfy statutory element that the crime was committed while she was unconscious or physically powerless. State v. Parker, 48 Kan. App. 2d 68 (2012), is factually distinguished. Remanded for new trial only on alternative means supported by sufficient evidence in the first trial—that this crime was committed while victim was overcome by force or fear. Double jeopardy bars retrial on alternative means that crime was committed while victim was unconscious or physically powerless.

District court did not err in overruling Shay’s requested instructions. District court’s reasonable doubt instruction did not sidestep holding in State v. Smith-Parker, 301 Kan. 132 (2014), and no instruction to the jury came too close to directing a verdict for the State.

STATUTE: K.S.A. 2017 Supp. 21-5504(b)(3)
Appellate Practice Reminders
From the Appellate Court Clerk's Office

Do You Prefer Vinyl or CD? It's All About the Record!

The onset of electronic records has created new problems concerning the record on appeal. However, the more things change, the more they stay the same—whether it's paper or electronic. Nothing is more frustrating to a research attorney than a record that has tortured citations and an archaic numbering system only Pythagoras could unravel.

Appellants and appellees are required to key all facts in their briefs to the specific volume and page number in the record on appeal. Supreme Court Rule 6.02 and 6.03, “The facts included in the statement must be keyed to the record on appeal by volume and page number. The court may presume that a factual statement made without a reference to volume and page number has no support in the record on appeal.” Rule 6.02(a)(4). Additionally, issue preservation is also critical. "Each issue must begin with citation to the appropriate standard of appellate review and a pinpoint reference to the location in the record on appeal where the issue was raised and ruled on.” Rule 6.02(a)(5).

For the most part, preparation of the record on appeal begins and ends with the district court clerks. The clerk of the district court has 14 days after service of the docketing statement to compile the record on appeal in one or more convenient volumes, with each page in the volume conveniently viewable and separately numbered. Rule 3.02(a), (b). Obviously, the district court clerk has a duty to package the record on appeal for us. Sometimes it gets quite complicated when cases are consolidated before, and also after, the record on appeal has been transmitted to the Clerk of the Appellate Courts. "In cases consolidated for appeal, the record on appeal should be prepared as if it were one case, using separate, continuous, non-repeating volume numbers.” Rule 3.02(b)(5).

It’s no surprise that we sometimes have issues with district courts and electronic records. In a recent instance, the district court failed to consolidate a record, and the parties used these really tortured citations to try and convey to the court what they were trying to cite. Save your hieroglyphics and just contact the Clerk of the Appellate Courts if a record doesn’t look right. It’s so much easier in the long run. We are very interested, as are both appellate courts, in making sure that the record is accurate and consistent, and if the attorney thinks something is wrong, we’re going to stop everything and investigate. All an attorney needs to do is file a motion to stay, and let us take over. We appreciate that attorneys want to keep things rolling and are making do the best they can, but the record on appeal will need to be fixed at some point, so getting it done earlier rather than later is the best practice in this situation.

For questions about these or other appellate procedures and practices, call the office of the Clerk of the Appellate Courts (785) 296-3229 • Douglas T. Shima, Clerk.
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Robert L. Gernon Law Center, Topeka

8:30 a.m. Check-in & Continental Breakfast
9:00 a.m. Introduction of Bankruptcy Code and Rules
9:50 a.m. Preparing the Bankruptcy Filing
10:40 a.m. Break
10:55 a.m. Lawyers Behaving Badly/Lawyers in Crisis
11:45 a.m. Lunch (Provided) – Judge Somers “State of the Court”
1:15 p.m. Putting on Expert Valuation Testimony
2:05 p.m. Creditor Representation: Basic Skills
2:55 p.m. Break
3:10 p.m. Ethics Jeopardy
3:40 p.m. Adjourned

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<td>7:30 a.m.</td>
<td>Check-in &amp; Continental Breakfast</td>
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<td>8:00 a.m.</td>
<td>The Evolving Definition of a Parent (100 minutes)</td>
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<td>Hon. Keven O’Grady, Tenth Judicial District, Olathe</td>
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<td>Hon. Neil Foth, Tenth Judicial District, Olathe</td>
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<td>9:40 a.m.</td>
<td>Break</td>
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<td>Legislative Update</td>
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<td>Ronald W. Nelson, Ronald W. Nelson PA, Overland Park</td>
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<td>Ashlyn Yarnell, Ronald W. Nelson PA, Overland Park</td>
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<td>10:40 a.m.</td>
<td>Tax Law Changes</td>
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<td>Matthew Berberich, MarksNelson CPA LLC., Kansas City, MO</td>
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<td>Angela M. Meyer, Meyer Law Firm LLC., Pittsburg</td>
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<td>11:30 a.m.</td>
<td>Trauma Informed Courts: An Overview</td>
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<td>Hon. Jeffry L. Jack, District Court of Labette County, Parsons</td>
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<td>Margo R. Moore, Labette County Mental Health Services Inc., Parsons</td>
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<td>12:20 p.m.</td>
<td>Lunch (Provided)</td>
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<td>1:20 p.m.</td>
<td>Ethics Panel Part 1 (Civility &amp; Courtesy in Challenging Circumstances of the Family Law Practice)</td>
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<td>Steve Henry, The Henry Law Firm PA., Overland Park</td>
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<td>2:10 p.m.</td>
<td>When CINC Appeals Happen and How to Avoid Them Without Sacrificing the Client’s and The Child’s Best Interests</td>
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<td>Hon. Kevin M. Smith, Eighteenth Judicial District, Div. 12, Wichita</td>
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<td>3:00 p.m.</td>
<td>Break</td>
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<td>3:15 p.m.</td>
<td>Ethics Panel Part 2 (Civility &amp; Courtesy in Challenging Circumstances of the Family Law Practice)</td>
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<td>Sarah Carmody, Moderator, Sarah Carmody Law LLC., Olathe</td>
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<td>Steve Henry, The Henry Law Firm PA., Overland Park</td>
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<td>Tish Morrical, Hampton &amp; Royce LC., Salina</td>
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<td>Megan Weddle, Doll Law Firm LLC., Dodge City</td>
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<td>4:05 p.m.</td>
<td>Adjourned</td>
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- KBA Member Registration $310
- Non-member Registration $430
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• Provision of brief advice allows legal services staff attorneys to focus on full representation
• Provision of brief advice can prevent larger legal crises from developing
• OnlineTNjustice.org—the Tennessee model for ABA Free Legal Answers—has, in its few years of service, received over 10,000 legal questions

CAN I PARTICIPATE AS A PRO BONO ATTORNEY?
Yes, as long as you are licensed in a participating state and in good standing. Scan the QR code below or go to abafreelegalanswers.org and click on “Attorneys Volunteer Here.”

ABA Free Legal Answers increases pro bono opportunities:
• Convenient pro bono opportunity that attorneys can fit into their schedule
• Attorneys can log in and provide answers 24/7/365
• Reaches volunteer populations with restricted time in which to provide pro bono, such as stay-at-home parents, corporate attorneys, and government attorneys

The American Bar Association offers:
• No cost to participating states
• Malpractice insurance for all volunteer attorneys will be provided
• Web hosting will be provided
• A national staff person to maintain the site, manage the queue, and collect and analyze data

QUESTIONS?
If your state is not already participating and you are interested in learning more, contact Tali Albukerk at 312.988.5704 or abafreelegalanswers@americanbar.org.
Positions Available

Advocate – Disability Crime Victims Unit
Help obtain justice for victims of crime with disabilities. Advocate sought by Disability Rights Center of Kansas to advocate for crime victims with disabilities. 40 hours a week position, yearly pay is approx $32K, but depends on experience. Paralegals encouraged to apply. Great benefits. Employer-paid BCBS health insurance, KPERS retirement, etc. Questions? Need an alternative format? Contact DRC: 1-877-776-1541 for info@drckansas.org. Get the full job description & application at www.drckansas.org/about-us/jobapp

Attorney Position Available. Arn, Mullins, Unruh, Kuhn & Wilson LLP, established Wichita law firm seeks associate and/or lateral hire. Minimum two (2) years experience in Civil, Family, Litigation and General Practice. Attractive benefits, including health insurance, 401(k), disability/life insurance. Please forward resume, introductory letter and writing sample(s) to: Kris J. Kuhn (kkuhn@arnmullins.com).

Attorney Position Available. Young, Bogle, McCausland, Wells & Blanchard, a downtown Wichita law firm seeks associate or lateral hire. At least three years’ experience in civil litigation/general practice and must be admitted to the Kansas Bar. Equal opportunity employer. Competitive benefits, including health insurance. Email resume, introductory letter, writing sample, and salary requirements to Paul McCausland, p.mccausland@youngboglelaw.com.

Commercial Services-Based Law Firm
seeking new litigation attorney, preferably 1-5 years of experience. Attorneys with additional experience in bankruptcy, business or transactional matters would be ideal. Candidates with a developed book of business in our practice areas encouraged to apply. Must be licensed to practice in Kansas with significant civil litigation experience. Our firm is dynamic, filled with colorful, expressive personalities. We seek someone to complement our diversity and flair. Must be capable of high quality work, a superior client experience. Very competitive salary, great benefits package. Send resume, cover letter, salary history, list of references and writing sample to laura@eronlaw.net. All inquiries confidential, except to contact references.

Crow & Associates, Leavenworth, seeks associate attorney. Benefits include health/dental insurance. Salary negotiable. Send resume to mikecrown@crowlegal.com

Evans & Dixon, LLC seeks to hire an attorney with strong transactional expertise for our Overland Park office. We offer a rewarding work environment with a commitment to creating long-term relationships with our clients by providing excellent service. Email cover letter and resume to lhauf-vitale@evans-dixon.com

Legal Secretary – Goodell, Stratton, Edmonds & Palmer, LLP has an opportunity for an experienced legal secretary. The legal secretary will perform necessary legal functions by providing administrative support to professional legal staff. For detailed information regarding the position, contact gsep@gseplaw.com. Goodell, Stratton, Edmonds & Palmer, LLP offers a competitive compensation and benefit package commiserate with level of experience including health, dental and life insurance, 401k, Profit Sharing, paid vacation and sick leave. Resumes may be sent to: Managing Partner, Goodell, Stratton, Edmonds & Palmer, LLP, 515 South Kansas Ave., Suite 100, Topeka, KS 66003 or email to: gsep@gseplaw.com

Overland Park Law Firm. Ferree, Bunn, Rundberg & Ridgway seeking attorney experienced in complex Estate Planning and Probate work. Must be licensed in Missouri and Kansas. If interested, please forward introductory letter and resume for consideration to pbunn@fbr2law.com

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@probascolaw.com or via fax (785) 233-2384.

Wichita Firm Seeks Associate Attorney. Morris, Laing, Evans, Brock & Kennedy, Cht.d. 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 tlgrand@slwl.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@mcdonaldtinker.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.

Security Expert Witness. Board Certified Protection Professional and former Senior Police Commander providing forensic consulting to both plaintiff and defense counsel in all areas/venues of security negligence. A comprehensive CV, impeccable reputation and both criminal and civil experience equate to expert litigation support. Michael S. D’Angelo, CPP, Secure Direct Consulting, LLC. www.securedirection.net. (786) 444-1109, expert@securedirection.net.

Veterans Services. Do you want to better serve your veteran clients without going to the trouble of dealing with the VA? I am a VA-accredited attorney with extensive experience applying for various VA benefits, including Improved Pension. I regularly consult with attorneys (and their clients) about the various services attorneys can offer their clients to help qualify veterans and their families for various VA programs. As soon as a client is in position to qualify, I can further assist by handling the entire application to the VA for you. For more information about my various consultation and application services, please contact the Law Office of Scott W. Sexton P.A. at (785) 409-5228.

Office Space Available
2 Updated Office Spaces for Lease—601 N. Mur-Len Rd. Ste. 20, Olathe, KS 66062. Office 1) Large window with large ledge; Office 2) Storage closet and large picture window. *Coffee bar, waiting area and receptionist/paralegal area. Fax, Wifl, 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 Byron 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@nyslerlawfirmllc.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@kevin hooplaw.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; wit-nesses, notaries, fax/copy machine, internet, phone, etc. Please contact Tim Winkler at (913)-890-4428 or tim@kcelderlaw.com.

Ottawa, KS Office Space for Rent—950 sq. ft. for business office. Reception area, conference room, 4 private rooms, loft area for storage, kitchenette, back storage area, restroom. $600/month Please call (785) 893-0494 for more information. The location is 110 W 3rd St, Ottawa, Kansas. Pictures available upon request.

Overland Park Law Office. Two offices available at SW corner of 119th & Quivira. Cubicle space available for paralegal. Use of large conference room and storage space included. Open to either office share or ‘Of Counsel’ arrangement. Contact Whitney at web@cal dwellandmoll.com or 913-451-6444.

Professional Office Space for lease. The available space consists of one to two offices and an administrative staff bay, in a larger office building. No cost use of reception area, conference rooms, and high-speed internet. Located in southwest Topeka. Competitive rent. For more information, call 785-235-5367 or visit Law Office, PO. Box 67689, Topeka, KS 66667.

Seeking Office Space: Bilingual Immigration attorney with over 10 years of experience, looking to rent a conference room or office once or twice a month in Garden City, Kansas. No services needed other than a place to meet clients. We have served the immigrant community in Western Kansas for 9 years and have an ample client base. Our office is a great source of referrals for a family or criminal attorney as we only prac-tice immigration. Please reply to: erika.juradograham@gmail.com.

WYCO Office Suite Available at 134 N. Nettleton, Bonner Springs, KS 66012. 1100-2000 sf. Waiting area, receptionist area, break room, conference room, large and small offices, private parking, ADA Accessible. 1.25/sf/mo. Utilities included. For more information, call (913) 422-1620.

Other KANSAS REPORTS. Due to retirement I have Kansas Reports Vol. 1-306; Kan App 2d Vol. 1-54 and supplements current through July 2018 (missing two early out of print volumes). I will donate to a law library, public library or worthy charity. I will also donate to a young lawyer or law firm who could put them to use. Excellent condition. You must pick up or arrange and pay for delivery. Contact Richard G. Tucker, Parsons, KS, 620-423-9693 or at rickt@wavewls for details.

One of a kind walnut 4x8 conference table/desk/Board of Directors table. Four drawers each side and embossed leather top. Priced to sell $575 by retiring lawyer. Topeka location. 785.766.2084.

Retiring due to injuries. I have a complete set of Kansas Reports and Kansas Appellate Reports—$1000 OBO. Will deliver in the Topeka area. Contact Robert E. Keeshan, Esq., Topeka, KS (785) 554-6187.

Miscellaneous Services
David P. Mudrick, Mediator AV-rated; over 30 years’ experience in employment & labor cases; Past President, Employment Law section of KBA (2016-18); Selected for Best Lawyers in America ©: Labor Law-Management; Approved by State of Kansas as Civil Mediator; Former conciliation counsel in charge of litigation & claims, including personal injury, contract, & discrimination claims. Henson, Hutton, Mudrick, Gragson, & Vogelsberg, L.L.P.; (785) 232-2200, ext. 208; dmudrick@hhmglaw.com.
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