When CINC Appeals Happen and How to Avoid Them
Without Sacrificing the Client’s and the Child’s Best Interests
by Hon. Kevin M. Smith
P 38

When Disaster Strikes:
Lawyer Responsibilities in the Event of a Disaster
by M. H. Hoeflich
P 29

2nd Annual KBA Photography Contest
P 9
LawPay is proud to be a vetted and approved Member Benefit of the Kansas Bar Association.

“LawPay has been an essential partner in our firm’s growth over the past few years. I have reviewed several other merchant processors and no one comes close to the ease of use, quality customer receipts, outstanding customer service and competitive pricing like LawPay has.”

— Law Office of Robert David Malove

Trusted by more than 35,000 firms and verified ‘5-Star’ rating on ★ Trustpilot

888-281-8915 or visit lawpay.com/ksbar
Special Features

6 | Brown v. Topeka Board of Education
   65 Year Mark ...........................................Shelby Lopez

9 | 2nd Annual KBA Photography Contest
   New categories and requirements

12 | Lawyers Serving the Citizens of Kansas and
    Strengthening Our Community

Regular Features

8 | CLEs

10 | Substance and Style
   Explanatory Parentheticals are Your Friends
   ...............................................................Mary Matthews

16 | The Diversity Corner
   Hispanic Immigrants Legally Present in the U.S.
   Facing Discrimination at DMV Offices
   ........................................................................Leyla McMullen

33 | Law Practice Management Tips and Tricks
   The KBA Lending Library .............................Larry Zimmerman

50 | Law Students' Corner
   A Voice for the Unheard ..............................Maria Dushaj

18 | Law Wise—Freedom of Speech issue

46 | If Not Properly Conducted, Kansas Grand
    Juries May Result in Due Process Violations
       ....................................................................Christina M. Wahl

29 | When Disaster Strikes:
    Lawyer Responsibility in the Event of a Disaster
    M. H. Hoeflich

52 | Members in the News

53 | Obituaries

56 | Appellate Decisions

64 | Appellate Practice Reminders
   Huge Changes Proposed for 2019
   Annual Attorney Registration  .............Douglas T. Shima

65 | Classified Advertisements
2018-19
Journal Board of Editors

Emily Grant (Topeka), chair, emily.grant@washburn.edu
Sarah G. Briley (Wichita), sbriley@morrising.com
Hon. David E. Bruns (Topeka), brund@kcourts.org
Richard L. Budden (Kansas City), rbudden@sblaw.com
Boyd A. Byers (Wichita), byers@foulston.com
Jennifer Cocking (Topeka), jcocking@capfed.com
Connie S. Hamilton (Manhattan), jcham999@gmail.com
Michael T. Jilka (Lawrence), mjilka@jilkalaw.com
Lisa R. Jones (Mt. Myers, FL), ljones@ecu.edu
Hon. Janice Miller Karlin (Topeka), judge_karlin@kscourts.gov
Casey R. Law (McPherson), claw@bwisecounsel.com
Hon. Robert E. Nugent (Wichita), judge_nugent@kscourts.gov
Professor John C. Peck (Lawrence), jpeck@ku.edu
Rachael K. Pirner (Wichita), rpirner@wfgfirm.com
Richard D. Ralls (Overland Park), rallslaw@turnkeymail.com
Karen Renwick (Kansas City), krenwick@wrsvlaw.com
Teresa M. Schreffler (Wichita), tschreffler@gmail.com
Richard H. Seaton Sr. (Manhattan), seatonlaw@sbcglobal.net
Sarah B. Shattuck (Ashland), slopez@ksbar.org
Richard D. Smith (Topeka), rich.smith@ag.ks.gov
Marty M. Snyder (Topeka), marty.snyder@ag.ks.gov
Patti Van Slyke, Journal Editor & Staff Liaison, pvanslyke@ksbar.org
Catherine A. Walter (Topeka), cwalter@topekajournal.com
Meg Wickham, Dir. of Communications & Member Svcs., mwickham@ksbar.org
Issaku Yamaashi (Overland Park), iyamaashi@foulston.com
Natalie Yoza (Topeka), nyoza@ksbar.org

The Journal Board of Editors is responsible for the selection and editing of all substantive legal articles that appear in The Journal of the Kansas Bar Association. The board reviews all article submissions during its quarterly meetings (January, April, July, and October). If an attorney would like to submit an article for consideration, please send a draft or outline to Patti Van Slyke, Journal Editor at editor@ksbar.org.

Ryan Purcell, graphic designer, rpurcell@ksbar.org

The Journal of the Kansas Bar Association (ISSN 0022-8486) is published monthly with combined issues for July/August and November/December for a total of 10 issues a year. Periodical Postage Rates paid at Topeka, Kan., and at additional mailing offices. The Journal of the Kansas Bar Association is published by the Kansas Bar Association, 1200 SW Harrison St., Topeka, KS 66612-1806; Phone: (785) 234-5696; Fax: (785) 234-3813. Member subscription is $25 a year, which is included in annual dues. Nonmember subscription rate is $45 a year.

The Kansas Bar Association and the members of the Board of Editors assume no responsibility for any opinion or statement of fact in the substantive legal articles published in The Journal of the Kansas Bar Association. Copyright © 2017 Kansas Bar Association, Topeka, Kan.

For display advertising information, contact:
Bill Spilman at (877) 878-3260 toll-free, (309) 483-6467 or email bill@innovativemediasolutions.com

For classified advertising information contact Patti Van Slyke at (785) 234-5696 or email editor@ksbar.org.

Publication of advertisements is not to be deemed an endorsement of any product or service advertised unless otherwise indicated.

POSTMASTER: Send address changes to The Journal of the Kansas Bar Association, 1200 SW Harrison St., Topeka, KS 66612-1806.
PROTECT YOUR FIRM. HELP MORE PEOPLE. BE THE LAWYER YOU WANT TO BE.

Find out more about your KBA-endorsed carrier at www.alpsnet.com/kbajournal

MALPRACTICE INSURANCE FOR THE LAW FIRM WORTH PROTECTING

Endorsed by more state bars (including yours) than any other carrier.

KANSAS BAR ASSOCIATION www.ksbar.org

ALPS THE NATION’S LARGEST DIRECT WRITER OF LAWYERS’ MALPRACTICE INSURANCE.

(800) 367-2577 • www.alpsnet.com • learnmore@alpsnet.com
Anniversaries are important and wonderful events. They offer an opportunity to reflect and look back at the challenges we have overcome, while at the same time provide the occasion to articulate a plan for the future. As the nation prepares to celebrate the 65th anniversary of the landmark Supreme Court decision of 1954’s Brown v. Board of Education of Topeka, I can’t help but reflect on my year of service at the Brown Foundation and the profound impact that year would have on my life.

Many consider Brown v. Board the most noteworthy Supreme Court decision in U.S. history. The Brown decision overturned the separate-but-equal doctrine established by the Plessy v. Ferguson decision. It brought about the integration of public schools and helped launch the civil rights movement. And yet, prior to beginning my term of service, I had never heard of the Brown Foundation and had only a basic knowledge of the case and its significance in U.S. history. How is that possible?

I had lived in Topeka my entire life. In elementary school, we took a field trip to visit the Supreme Court room where the case was argued; I remember discussing the basic facts, but I don’t recall any conversation or dialogue regarding the significance of this historic case that played out in my hometown. But that was the extent of my experience and understanding of the decision. As a young, white girl from a middle-class family growing up in a rural school lacking much diversity at all, my understanding of racial discrimination was limited, to the say the least. My first real exposure to any sort of racial diversity came at the age of 22 when I began chiropractic school in urban Kansas City. While I took note of others who looked different than me and, upon first glance, appeared to have fewer resources, I had never stopped to consider that the
mere color of a person’s skin could be a real barrier to healthy
development, educational opportunities and future success.

Fast forward seven years…at the age of 29 I found myself at
a crossroads. I was a single mom of two intelligent, adorable
boys, a business owner and chiropractor struggling to start my
own practice and, in the stroke of an instant, both a victim
and a survivor of domestic violence all at once. I was deter-
mined to find meaning in the dark.

A month later, I had closed the doors of my business and
volunteered to serve a one-year term with AmeriCorps VIS-
TA, a national service program created under President John-
son’s Economic Opportunity Act of 1964 as part of his War
on Poverty. Often called the “Domestic Peace Corps,” Ameri-
Corps VISTA is designed to fight poverty by engaging full-
time volunteers in strengthening the capacity of organizations
that serve low-income communities. VISTA members live
and work alongside community members, helping solve the
most pressing challenges facing communities. That sounded
like the perfect respite while I figured out where to go from
here.

Even as I answered the call, completed my application and
was selected for an interview at the Brown Foundation, I was
still completely oblivious to the journey I was embarking
upon. As an AmeriCorps VISTA member, I would be part
of a team building onsite children’s libraries in low-income
housing projects across Topeka, in an effort to increase access
to books and improve reading skills for both the adults and
children residing in those communities. At my first training,
it was explained that I wouldn’t be swinging a hammer; rather,
I would be engaged in capacity-building activities to support
the actual construction and continued administration of the
libraries, i.e. fundraising initiatives and volunteer recruitment
to ensure long-term sustainability of the project. Truth be
told, I had to look up the meaning of “capacity-building.”

I received a small stipend of around $800/month as com-
penration for full-time volunteer work. I received health in-
urance for myself and qualified for childcare benefits for my
two boys. While not a big sum, it was enough to live on, and
I learned how to access all of the other benefits available to
someone who was earning below the poverty level. I also made
changes to my lifestyle and learned to find free or cheap meth-
ods of entertainment such as going to the library for books,
music and movies and exploring the great outdoors with the
kids.

An unforeseen benefit of my service was the ability to raise
my boys with a different awareness than I had been given.

There were big opportunities like meeting Coretta Scott King
and listening as she shared stories of her husband’s fight for
civil rights, but also smaller daily opportunities to interact
with people who didn’t look like them and build friendships
with children from different racial and cultural backgrounds.
As our eyes were opened to the reality of racial inequities, I
found myself struggling with disbelief and nausea. How could
people make instant judgements about a person’s value based
solely on the color of their skin? How can people be so indif-
ferent to what’s happening? And what part was I playing in
perpetuating the inequity? These questions served as the start-
ing point for a deeper dialogue with myself, my friends, my
family and my larger community. For the first time in my life,
I felt a passion in my soul, a fire in my belly. I wasn’t exactly
sure how, but I had a good idea that I was headed down the
path of public service. After my first year of service I felt that
my work was not yet complete. I felt there was still more I
could do to help the organization and help my community. I
signed on for a second term of service, but near the end of my
term, I was recruited to go to work for the Kansas Volunteer
Commission (KVC), one of two organizations in Kansas that
manage national service programs administered through the
Corporation for National and Community Service. This was
an opportunity to make a difference on a larger scale — and I
jumped at the chance. I spent 13 years at the KVC, eventually
becoming Executive Director. Those 13 years were some of
the most rewarding of my career, providing the opportunity
to interact with people like me who felt a calling to serve as
well as people who were the grateful recipients of the service
provided. Kids who dropped by their community center ev-
every day, not because they wanted to play with other kids, but
because the lunch or the snack they received there might be
the only food they had access to that day. And single moms
living in volunteer-built homes because they finally found the
courage to leave an abusive relationship.

I feel so lucky to have had the opportunity to be part of
an amazing national service program, to further my knowl-
edge and understanding of critical issues and to enhance my
leadership skills while simultaneously giving back to the com-
community where I had lived my entire life, but had never truly
experienced.

While the debate continues over the lasting impact of the
Brown v. Board decision one thing is clear, there is still much
work to be done. As we celebrate this significant anniversary
let us also recognize the ongoing challenges we face and reflect
on how we can continue to foster the important dialogue that
began 65 years ago. ■
It’s May—The Lusty Month of May
Sign up for a CLE!

Live Programs:

MAY
Saturday, May 18, 2019
Young Lawyers Sporting KC
Friday, May 24, 2019
Solo and Small Firm CLE

JUNE
Tuesday, June 4, 2019
Brown Bag Ethics
Saturday, June 8, 2019
Legislative & Case Law Institute
Tuesday June 11, 2019
Brown Bag Ethics
Friday, June 14, 2019
Legislative & Case Law Institute
Wednesday, June 26, 2019
Legislative & Case Law Institute June 26
Thursday, June 27, 2019
Brown Bag Ethics
Friday, June 28, 2019
Legislative & Case Law Institute

JULY
Friday, July 12, 2019
Legislative & Case Law Institute
Tuesday, July 16, 2019
Brown Bag Ethics

AUGUST
Friday, August 9, 2019
Legislative & Case Law Institute

SEPTEMBER
Thurs.-Fri., 26 & 27
Elder & REPT Conference
Four Points by Sheraton, Manhattan

NOVEMBER
November 8, 2019
Alternative Dispute Resolution CLE

Webinars:

MAY
Wednesday, May 8, 2019..... Rock-n-Roll Law Intellectual Property/Copyright Series: The Exclusive Rights (and Revenue) You Get With Music
Tuesday, May 14, 2019........ Show Me The Ethics!: The Ethycal Way to Bill for Legal Services
Friday, May 17, 2019.......... Webinar Practice Management Tips for the New and Not so New Attorney
Saturday, May 18, 2019...... The 2019 Ethy Awards
Tuesday, May 21, 2019........ It’s Not the Fruit, It’s the Root: Getting to the Bottom of Our Ethical Ills
Thursday, May 23, 2019..... Shamberg Series: Bridging Language Barriers in Client Representation
Wednesday, May 29, 2019... The Ethics of Delegation
Wednesday, May 29, 2019... Nice Lawyers Finish First
Friday, May 31, 2019......... Shamberg Series: The Current State of School Finance in Kansas
Friday, May 31, 2019......... Ethical Issues and Implications on Lawyers’ Use of LinkedIn

JUNE
Saturday, June 8, 2019....... Legislative and Case Law Institute Debut
Friday, June 14, 2019........ Legislative & Case Law Institute
Monday, June 24, 2019 ...... Legislative & Case Law Institute
Friday, June 28, 2019........ Legislative & Case Law Institute
Saturday, June 29, 2019 ..... Legislative & Case Law Institute
June On Demand .............. 2019 Brown Bag Ethics Series: Ethics Theatre
June On Demand .............. 2019 Brown Bag Ethics Series: #METOO & Our Judiciary: Enhancing Confidence in the System

To Register: www.ksbar.org/CLE
The 2nd Annual KBA Photography Contest

Categories:

Amazing Animals - pets, domestic, indigenous or exotic, any kind, anywhere

Spectacular Structures - buildings, bridges, towers, macro or micro, anything man-made

Lavish Landscapes - at home or abroad, land, sea or city, the sweeping sights that make you gasp

Memorable Moments - from the gaze of a grandchild to a family graduation or wedding to a celebrity encounter or any moment that moved you

Arts and Athletics - bring to life your favorite sport, capture a breathtaking sculpture or dance, share your own achievements in sports and the arts

Theme:

What a Wonderful World

Requirements:

• Open to KBA member attorneys only
• Photos must have been taken in the 2019 calendar year
• MUST be submitted in digital, hi-resolution format (300 dpi or better)
• Photographers MUST complete personal info sheet AND sign and submit a release for photos submitted.
• A maximum of one photo per category may be entered
• Photographer will determine the category in which each photo will be judged.

Photos & signed release to be submitted to: editor@ksbar.org
All entries MUST be in by midnight, Sunday, Sept. 29, 2019
Explanatory Parentheticals are Your Friends

by Mary Matthews

Legal writers aspire to craft clear, concise, and persuasive briefs. In this effort, lawyers employ a variety of tools; this article briefly addresses one of these tools—explanatory parentheticals.

An explanatory parenthetical “typically uses a participial phrase, a quotation, or a short description to help readers understand the cited source’s significance.” The “Bluebook” recommends using parentheticals “to explain the relevance of a particular authority to a proposition given in the text” when the relevance of the authority “might not otherwise be clear.” Explanatory parentheticals allow the author to provide precise information required to show how the authority supports a proposition. Indeed, Justice Ruth Bader Ginsburg has opined that the best briefs contain citations with “parenthetical explanations” (although other legal writers dissent).

Legal writers use explanatory parentheticals in many ways: (1) to prove or illustrate a rule from single authority or synthesized from multiple authorities; (2) to show the outcome or procedural posture of cases; (3) to distinguish adverse authorities; or (4) to apply rules to the facts of the case at hand. Each of these uses of parentheticals contributes to persuasive writing by providing accurate information in a condensed, concise manner.

Accuracy ensures that an explanatory parenthetical advances the credibility of the writer. A parenthetical that quotes language from an authority demonstrates the reliability of the material and thus adds to the persuasive quality of the writing. Most Supreme Court justices use quotations in explanatory parentheticals more frequently than other parenthetical devices. And before he became Chief Justice Roberts, attorney John Roberts often utilized direct quotes in explanatory parentheticals.

Legal scholars cite Robert’s brief for the petitioner in Alaska Dept of Environmental Conservation v. E.P.A as a model of effective brief writing. That brief contained numerous parentheticals directly quoting language from case law and other authorities—including the following:

Thus, when Congress wanted to require EPA approval of a state BACT determination, it did so explicitly. See, e.g., Barnhart v. SIgnon Coal Co., 534 U.S. 438, 452-
Carefully constructed parentheticals help to make legal writing concise, accurate, and credible. Together these characteristics add up to more persuasive writing.

---

**About the Author**

Mary Matthews is a visiting associate professor of law at Washburn University School of Law where she teaches Legal Analysis, Research & Writing. She previously served as a Career Law Clerk to the Hon. Kathryn H. Vratil, U.S. District Court for the District of Kansas and to the Hon. James K. Logan, U.S. Court of Appeals for the Tenth Circuit.

Mary.matthews@washburn.edu

---

1. Explanatory parentheticals may be your friends, but—as with any rhetorical device—if you misuse them they may turn on you. See Law classes with Gregory J. Pease, Washburn Law School Professor Emeritus (admonishing first year law students that “[t]he law is your friend but . . .”).


6. See David H. Tennant, For Maximum Persuasion, Higher Art in Case Citations (Parentheticals and More), For the Defense, 51 No. 3, at 66 (March, 2009) (noting critics who complain that “parenthetical explanations are painful to read”).

7. Voigt, supra note 5, at 280-81.


9. Tennant, supra note 6, at 68.


13. Id. at 45.


15. Id. at 263.


17. Id.

18. This parenthetical is adapted from the Tenth Circuit Opinion in Yvonne L. v. New Mexico Dep’t of Human Services, 959 F.2d 883 (10th Cir. 1992).
In 1957, the Bar Foundation Committee recommended the establishment of the Kansas Bar Foundation to the KBA Board of Governors. Sixty-two years ago, nine members served on the Board of Trustees. Today, the Foundation has twenty-five trustees and has provided millions of dollars in grants and scholarships.

What is the mission of the KBF?
The mission of the Kansas Bar Foundation is “…to serve the citizens of Kansas and the legal profession through funding charitable and educational projects that foster the welfare, honor and integrity of the legal system by improving its accessibility, equality and uniformity, by enhancing public opinion of the role of lawyers in our society.”

What does the KBF do?
The Foundation provides funding for legal services to the disadvantaged and law related educational resources to the public. A primary objective is to secure access to justice by funding numerous pro bono programs. For example, grants have provided legal advice and representation for senior citizens, survivors of domestic violence, children in the court system, and others. In addition, KBF dollars have supported educational projects and publications about legal rights and responsibilities and the role of Kansas courts.

How does the KBF do this?
The Foundation is supported by donations from attorneys, the IOLTA program, and various grants provided by cy pres settlements and other court ordered settlements.

Fellows
Members of the KBF are called Fellows. A Fellow is a person admitted to practice law under the Rules of the Kansas Supreme Court who has contributed an aggregate total of $1,000 or has pledged in writing to contribute at least $1,000 in 10 or fewer consecutive annual installments. Contributions after $1,000 are categorized in levels.

Fellow Giving Levels
- Fellow: $1,000 – $2,499
- Fellow Silver: $2,500 - $4,999
- Fellow Gold: $5,000 - $7,499
- Fellow Platinum: $7,500 - $9,999
- Fellow Diamond: $10,000 - $14,999
- Pillar of Foundation: $15,000 - $49,999
- Pillar of Profession: $50,000 or more

How do I make this commitment?
It is easy. You can complete your pledge form in this article and send it to the KBF. We will process your initial gift and
track your progress toward becoming a Fellow. You can also become a Fellow by completing the form online at https://www.ksbar.org/kbf_fellow. Please indicate in the comment box that you would like to become a Fellow pledge.

**IOLTA**

In addition to Fellows contributing to the KBF, remittances from IOLTA accounts are deposited to the foundation. The KBF IOLTA Committee meets each fall to review IOLTA grant proposals. Approximately $80,000 is dispersed among the grant recipients. Establishing an IOLTA account is easy. Visit https://www.ksbar.org/iolta.

**Cy pres and other court ordered settlements**

At times, the Foundation will receive funds from a cy pres settlement or other court ordered settlement. When this happens, the Foundation will establish a special committee to establish the grant program and review proposals. Currently, the KBF Community Redevelopment and Homeowners Assistance Grant Committee determines program guidelines and funding recommendations for a settlement received in 2015 that provides grants to legal services organizations to provide legal representation for foreclosure prevention and community redevelopment purposes.

**Scholarships**

Several KBF members and law firms have established scholarships that are administered by the foundation. Currently, there are twelve scholarships. The KBF Scholarship Committee reviews applications in the fall and scholarships are awarded in February.

**Endowments & planned giving**

The KBF manages several endowments and can assist with your planned giving arrangements. Creating a memorial or honorary gift fund, establishing a fund for building maintenance and improvement, and funding for special programs are unique ways to customize your gift.

**Events and awards**

In June each year, the KBF recognizes new Fellows, Fellows reaching new levels and the recipient of the Robert K. Weary Award. The “Weary Award” was established in 2000 to recognize lawyers or a law firm for exemplary service and commitment to the goals of the Kansas Bar Foundation. Visit https://www.ksbar.org/kbf_awards.
Kansas Bar Foundation Pledge Form
https://www.ksbar.org/pledge

Complete and return to:
Kansas Bar Foundation
1200 SW Harrison St.
Topeka, KS 66612-1806
Fax to 785-234-3813 OR Scan and send to Anne Woods awoods@ksbar.org

Today I join over 600 Fellows who have pledged $1,000 or more
to the Kansas Bar Foundation!

Name

Address

City ____________________________ State _____ Zip ________

Phone ___________________ Email _______________________

Enclosed is my tax-deductible gift or credit card number for:  $____________

Check one:
□ Full payment of $1,000
□ $100, the first of 10 annual contributions of $100 each, to be paid annually.

Payment Options
□ Check (Please make the check payable to Kansas Bar Foundation)
Check #_______ Date ____________

□ Credit card
□ Credit Card Information: Same as pledge contact information (same as above)

Name on Card _______________________
Address __________________________
City ____________________________ State _____ Zip ________
Billing Phone ______________________

Card Type: □ MasterCard □ Visa □ AmEx □ Discover

Card Number __________________________ Exp. Date __________ CVV __________
Signature ___________________________________
Student and Employee Dismissal and Disciplinary Cases

Clifford A. Cohen
Attorney at Law

Public and Private School Cases
Public Employee Due Process Claims
Federal and State Court
Over 35 Years of Experience

Colantuono Bjerg Guinn LLC
(Of Counsel)
7015 College Blvd. #375
Overland Park, Kansas 66211
(913) 345-2553 Fax (913) 345-2557
cemail: cac@ksmolaw.com
Licensed in Kansas, Missouri and Colorado

Guidance Tailored to the Needs of Attorneys

Fee-Only | Fiduciary | Independent | Objective

785-232-3266
716 S. Kansas Ave., Topeka, KS 66603
claytonwealthpartners.com

Stange Law Firm P.C. Utilizes Alternative Dispute Resolution Methods

Collaborative Divorce: A process in which parties work with a trained attorney, along with mental health and finance professionals, in attempt to reach an amicable resolution, privately and confidentially outside of the traditional courtroom.

Mediation: A neutral mediator tries to facilitate communication between the parties involved in hopes to reach an agreement on specific issues outside of court. If an agreement can be reached, the parties then hire separate attorneys to file settlement paperwork in court and obtain the approval of a judge.

DIVORCE • PATERNITY • ADOPTIONS • CHILD SUPPORT • MODIFICATIONS • CHILD CUSTODY • COLLABORATIVE LAW • MEDIATION • FAMILY LAW

Family Law Offices in Overland Park, Topeka and Wichita!

345 N. Riverview, Ste. 120 | Wichita, Kansas 67203
316.260.3120 | wardpotter.com

Note: The choice of a lawyer is an important decision that should not be based solely upon advertisements. Kirk C. Stange is responsible for the content. Principal place of business: 120 South Central Avenue, Suite 450, Clayton, MO 63105.

Stange Law Firm P.C. Utilizes Alternative Dispute Resolution Methods

Collaborative Divorce: A process in which parties work with a trained attorney, along with mental health and finance professionals, in attempt to reach an amicable resolution, privately and confidentially outside of the traditional courtroom.

Mediation: A neutral mediator tries to facilitate communication between the parties involved in hopes to reach an agreement on specific issues outside of court. If an agreement can be reached, the parties then hire separate attorneys to file settlement paperwork in court and obtain the approval of a judge.

DIVORCE • PATERNITY • ADOPTIONS • CHILD SUPPORT • MODIFICATIONS • CHILD CUSTODY • COLLABORATIVE LAW • MEDIATION • FAMILY LAW

Family Law Offices in Overland Park, Topeka and Wichita!

345 N. Riverview, Ste. 120 | Wichita, Kansas 67203
316.260.3120 | wardpotter.com

Note: The choice of a lawyer is an important decision that should not be based solely upon advertisements. Kirk C. Stange is responsible for the content. Principal place of business: 120 South Central Avenue, Suite 450, Clayton, MO 63105.
Hispanic Immigrants Legally Present in the U.S. Facing Discrimination at DMV Offices:

My Personal Experience Helping a Hispanic Woman Obtain Her Kansas Driver’s License on Her Fifth Attempt

by Leyla McMullen

While my practice at the Mdivani Corporate Immigration Law Firm focuses on business immigration, my firm has also established a pro bono program specific to women victims of domestic violence and other violent crimes. As part of this pro bono program, we enter our appearances for victims while they are in a shelter and work with shelter advocates and sometimes even with the police and prosecutors’ offices to ensure that these valuable witnesses can legally remain in the country to be able to assist the government in successfully prosecuting and incarcerating their dangerous perpetrators. Through our pro bono program, I became involved in assisting “Jane” (not her true name) to obtain her Kansas driver’s license.

My colleague Danielle Atchison had successfully represented Jane in her U Visa process. She obtained legal status and valid work authorization for Jane while Jane’s permanent residency process was still pending.2 Not only did Danielle help Jane obtain her U Visa, but she also assisted her in filing the appropriate paperwork for Jane to be able to prove her legal status to obtain a driver’s license.

Many states/agencies use the Systematic Alien Verification for Entitlements (SAVE) Program to verify foreign nationals’ immigration status before granting benefits such as driver’s licenses to which they are legally entitled. In Jane’s case, we completed the necessary steps through the SAVE program, and Jane took the paperwork to the Olathe DMV. We are not exactly sure what transpired during each of her DMV visits, but Jane repeatedly called us from the DMV offices to inform us that she was denied. Jane explained to us that it seemed like they did not want to even attempt to look at her papers, and that they just kept telling her no. After this happened to Jane four separate times, Danielle and I decided Jane needed a lawyer present for her next attempt.

I drove to the DMV to meet Jane. We waited in line for four hours, and when Jane was finally called to present her documentation, she was denied once again and was told that an attorney was not necessary. I made it clear I was not leaving until we had a driver’s license for Jane. Meanwhile, Danielle, back at the office, had called the SAVE Program’s main office and had them on the line ready to go. Long story short, we
got Jane her driver’s license, but it took two lawyers to get that simple task accomplished. Jane was ecstatic - she could finally drive her three young children to school without fear, and she could get a much lower rate on her car insurance. Jane is a single mother of three, working two jobs, so this was a big deal.

I immigrated to the U.S. from Argentina, and I am now a naturalized U.S. citizen. Because I remember how difficult things were for me when I first arrived in the US, and I was not able to speak English well, I value opportunities to help those in similar situations. I am glad my colleagues Mira Mdivani and Mason Ellis were able to cover my morning appointments so I could provide the much-needed free legal representation to Jane, but I left the DMV wondering what happens to the other U visa holders who cannot find a lawyer to step in pro bono? I believe the answer is that our DMV offices need to receive proper training.

1. U Visa is a nonimmigrant status that is given to government witnesses who are assisting or have assisted the government in the prosecution of a violent criminal. In this case, Jane had testified against her attacker, who inflicted severe injuries to her face and body during a violent attack. Her brave testimony was invaluable, and this dangerous criminal was convicted and incarcerated as a result.

2. The U Visa Process allows for Permanent Residency, but there are backlogs in the system that cause approximately a ten year delay in completing the Permanent Residency for these victims. For this reason, these victims can continue to renew their temporary legal status until they can finally be granted Permanent Residency.

Leyla McMullen is a member of the KBA Diversity Committee and the Hispanic Bar Association. She practices business immigration law at Mdivani Corporate Immigration Law Firm in Overland Park.

LMcMullen@uslegalimmigration.com

When the professional stakes are highest, put the deepest legal experience on your side.

We represent Licensed or Regulated Businesses and Individuals before all State regulatory agencies, administrative and disciplinary panels, and the Courts.

Through investigations, hearings, trials or appeals, we ensure any allegation against you is challenged with the strongest possible defense.
The Journal of the Kansas Bar Association

Greetings from the Kansas Bar Association (KBA).
Welcome to this third edition of Law Wise for the 2018-2019 school year.

IN THIS ISSUE
The Enduring Importance of Free Speech …1
Origins of Freedom of Speech ............... 2
Freedom of Speech in American Legal History..................................................... 3
Free Speech in the Digital Age ............. 4
Lesson Plan 1: Respecting Freedom of Speech 6
Lesson Plan 2: Norman Rockwell, Freedom of Speech—Know It When You See It ........... 8
Terrific Technology for Teachers.......... 10
iCivics ................................................... 11

The Enduring Importance of Free Speech

It might seem counter-intuitive to have to make a case for the continuing importance of the First Amendment, but it is common to even for freedoms and protections granted in the best of times. However, societal attitudes regarding freedom of speech have undergone change in the last few years. According to a 2015 Pew Research Poll of millennials, 40 percent of those polled felt the government should be able to suppress speech considered offensive to minority groups. This contrasted with only 12 percent of individuals born between 1928 and 1945. It is a reasonable position to want to restrict speech which is harmful to minority groups, especially in a political climate where racial tensions are palpable.

One of the challenges of a free and open society is to allow for the expression of ideas and speech which we might find offensive. In these types of cases, we must remember that “offensive speech” is often a matter of perspective. In the middle of the nineteenth century, the speech of abolitionists and former slaves like Frederick Douglass would have certainly riled the passions of slave-owners in the South. Likewise, the demands for voting rights and equality by female suffragists would have seemed dangerous and offensive to those who opposed a woman’s right to vote. Today individuals in the LGBT community who advocate for their rights are met with opposition from many parts of our society. The
protection of the rights of those whose views and values are not consistent with the majority certainly is one of the hallmarks of American democracy.

This issue will look at the origins of free speech in the United States, landmark legal cases that have further clarified this freedom, and the continuing application of right in a world that our founders could not have foreseen. Throughout the history of the United States, vigilance regarding freedom of speech and other constitutional freedoms has not necessarily been easy, but it has certainly been necessary. As David Cole, professor of law at Georgetown University and National Legal Director of the ACLU, has written “If we defended speech only when we agreed with it, on what ground would we ask others to tolerate speech they oppose?”

The United States had endured a tumultuous first decade of its existence. Immediately after declaring independence from Great Britain, it found itself engaged in war with Britain that did not conclude until the British surrender at the Battle of Yorktown in 1781. After the formal end of the war with the Treaty of Paris in 1783, the United States faced internal challenges with the system of government established with the Articles of Confederation. Events such as Shay’s Rebellion highlighted weaknesses in the Articles.

A convention was called in Philadelphia in 1787 to revise the Articles of Confederation. However, the participants decided to produce a new document known as the Constitution. Signed in 1787, it took until 1789 for the states to ratify the Constitution.

One of the strongest objections to the Constitution was the lack of a Bill of Rights. Several founders argued the Constitution itself ensured the rights of the citizens, however a vocal opposition led by George Mason strongly advocated for the inclusion of a Bill of Rights. Mason’s objections were printed in November of 1787 at the request of George Washington. Washington disagreed with Mason and hoped to publicly refute his objections. Mason argued, “There is no Declaration of Rights, and the laws of the general government being paramount to the laws and constitution of the several States, the Declarations of Rights in the separate States are no security. Nor are the people secured even in the enjoyment of the benefit of the common law.”

Mason had primarily authored the Virginia Declaration of Rights in 1776 and colonies such as Massachusetts (1780) had similar declarations in their state constitutions. Still, Mason felt that as the supreme law of the land, the United States Constitution should have similar enumerated protections.

While some historians will point back to the freedoms found in classical Greece and Rome, the more direct tradition of rights of citizens which influenced the American Bill of Rights derive from the Great Charter, better known as the Magna Carta of 1215. The English King John agreed to this document under the threat of rebellion and civil war from powerful barons. While celebrated even today, the document limited freedoms of these barons and other members of the English nobility for over 500 years. In 1628, the English Petition of Right guaranteed “no free man shall be…imprisoned or disseised [dispossessed]… except by the lawful judgment of his peers or by the law of the land.”

Nearly 100 years prior to the ratification of the United States Constitution, when William and Mary assumed the English throne during the Glorious Revolution, Parliament received specific rights, and England transformed into a constitutional monarchy. In effect, Parliament now had authority over the monarchy. Among the more important freedoms were:

• Freedom to elect members of Parliament, without the king or queen’s interference
• Freedom of speech in Parliament
• Freedom from royal interference with the law
• Freedom to petition the king
Few rights are more important than freedom of speech in American history. However, though the founders were explicit about the government’s inability to restrict the freedom of speech and other First Amendment protections, the Supreme Court has often had to rule on specific challenges to this hallowed right. Here are some of the more notable Supreme Court cases regarding freedom of speech.

**Extension of Free Speech to the States**

*Gitlow v. New York* (1925)

The Court ruled that freedom of speech extended to the states through the due process clause of the Fourteenth Amendment.

**Freedom of Speech and Political Protest**

*Schenck v. United States* (1919)

The court ruled the government could restrict freedom of speech to prevent “a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.”

*Abrams v. United States* (1919)

According to this decision, First Amendment protections did not extend to the printing of leaflets advocating for a general strike or opposition to the war effort. Calls for violent revolution were not protected either.

*Debs v. United States* (1919)

Eugene Debs, American socialist and frequent presidential candidate attempted to give a speech encouraging draft resistance. The Court ruled this was not protected speech.

*United States v. O’Brien* (1968)

The burning of draft cards protesting the Vietnam War was declared to not be symbolic speech and therefore could be prohibited.


Students wearing black armbands to protest the Vietnam War did qualify as symbolic speech according to the Court.
Flag burning was ruled protected symbolic speech.

Free Speech and Violence
Chaplinsky v. New Hampshire (1942)
The First Amendment did not protect “fighting words” that could lead to an imminent breach of peace.

Brandenburg v. Ohio (1969)
Using the First and Fourteenth Amendments, the Court ruled that a Ku Klux Klan speech advocating violence was protected as the speech did not advocate “imminent lawless action.”

A criminal ordinance prohibiting symbols that “arouse anger, alarm or resentment in others on the basis of race, color, creed, religion or gender” was declared unconstitutional. The Court ruled ordinances like this cannot punish speech based on the ideas expressed.

A blanket prohibition for cross-burning was ruled unconstitutional. According to the court, the use of cross-burning for intimidation was illegal, but the burning of a cross alone was insufficient to infer intent.

Obscenity and Pornography
Miller v. California (1973)
This case established guidelines regarding obscenity, but also provided leeway for state and local governments to determine obscenity standards.

The Court prohibited school officials from removing books from libraries based on the content of the books.

Bethel School District v. Fraser (1986)
School authorities did have the ability to suspend a student who had given an election speech using “elaborate, graphic, and explicit sexual metaphor.”

Reno v. ACLU (1997)
The 1996 Decency Act was declared unconstitutional for being broad and vague and for an attempt to regulate indecent speech, which is constitutionally protected.

Ashcroft v. ACLU (2004)
The Child-On-Line Protection Act was declared unconstitutional for being too broad, and the Court determined less restrictive options existed to protect children from harmful content.

Free Speech in the Digital Age

The United States Constitution has proven to be one of the most durable and flexible legal documents in the past few hundred years. While there have been twenty-seven amendments to this document, considering the first ten amendments came at once in the Bill of Rights, it is remarkable the document has not undergone considerable revision over the last two centuries. However, even a document as impressive as the Constitution continues to face new challenges as the United States and the world evolve. One area of growing interest is digital communications including the internet, social media and other applications mostly used on computers, tablets, and smartphones.

In 1997, the Supreme Court stated it found “no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium.” That decision, Reno v. ACLU struck down the 1996 Decency Act for being overreaching in its attempt to regulate speech on the internet. Nearly a decade later, the Court also declared the Child-On-Line Protection Act unconstitutional for similar reasons. In these rulings, the Court has supported the idea promoted by the American Civil Liberties Union that the internet is a “free-speech zone.” With concerns over the presence of “fake news” and “cyberbullying” among other issues, the Court will certainly face new challenges as digital media continues to grow in presence and significance.

In October of 2018, prior to a shooting at a Pittsburgh synagogue which resulted in 11 deaths, the shooter had posted on
Gab, a social media site catering to nationalists and populists among other groups. In the aftermath of this tragedy, several providers including PayPal, Joyent, and GoDaddy refused to do business with Gab, which had to shut down for a week as a result of these actions. As the ACLU points out, this is analogous to an individual losing phone or Internet service for posting racist or similarly offensive speech online. While you might disagree with these types of comments, do you have the right to restrict the ability of someone to make these comments?

Most major social media sites such as Facebook, YouTube, Twitter, Instagram and others have community standards meant to police their sites. However, these same standards have led to the suppression of speech by activists associated with Black Lives Matter, activists in Egypt documenting human rights abuses and organizations working to prevent unwanted and teen pregnancies. Civil libertarians point out that changing societal attitudes serve as another major factor to consider when determining the extent of freedom of speech. Ethnic minorities, women and members of the LGBT community are only a few of the groups whose minority status resulted in suppression in earlier eras of American history.

With media providers such as Netflix, Hulu, Amazon and others, guidelines for older media including television and films are likely to be outdated within another generation or two. In *Turner Broadcasting System v. FCC* (1994), the Court wrote “the FCC’s oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations.”

According to the Freedom Forum Institute, in *United States v. Playboy Entertainment Group, Inc.* (2000), a majority of the Court finally declared that, at least with respect to the regulation of programming content on cable television, strict First Amendment scrutiny applies. However, as media providers bypass cable providers to offer content, is this content still protected by the First Amendment? At present, these issues have been left to the Federal Communication Commission to adjudicate, though there will likely be controversies with these new forms of media that will require further consideration by the Court.

---

**2019 KBA YLS Mock Trial Competition**

Case materials for the 2019 competition will be posted at [www.ksbar.org/mocktrial](http://www.ksbar.org/mocktrial) in late December.

The case will be a civil matter involving a student running for student council at a public school. The student was prepared to give a speech on religion as the foundation for his platform. The school told him that it is against separation of church and state.

**Regional Competition • Saturday, February 23**

**State Competition • Saturday, March 23**

Please direct questions to: kansasmocktrial@gmail.com

www.ksbar.org/lawwise
Lesson Plan 1: Respecting Freedom of Speech
Recommended for High School Students
Grades 9-12
Lesson provided courtesy of The Bill of Rights Institute

National Standards for Civics
WHAT ARE THE FOUNDATIONS OF THE AMERICAN POLITICAL SYSTEM?

What is American political culture?

Recommended Time
Two 45-minute class periods or one 90-minute block class, with additional time as needed for extensions or research.

Overview
In the course of this lesson, students will consider the point where respect and freedom of expression intersect. For homework the night before, students are asked to review the language of the First Amendment, as well as examine their definition of respect by responding to a writing prompt. The next day, students are asked to consider five controversial instances of “free speech” and participate in a discussion that attempts to draw the distinction between: private versus government action regarding speech; rights of the speakers and rights of the listener; and right to free speech and responsibility to act or speak with respect. What role does freedom of expression play in maintaining a free and open society?

Caution: The issues and examples integral to this lesson are controversial. Although the lesson provides guided questions and suggested answers, teachers are encouraged to use their discretion and review the material to determine its appropriateness for their students.

Objectives
Students will be able to:
• Write a one page response defining "respect"
• Analyze the language of the First Amendment concerning freedom of speech
• Distinguish between government and private restrictions on freedom of speech
• Distinguish between constitutional and societal limits on freedom of speech
• Apply an understanding of “freedom of speech” and “respect” to various situations

Procedure
Background/Homework [15 minutes]
Have students complete one of the following exercises for homework the night before the lesson.

Definition/Response. Merriam-Webster’s Collegiate Dictionary defines “respect” in a number of ways:
• a relation or reference to a particular thing or situation
• an act of giving particular attention
• high or special regard
• the quality or state of being esteemed
• plural : expressions of respect or deference

You may want to point out that the history of the word “respect” goes back to the Latin respectus, literally, the act of looking back, and that to respect does not mean only “high or special regard” but also simply the act of paying attention to something. Ask students to write a one-page response where they attempt to define what “respect” means to them.

Have students reread the language of the First Amendment:

First Amendment
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Warm-Up [15 - 20 minutes]
Begin a discussion about respect and attempt to brainstorm a definition, listing class contributions on the board or overhead.

Suggested questions:

What is respect- how would you define it?
Where have you heard the use of the word respect? (respect your elders, pay your last respects, respect yourself, respect the environment)

How do we show people respect? (through our actions, words, behaviors: don’t say hurtful things- curses, slurs; being quiet when others are talking; good manners show respect for others; removing hats in buildings; wearing black to a funeral; being on time and prepared or class or work; shaking hands with the other team after a game; being truthful in our relationships- not cheating, lying)

To what other things do we show respect? (understanding the power of things we can’t control- animals, the ocean; concepts- justice, honor, bravery; rights, property or authority of others; traditions/societal conventions- family, marriage; achievements- graduation, honors, awards, actions). Who are some of the people we respect as a culture? (students may mention some names like George...
Washington, Mother Theresa etc.; honorable people—people who do something brave, selfless; people who serve others—fireman, policemen)

If students contribute that they respect famous people like movie stars, athletes, you may want to ask, “Why do we respect these when there are so many who commit outside acts that we do not respect?”

If students say that our culture respects having material possessions we want or can do things we wish we could, you may want to ask, “Is this true respect?”

Why do we respect certain people? (for their actions or achievements, courage, opinion, etc.)

Why is showing respect important to our society? (helps to maintain civilization and our relationships with one another)

What happens when we fail to give others respect? (their feelings get hurt; we get into a confrontation; war; they show us disrespect)

**Review the language of the First Amendment (see above).**

**Suggested Questions:**

According to the language of the First Amendment who or what is constitutionally prevented from limiting your right to speak?

--The government. “Congress shall make no law…”

Why do you think the Founders included freedom of speech in the First Amendment?

--The Founders were particularly concerned with preventing tyranny and believed that freedom of speech was necessary for a free, open, and civil society.

Is your freedom of speech absolute? Can you say whatever you want, whenever you want?

--No. The language of the First Amendment has been interpreted by the Supreme Court so that in certain specific circumstances the government is able to limit your right to freedom of speech because it infringes on the rights of others. With regard to non-governmental action, society and individuals limit your right to speak in various ways that you will explore in this lesson.

Revise the class definition of respect, if necessary.

**In-Class Readings and Discussion: Current Events**

[30 minutes]

**Handout 1 – Respect: Reading Selections**

Have students read the situations individually, keeping in mind the following questions:

Does the speaker(s) have a right to speak?

Did the speaker(s) show respect, according to the class definition?

As a class, review each situation and discuss. Suggested questions and answers are given on

**Handout 2 – Respect: Reading Selections (Questions)**

Be sure to make the following distinctions in each case, as applicable:

Private versus government action

Right to speak versus right to protest

Right versus responsibility (respect)

Revise the class definition of respect as needed.

**Wrap-Up Discussion** [10 - 15 minutes]

**Suggested questions:**

Do you think that there should be any limit on your constitutional right to speak?

Do you think that the constitutional protections of your right to speak should extend to private entities?

What are the benefits to society if everyone respects the right to disagree?

At what point do you think that a person’s expression shows disrespect -- rather than simply disagreement?

To what extent should an expectation of respect limit your freedom of speech?

**Homework: Connect to Students**

Students have read the First Amendment, and know that they have a constitutional right to free speech and free press. From their readings, they should have a better understanding that people may choose to temper their right to expression with discretion, weighing the consequences of their expression and the impact it may have on the rights of others.

**Options:**

Have students create a presentation or lesson for a hypothetical fifth grade class on the topic: First Amendment and Freedom of Expression. Have them explain how and why they show respect for others in order for the First Amendment freedoms to be effective in a free society. Require that the students write a paragraph or outline five key points. Suggested responses:

Respect other people’s right to speak and they will respect your right to speak

Respect other people’s right to speak so that there may be a dialogue and resolution of conflicts and problems

Respect other people as individuals, and they will be more apt to listen to your individual point of view

Respect others, or face the potential consequences of: people choosing not to associate with you, do business with you, take you seriously, hire you, or work for you

Have students revise the First Amendment and clarify the limits, if any, on freedom of speech.

Have students research Freedom of Speech cases decided by the Supreme Court and present their findings to the class.
Lesson Plan 2: Norman Rockwell, Freedom of Speech
Know It When You See It
Recommended for High School Students
Grades 9-12
Lesson provided courtesy of Edsitement! • Kaye Passmore and Amy Trenkle

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

—The Constitution of the United States, Amendment I

Overview
Do you recognize freedom of speech when you see or hear it? As the United States apprehensively approached World War II, President Franklin Roosevelt listed four American freedoms in his State of the Union address to Congress in 1941. In order to make these abstract ideas more widely understood and appreciated, Norman Rockwell illustrated how these freedoms appear in everyday American life. In this lesson students learn to recognize freedom of speech within their community, state, country, and world. After examining Rockwell’s Freedom of Speech, they will report on a town meeting and create a collage featuring examples of free speech.

Recommended Time- 3-4 class sessions

Guiding Questions
• How does Norman Rockwell’s Freedom of Speech illustrate the American right of free speech?
• How is the first Amendment evident in everyday local community life?

Learning Objectives
At the end of this lesson students will be able to:
• Explain how artist Norman Rockwell composed this painting to idealize the right of ordinary American citizens to speak their ideas without fear of censure
• Identify the five freedoms in the First Amendment (religion, assembly, press, petition, and speech) and be able to give an example of each in daily/community life, state community, national community, and international community

Lesson Background
When President Franklin D. Roosevelt alerted Congress to the necessity of an impending war in January 1941, he identified four ideas—freedom of speech, freedom of worship, freedom from want, and freedom from fear—which were central to the New Deal and which were also to guide his wartime policies. Yet despite an effort on the part of the government to communicate these ideas, by the summer of 1942 a survey revealed that a majority of Americans had little knowledge of the Four Freedoms. This situation inspired American illustrator Norman Rockwell to create one of his greatest artistic achievements. He conceived The Four Freedoms as four idealized scenes of these freedoms in ordinary American life. These first appeared in 1943 as covers for the popular The Saturday Evening Post magazine before touring the country in an exhibit promoting the purchase of War bonds.

www.ksbar.org/lawwise
In the 1940’s, most Americans were familiar with Rockwell as an artist of idealized life in small town America. His detailed scenes featuring ordinary people captured the essence of America’s generous democratic spirit. Rockwell was born in New York in 1894 and became an illustrator for Boys Life magazine soon after graduating from art school. In 1916 he created his first of over 300 covers for The Saturday Evening Post.

During Rockwell’s career abstract art dominated the art world. Although his art was loved by Americans, it was shunned by art museums, curators, and art historians as mere illustration, not fine art. Not until 20 years after his 1978 death did major art museums and art critics begin to acknowledge his paintings as fine art.

**Lesson Activities**

- **Activity 1: Look and Think-** Students will study the painting and answer the questions from Worksheet 1.
- **Activity 2: First Amendment Rights in Our Press-** Students will learn what the five freedoms of the First Amendment are: Freedom of Religion, Freedom of Assembly, Freedom of Press, Freedom of Petition and Freedom of Speech. Teach students the acronym RAPPS (Religion, Assembly, Press, Petition, and Speech) to help them remember. Define each the right that corresponds with each part of this acronym.
- **Activity 3: Breaking News: The Town Meeting-** Students will have an opportunity to place themselves in the painting, while creatively responding to writing prompts as a news reporter. Depending on the time availability, teachers may want to discuss in more depth the characteristics of various news articles (news, features, style, etc.) and allow the students to choose their type of article to write. (Worksheet 3 is provided for this activity.)

**Assessment**

Create a collage of First Amendment freedoms in the:
- community
- state
- country
- world

Assign students or pairs of students to each of the regions above. Have students search newspapers, magazines, campaign flyers, posters, and Internet sites to find examples of citizens exercising their first amendment rights of free speech and assembly. Students may print out, copy, and cut out headlines, photographs, cartoons, and phrases. After arranging these to show their meaning, they may paste these on paper or cardboard. They may add marker lines to emphasize meaning. On a separate sheet of paper, have students write what they have included in their collage and why. Students should specifically point out first amendment examples. Have students explain their collages to each other. Display the collages and their analysis.
TERRIFIC TECHNOLOGY FOR TEACHERS

What Does Free Speech Mean?
http://www.uscourts.gov/about-federal-courts/education-resources/about-educational-outreach/activity-resources/what-does
A brief explanation of what does and does not constitute free speech

How Well Do You Know the First Amendment?
A twenty-question quiz covering the First Amendment protections

Free Speech-American Civil Liberties Union
https://www.aclu.org/issues/free-speech
A good site for information about freedom of speech and potential challenges to this right.

Freedom of Speech-Freedom Forum Institute
Comprehensive listing of free speech including free speech in K-12 and college campuses.

Freedom of Speech: General - Bill of Rights Institute
https://billofrightsinstitute.org/educate/educator-resources/landmark-cases/freedom-of-speech-general/
Good resources regarding freedom of speech with special attention to relevant Supreme Court cases

Freedom of Speech- Pew Research Center
http://www.pewresearch.org/topics/free-speech/
Contains survey information on a variety of topics including social media activism and the potential restriction of false information by the government

Know Your 1st Amendment Rights-The Interactive Constitution
Outlines how the Supreme Court has interpreted freedom of speech and freedom of the press with potential areas of restriction. Also includes articles related to these freedoms by constitutional law scholars.

Freedom of Speech-History.com
https://www.history.com/topics/united-states-constitution/freedom-of-speech
An overview of the constitutional protection of freedom of speech and topics like flag burning and restrictions on freedom of speech

11 Facts About Free Speech- DoSomething.org
https://www.dosomething.org/facts/11-facts-about-free-speech
A quick overview of free speech in the United States and worldwide. Includes historical figures like Socrates and Galileo who endured trials and persecution because of their teaching and writings.

Free Speech-Human Rights Watch
https://www.hrw.org/topic/free-speech?ea.client.id=1908&ea.campaign.id=40786&ea.tracking.id=ED2018EVSCgg&gclid=CjwKCAiAz7TFRAKEiwAze8fKOPeJuG1H9IBkpdugNq5ArIoOkb78yY9CJ2CkW9S8lCfQj2F1VkvQBoCUtkQAvD_BwE
Looks at free speech from a global perspective with particular focus on internet freedom, press freedom, and religious freedom.
iCivics Resources for Getting Involved & Taking Action
www.icivics.org
This site provides teachers with free resources that improve students’ civic knowledge, civic attitudes, and core literacy skills.

Fun Learning Opportunities on Freedom of Speech
Visit www.icivics.com and go to the Teach section. If you do a search on Freedom of Speech, you will have access to several fun classroom exercises to teach students about specific freedom of speech issues, including an exercise on Texas v. Johnson on whether flag burning is considered protected speech and Why Can’t I Wear That? on freedom of speech and expression in schools.

Is Law Wise Helpful to You?
We are always open to receiving comments, ideas and suggestions. Please reply to awoods@ksbar.org.

Please let us know:
• Topics you would like to explore;
• Projects and lessons you have developed that you would like us to feature;
• Questions you would like to ask an attorney or judge.

We look forward to hearing from you.

Visit www.ksbar.org/lawwise to see archived issues, frequently asked questions, and to sign-up to receive six issues a year via email.

About the Law Wise Editor:
Nicolas Shump teaches courses in Creative Writing, Film, and Advanced Placement (AP) courses in Comparative Government and Politics, European History, Psychology, and U.S. Government and Politics for the Hybrid Learning Consortium (HLC) at The Barstow School in Kansas City, MO. He also teaches Discourse 100 at the University of Missouri-Kansas City (UMKC) where he is an MFA Student in the Creative Nonfiction Program. He is a columnist for the Topeka Capital-Journal and a Talk About Literature in Kansas (TALK) discussion leader for Humanities Kansas. He can be reached at nicshump@gmail.com

Law Wise FAQs
We have a list of FAQs available at http://www.ksbar.org/LWFAQ.

The Kansas Bar Foundation, with Interest on Lawyers’ Trust Accounts (IOLTA) funding, provides support for this publication. Law Wise provides general information about law-related matters of interest to teachers, students, and the public in Kansas, but does not provide any legal advice, so readers should consult their own lawyers for legal advice. For further information about any projects or articles, contact Anne Woods, public services director, (785) 234-5696. Law Wise is published by the Kansas Bar Association, 1200 SW Harrison St., Topeka, KS 66612-1806, during the school year.
Over the past two decades, the United States has experienced an increasing number of both natural and man-made disasters. The Western United States has been plagued by massive wildfires. The Eastern United States has suffered one “super storm” after another. The memory of 9/11 and the havoc it wrought is still fresh in every American’s memory. Cyber intrusions into personal and business computer systems occur each day across the nation. In short, no rational American can pretend that some form of disaster will not strike at home or at business. As lawyers, we are fiduciaries of our clients and under the Rules of Professional Conduct, we must protect their property, maintain the confidentiality of their information, communicate with them, and conduct all of our business on their behalf in a competent manner.1 There is no exception from these obligations in times of disaster.

Since 2011, the American Bar Association’s Committee on Disaster Response and Preparedness has maintained a website that provides various resources for lawyers concerned with disaster planning, including its “Surviving a Disaster. A Lawyer’s Guide.”2 However, these materials do not focus on the ethical obligations of a lawyer related to a disaster. Thus, on September 19, 2018, the ABA Committee on Ethics and Professional Responsibility published Formal Opinion 482 on this subject. Every practicing lawyer must familiarize themselves with this opinion and make sure that their practice is prepared to deal with a disaster should it occur.

Fundamentally, the ABA Opinion discusses several provisions of the “Rules of Professional Conduct” that are potentially implicated when disaster strikes a lawyer’s practice. Foremost among these are Rule 1.4 on communication, Rule 1.15 on the safekeeping of client property, and Rule 1.6 on keeping client confidences. Underpinning these rules is Rule 1.1 on lawyer competence.

To begin with Rule 1.1 and how it is implicated in time of disaster—a lawyer is required to be competent not only in traditional legal skills but also in technical skills, including the skills necessary to protect clients’ digital files, digital property,
and other electronic media. This means in practice that a lawyer must be aware both of the capabilities and limitations of the various systems and devices that are used for such purposes as communications with clients, storage of client files, protection of clients' tangible property, and other related matters. Thus, for instance, if a lawyer maintains files only in hard copies and on a server, both in the lawyer's office, such a practice puts the clients' files at risk if the lawyer's office is damaged or destroyed by a natural or man-made disaster. This is precisely what has happened to lawyers who experienced the damaging effects of hurricanes on the East Coast in recent years. Secondly, I would suggest that Rule 1.4 in conjunction with Rule 1.15 would require a lawyer to maintain adequate insurance to protect potential client losses in the case of a disaster. This, of course, will require lawyers to make competent assessments of the risk of loss of client property and files in advance of any disaster that may occur. Third, lawyers, as part of their competent representation of their clients, should develop an advance disaster plan to deal with possible losses and damage. Such plans should be known not only to other lawyers in the firm, but also to staff who may need to implement the plan in the case that the lawyer is incapacitated or killed in the disaster. Such a plan should extend specifically to situations in which the disaster that injures the lawyer occurs away from the lawyer's office or home, such as when the lawyer is on vacation.

Rule 1.4 requires that a lawyer communicate with clients. In the event of a serious disaster, communications lines may be weakened or even eliminated for a period of time. In the event of a disaster, a lawyer will need to communicate with clients who have current matters that require frequent communication. A lawyer may also need to communicate with clients and former clients whose files or property are damaged or destroyed by the disaster. Existing clients may also want to reach their lawyer in the event of a disaster to seek the lawyer's assistance. In all of these cases and others, the lawyer is responsible under Rule 1.4 to provide some means of communication to a client. This may mean setting up alternative means to communicate via cellphone or the Internet. Whatever means of communication are chosen for disaster communications, these should be robust and likely to survive a disaster, and clients should know what these alternative methods are. The opinion suggests, for instance, that lawyers may want to include information about disaster communications in the engagement letter or fee agreement. I would suggest that lawyers consider doing more than this because one might well ask how many clients will have such documents readily available in the case of a disaster.

Perhaps the most serious danger in the event of a disaster is the damage or destruction of property in a lawyer's office or the rendering of such property inaccessible for some period of time. The most important of such property are the lawyer's files and any other client property the lawyer may be holding.

A lawyer's files are the central property element in a representation. These files may contain anything from files necessary for a particular matter to actual physical property that has intrinsic value to a client such as hard copies of wills or other documents.

Files and other retained materials that may be maintained in digital format can be copied and saved outside the lawyer's office. The simplest means to do so would be to save digital documents on a server not in the lawyer's office, preferable one in a location not subject to the same disaster risks as the office. Today, many lawyers save copies of digital files in “cloud servers.” In ABA Op. 477R, the ABA Committee on Ethics and Professional Responsibility opined that the use of cloud storage may be ethically permissible so long as strict requirements that ensure safety and confidentiality are maintained. ABA Opinion 482 specifies, in addition, that:

…the lawyer should (i) choose a reputable company, and (ii) take reasonable steps to ensure that the confidentiality of client information is preserved, and that the information is readily accessible to the lawyer.

If a lawyer does lose client files or property as a result of a disaster, ABA Opinion 482 makes it clear that, in certain circumstances, the lawyer has an obligation to inform both current and past clients about the loss:

Under the lawyer's duty to communicate, a lawyer must notify current clients of the loss of documents with intrinsic value, such as original executed wills and trusts, deeds, and negotiable instruments. Lawyers also must notify former clients of the loss of documents and other client property with intrinsic value. A lawyer's obligation to former clients is based on the lawyer's obligation to safeguard client property under Rule 1.15. Under the same Rule, lawyers must make reasonable efforts to reconstruct documents of intrinsic value for both current and former clients, or to obtain copies of the documents that come from an external source.
A lawyer need not notify either current or former clients about lost documents that have no intrinsic value, that serve no useful purpose to the client or former client, or for which there are electronic copies. The lawyer must respond honestly, however, if asked about those documents by either current or former clients.

The largest category of documents will fall in the middle; i.e., they are necessary for current representation or would serve some useful purpose to the client. For current clients, lawyers may first attempt to reconstruct files by obtaining documents from other sources. If the lawyer cannot reconstruct the file, the lawyer must promptly notify current clients of the loss. This obligation stems from the lawyer's obligations to communicate with clients and represent them competently and diligently. A lawyer is not required either to reconstruct the documents or to notify former clients of the loss of documents that have no intrinsic value, unless the lawyer has agreed to do so despite the termination of the lawyer-client relationship.

Although ABA Opinion 482 deals with lawyers' ethical obligations in the event of a disaster, one special type of disaster and lawyers' obligations is dealt with in ABA Formal Opinion 483 issued on October 17, 2018. This opinion deals with lawyers' obligations when a lawyer's computer system has suffered a data breach or been subject to a cyber-attack. Thus, when the disaster that befalls a lawyer involves a cyber-intrusion, the lawyer must satisfy the requirements of both ABA Opinion 482 and 483. ABA Opinion 483 sets out rules for communicating a data breach to both current and former clients. According to ABA Opinion 483, when a data breach involves the files of a current client, the lawyer has the obligation to inform the client. In the case of former clients, the opinion does not require the lawyer who suffered the attack to notify the former client, but states:

Therefore, as a matter of best practices, lawyers are encouraged to reach agreement with clients before conclusion, or at the termination, of the relationship about how to handle the client's electronic information that is in the lawyer's possession.

The opinion also notes that lawyers need to be aware of state and federal laws which govern electronic data breaches. In fact, forty-eight states, including Kansas, have disclosure laws relating to electronic data breaches.

It is important to recognize that Opinion 483 is focused on the release of client information in the event of a cyber-attack while Opinion 482 is focused on the destruction of client documents and files. Thus, Opinion 483 has broader client notification requirements than does Opinion 482. However, if a disaster occurs that results in both the release and subsequent destruction of client files, then, presumably, the broader notification rules of Opinion 483 would apply.

Opinion 482 not only deals with the problems of client communication and property damage or loss, but, also, deals with two special representation issues that might arise in a disaster. The first is the ability of lawyers to provide advice even though they might not normally give such advice because it was "outside their normal area of expertise." As the opinion notes, Comment 3 to KRPC Rule 1.1 permits lawyers to give such advice in emergency situations when "the lawyer does not have the skill ordinarily required where referral to or consultation with another lawyer would be impractical." In such cases, however, "the assistance should be limited to that reasonably necessary in the circumstances."

In many emergencies, both lawyers and clients may have to relocate temporarily or permanently to another jurisdiction. In such cases, displaced lawyers may wish to continue to serve their clients even though they are not licensed in the new jurisdiction. ABA Opinion 482 cautions lawyers that while they may be able to engage in limited representation of clients in the new jurisdiction pursuant to Model Rule 5.5(c) [on multijurisdictional practice], “they should not assume the Rule will apply in a particular jurisdiction.” Indeed, the opinion goes on to state:

Displaced lawyers who wish to practice law in another jurisdiction may do so only as authorized by that jurisdiction.

Finally, Opinion 482 deals with lawyer solicitation and advertising rules in disaster situations. The opinion is quite clear on this issue:

The existence of a disaster...does not excuse compliance with lawyer advertising and solicitation rules.
ABA Formal Opinions 482 and 483 provide important guidance to lawyers in the event of natural or man-made disasters. The most important message is that the time to deal with a potential disaster is before it happens. The vast majority of actions lawyers must take in order to comply with their ethical obligations in the event of a disaster must be taken in advance of a disaster. Every lawyer should formulate disaster plans, take steps to protect client property and files long before a disaster occurs, and insure that communications and other vital links for clients will survive a disaster. In this way, through advance planning, lawyers will be able to serve their clients competently as required by KRPC 1.1 and avoid disciplinary infractions for failure to do so when disaster strikes. As the Boy and Girl Scouts mottos provides: “Be Prepared.”

About the Author

Michael H. Hoeflich is the John H. & John M. Kane Distinguished Professor of Law and Director of the Master of Science in Homeland Security Program at the University of Kansas. He has taught Professional Responsibility for more than thirty years. He has published twenty books and more than 130 articles. He wishes to thank Matt Beal, a 3L at KU for his assistance with this article.

Michael H. Hoeflich
hoeflich@ku.edu
The KBA Lending Library

by Larry Zimmerman

One of the benefits of KBA membership is access to the KBA Lending Library. The KBA staff and members have carefully selected a range of books covering everything from technology topics like Adobe Acrobat or Microsoft Word to practice management issues like accounting and advertising. Many of the titles are published by the ABA, and the purchase price can be steep. Getting a free preview by checking them out from the KBA is a frugal practice management decision.

Books (and a list of available titles) can be requested by phone at 785-861-8815 or by contacting Amanda Kohlman at akohlman@ksbar.org. Books may be checked out for 30 days and can be mailed anywhere in the state. Borrowers are responsible for returning the books to the KBA or a highly trained team of bibliophile bounty hunters are dispatched. (This may or may not be true; I was unable to confirm at the time this article went to print.)

Sample Titles

Microsoft Office 365 for Lawyers (2014), ABA Law Practice Section, Ben M. Schorr

The Microsoft Office Suite has long been a staple in law firms (after displacing the far superior WordPerfect and its Reveal Codes formatting tool.) As Office migrated to the cloud to compete with Google’s offerings, some things changed both in how Office works and with some new security issues lawyers must consider. Schorr’s book walks users through migration to Office 365 and gives tips and tricks for setting it up safely and securely.

QuickBooks in One Hour for Lawyers (2013), ABA Law Practice Management Section, Lynette Benton

Law firm accounting and safekeeping of client property is one of the most vital parts of practicing. Botching this responsibility can be a bullet train to involuntary retirement. Fortunately, there are many tools and resources available to make it easier, and an aptitude with QuickBooks is often a great start. Benton has been a QuickBooks certified ProAdvisor since its inception in 1999 and her overview of features, configuration, and processes is a must for all users.


Hiring an accountant or bookkeeper to handle firm finances may be a solid decision. However, a lawyer still needs to understand accounting basics to be an effective firm manager. The Cosmolex guide addresses fundamentals of accounting to help lawyers assess business performance, evaluate opportunities, and fulfill ethical obligations.

Personal Finance for Professionals (2015), Susan A. Berson

Berson is our KBA local talent and she offers a helpful guide to the personal finance side of practice. Pick any ten ethics cases heard by the Kansas Supreme Court at random and the facts of at least half of them will include professional problems with some genesis in personal financial woes. Student loan debt, credit cards, and budgeting through thick and thin
times create pressures for new and old lawyers alike, but Berson provides helpful advice on managing finances to accomplish goals.

Building a Better Law Practice, Become a Better Lawyer in Five Minutes a Day (2018), ABA Law Practice Division, Jeremy W. Richter

In the physical fitness environment, we are discovering that quick, high-intensity workouts pay real dividends. That same concept applies to improving as lawyers. Richter takes a look at best practices for lawyers and then creates little habit “workouts” that lead lawyers to those best practices. The practice and readily manageable tasks promise to make better lawyers and improve our capacity to fulfill client and ethical obligations.

The Lean Law Firm, Run Your Firm Like the World’s Most Efficient and Profitable Business (2018), ABA Law Practice Division, Larry Port and Dave Maxfield

A truly unique work. The first (and only?) law practice management text written as a graphic novel (comic book style). Follow the exploits of our hero, Carson Wright, as he rises to the challenge of saving a small law firm. His sage mentor, Guy Chapman, doles out wisdom in the form of lean techniques in use by non-legal companies to transform from struggling to profitability. Far from a gimmick, The Lean Law Firm is solid advice given in an engaging format.

Strategic Networking for Introverts, Extroverts, and Everyone in Between (2019), ABA Law Practice Division, Carol Schiro Greenwald, PhD and edited by the Law Practice Division

Finally, an understanding that networking is most successful when tailored to the unique personality and strengths of the lawyer. This book delves into strategies, insights, and tips to help meet leads and develop clients no matter how comfortable you are with the meet-and-greet.

Her Story, Lessons in Success from Lawyers Who Live It (2017), ABA Section of Litigation, Jacqueline Meccchella Bushwack, et al.

Every lawyer needs inspiration to keep going sometimes. Her Story is a compilation of personal essays by female lawyers conveying their challenges, their successes, and recoveries from apparent defeat as they juggle work and life.

Expanding Collection

If there is a book you believe would benefit other lawyers through the KBA Lending Library, contact Amanda or the KBA with a summary of the book and your assessment of its potential value to members. The library will consider purchase.

If you have extra books in your own library on topics of particular interest to lawyers, please consider donating them to the library. Donations may be sent to the KBA Lending Library, 1200 SW Harrison Street, Topeka, Kansas, 66612.

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.

kslpm@larryzimmerman.com
TranslationPerfect.com

LEGAL INTERPRETERS
SIGN LANGUAGE & 100+
FOREIGN LANGUAGES

ON-SITE • OVER THE PHONE
DOCUMENT TRANSLATION
Interpreters & Translators for courts,
depositions, and client meetings

Contact Kim Chao
913.491.1444
kim.chao@translationperfect.com
www.TranslationPerfect.com

GilsbarPRO.com

Fastest smartest malpractice insurance. Period.

800.906.9654
GilsbarPRO.com
Where Does the Money Go?

Our designated charities for 2019 are:

• CASA (Johnson/Wyandotte Counties)
• Safehome and Hope House (domestic violence programs)
• Metropolitan Organization to Counter Sexual Assault (MOCSA)
• Kansas Bar Foundation
• FosterAdopt Connect
• In addition, we will fund Ethics for Good scholarships to each of the KU, Washburn and UMKC Law Schools and the Johnson County Community College paralegal program.

How Do We Sign Up for this Amazing, Funny and Informative Program?

For a mere $90, you get both the ethics and the good, the entire Ethics for Good – now in its 20th year!

To register for this program, complete the form below or register online at: www.ksbar.org/EthicsforGood

Please mark the date you will be attending:

☐ June 26  ☐ June 28

Name __________________________________________________________
Address __________________________________________________________
City ___________________________ ST _______ Zip ______________
E-mail ___________________________ Sup. Ct. # ______________

Bill to: ☐ MasterCard ☐ Visa ☐ AmEx ☐ Discover

Account Number ___________________________ CVC ______
Exp. Date _______ Signature ________________________________

Contact Deana Mead, KBA Associate Executive Director at dmead@ksbar.org, 785-861-8839

ETHICS FOR GOOD XX
$90

☐ Check Enclosed
Payable to:
Kansas Bar Foundation
1200 SW Harrison St.
Topeka, KS  66612-1806
Where Does the Money Go?
Our designated charities for 2019 are:
• CASA (Johnson/Wyandotte Counties)
• Safehome and Hope House (domestic violence programs)
• Metropolitan Organization to Counter Sexual Assault (MOCSA)
• Kansas Bar Foundation
• FosterAdopt Connect
• In addition, we will fund Ethics for Good scholarships to each of the KU, Washburn and UMKC Law Schools and the Johnson County Community College paralegal program.

Interested in writing for The Journal of the Kansas Bar Association?
The Journal is on the lookout for authors and ideas for substantive articles! Send us an outline!!
Love to write, but don’t have the time to do a heavily researched issue article? How about writing a feature for us?
– A historical piece?
– A humorous piece?
– A biography/interview with a mentor or someone in the law who you admire?
Submit written features or outlines (for substantive articles) to: Patti Van Slyke • editor@ksbar.org
Questions? Call 785-861-8816

Hartman Oil is actively purchasing oil related Royalty and Working interests.
Please contact Chuck Gorney at 316.636.2090 or cgorney@hartmanoil.com
When CINC Appeals Happen and How to Avoid Them Without Sacrificing the Client’s and the Child’s Best Interests

Tips and Views from the Bench

by Hon. Kevin M. Smith
In the morning sow your seed, and in the evening withhold not your hand, for you know not which will prosper, this or that, or whether both alike will be good.\(^1\)

Applying this verse to appellate practice, savvy litigators know they must object to preserve issues, brief all possible issues, and, when all else fails, plead insufficiency of the evidence... something is bound to stick! This “everything including the kitchen sink” approach works in criminal, domestic, civil, and just about every area of appellate law. But for the Child In Need of Care (CINC) practitioner, a shotgun approach is not only ill-advised, but possibly fatal. This article considers the limited appealable issues in CINC cases, and how this and other statutory provisions should influence the CINC lawyer’s representation of his client.

The right to appeal is statutory not constitutional.\(^2\) In the CINC code, K.S.A. 38-2273(a) provides for appeal “from any order of temporary custody, adjudication, disposition, finding of unfitness or termination of parental rights.”\(^3\) Moreover, although one may appeal a non-lawyer district magistrate’s order to the district court, you may do so only if the order is appealable under 38-2273(a).\(^4\)

Consider how Kansas courts have applied this restricted right to appeal under the CINC code. Appellate courts lack jurisdiction to review district court orders that:

- Change placement of child after parental rights are terminated;\(^5\)
- Concern Kansas Department of Children and Families (DCF) placement with potential adoptive families;\(^6\)
- Deny state’s motions to terminate parental rights;\(^7\)
- Involve an appellant who isn’t listed as an interested party in the statute regardless of relation to the children, and court has not granted interested party status.\(^8\)

Why such limitations? Unlike other areas of law, the focus of the case—the child—does not allow years to work through legal issues. Time passes much more quickly for children, and such “child time” demands permanency, i.e., for a child to know a “forever home,” sooner rather than later.\(^9\)

It’s the lawyer’s job to know what is and isn’t appealable

Kansas Rule of Professional Conduct 1.1, Competence, provides that “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Rule 1.3, Client-Lawyer Relationship: Diligence, provides that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.” Considered together, representing CINC clients should always demand that the lawyer approach each pending hearing as if it were the client’s last chance for relief and not anticipate asking an appellate court for relief. This rule of thumb applies in CINC cases more so than in others where, at a minimum, the lawyer can argue “insufficiency of the evidence.” If the case doesn’t fit into K.S.A. 38-2273(a)’s appealable issues, it truly is the client’s last chance. When the aggrieved party is a grandparent or other relative who may never see the child again, casting blame on the judge or lawmakers responsible for this restricted right to appeal won’t suffice. Their only chance for justice, one that won’t help them gain custody of the child, might be to sue their lawyers for malpractice or file ethics complaints.

The CINC lawyer must prepare for each hearing as if it were the client’s last. The lawyer must also know the hearing outcomes that are appealable as well as the burdens of proof and standards of appellate review to preserve the client’s issues for appeal and to help the court obtain permanency for the child without undue delay.\(^10\) Finally, parents’ lawyers must be prepared to help their clients make hard choices when such choices are in their own best interests.
Prepare for every hearing as if it were the client’s last, because it might be.

CINC cases involve multiple stakeholders: the Kansas Department of Children and Families (DCF); the contractor who works the case, such as Saint Francis Community Services (SFCS), Kaw Valley Cooperative (KVC), Youthville, or whatever contractor DCF chooses to represent its interests; the District or County Attorney; the Guardian Ad Litem; the Court Appointed Special Advocate (CASA) volunteer; parents’ lawyers; grandparents’ lawyers; foster or adoption families; foster or adoption family lawyers; and perhaps even an Indian tribe representative. Suffice to say there are lots of moving parts in every CINC case.

Add to the above stakeholder mix the parties who write reports that are necessary for the court to make mandated findings. Such documents include:

- DCF or contractor’s reports. These include the case worker’s assessment and recommendations. The case worker is the key witness in all hearings and lawyers need these reports to prepare for cross-examination of the worker, as well as direct examination of witnesses who will contest the worker’s conclusions.
- Therapist reports. Obtaining these reports—if a lawyer represents anyone but the child—begins with ensuring that the court orders parties to sign medical releases, so they can make demands for these reports, and issue subpoenas if the therapists don’t respond timely. Also, it’s best to request six weeks in advance so lawyers have time to serve subpoenas on the therapists.
- Education advocate reports.
- Grade reports.
- Drug and Alcohol Treatment status reports.
- Court documents for pending and closed criminal cases, domestic cases, PFS/PFS cases, civil cases, etc.
- Police reports.
- Visitation reports.
- CASA volunteer reports.

It’s the lawyer’s job to get these documents and exhibits. If the judge needs to see them before making a ruling, the lawyer will need to know who to subpoena to lay foundation well in advance—the lawyer cannot assume the DA or other lawyers will do so! Many jurisdictions, including Sedgwick County, require these reports to be filed electronically in a social file so all lawyers have access prior to hearings and trial. Lawyers not accustomed to the court in question should check in advance whether electronic discovery procedures are available. For finality in the court’s rulings, the lawyer must ensure that the judge makes these findings to prevent reversal on appeal.

Temporary Custody

The first hearing immediately following the state placing the child in protective custody is temporary custody (TC), which must happen within 72 hours of the state taking the children into protective custody, “excluding Saturdays, Sundays, legal holidays, and days on which the office of the clerk of the court is not accessible.” K.S.A. 38-2243(f) states that:

The court may enter an order of temporary custody after determining there is probable cause to believe that the: (1) child is dangerous to self or to others; (2) child...
is not likely to be available within the jurisdiction of the court for future proceedings; (3) health or welfare of the child may be endangered without further care; (4) child has been subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. 2017 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. 2017 Supp. 21-6422, and amendments thereto; or (5) child committed an act which, if committed by an adult, would constitute a violation of K.S.A. 2017 Supp. 21-6419, and amendments thereto.

Probable cause is a low burden—“fair probability”19—and the state need only present evidence under one of the above five categories (although more than one is a better practice). Indeed, most parents waive temporary custody, which raises another issue. The record must reflect that the parent’s waiver of hearing was free and voluntary and not given under duress.20

Orders of temporary custody are appealable. However, since adjudication must happen within 60 days of the filing of the petition,21 and there is no provision for expedited appellate review, most TC arguments are moot by the time the appellate courts consider them.22 Indeed, there is no Kansas case limited to appealing TC orders; rather, most concern adjudications and terminations. There is also no case that reviews a district court’s probable cause determination to place a child in temporary custody. The most analogous situation where such a determination is made on a regular basis, and the appellate courts review the propriety of a district or magistrate court’s PC determination, is with search warrants. In such cases, an appellate court will uphold the district court’s ruling, if there’s a “substantial basis for concluding probable cause existed.”23

**Adjudication**

The next hearing is adjudication. Here, the court must find by *clear and convincing evidence*24 that the child falls into one or more of fourteen categories of a child in need of care.25 These are:

(1) is without adequate parental care, control or subsistence, and the condition is not due solely to the lack of financial means of the child’s parents or other custodian;

(2) is without the care or control necessary for the child’s physical, mental or emotional health;

(3) has been physically, mentally or emotionally abused or neglected or sexually abused;

(4) has been placed for care or adoption in violation of law;

(5) has been abandoned or does not have a known living parent;

(6) is not attending school as required by K.S.A. 72-3421 or 72-3120, and amendments thereto;

(7) except in the case of a violation of K.S.A. 41-727, K.S.A. 74-8810(j), K.S.A. 79-3321(m) or (n), or K.S.A. 2017 Supp. 21-6301(a)(14), and amendments thereto, or, except as provided in paragraph (12), does an act which, when committed by a person under 18 years of age, is prohibited by state law, city ordinance or county resolution but which is not prohibited when done by an adult;

(8) while less than 10 years of age, commits any act which if done by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 2017 Supp. 21-5102, and amendments thereto;

(9) is willfully and voluntarily absent from the child’s home without the consent of the child’s parent or other custodian;

(10) is willfully and voluntarily absent at least a second time from a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person’s designee;

(11) has been residing in the same residence with a sibling or another person under 18 years of age, who has been physically, mentally or emotionally abused or neglected, or sexually abused;

(12) while less than 10 years of age commits the offense defined in K.S.A. 2017 Supp. 21-6301(a)(14), and amendments thereto;

(13) has had a permanent custodian appointed and the permanent custodian is no longer able or willing to serve; or

(14) has been subjected to an act which would constitute human trafficking or aggravated human trafficking.
when CINC appeals happen

Clear and convincing “is an intermediate standard of proof between a preponderance of the evidence and beyond a reasonable doubt.” This standard is met when “the factfinder believes that the truth of the facts asserted is highly probable.”

As to the standard of review, the appellate court will uphold the district court’s holding if it “is convinced that a rational factfinder could have found it highly probable, i.e., by clear and convincing evidence, that the child is a CINC.”

**Disposition**

“The Supreme Court defined a disposition order pursuant to K.S.A. 2014 Supp. 38-2255 and K.S.A. 2014 Supp. 38-2256 as an order made within 30 days of adjudication that determines placement of the child or any other order entered during the process of managing the child’s placement until the order terminating parental rights is entered.”

The record must reflect that the court gave consideration to:

1. The child’s physical, mental and emotional condition;
2. the child’s need for assistance;
3. the manner in which the parent participated in the abuse, neglect or abandonment of the child;
4. any relevant information from the intake and assessment process; and
5. the evidence received at the dispositional hearing.

The court may place the child with a parent. It may also remove the child from a parent if it makes the following findings:

1. (A) The child is likely to sustain harm if not immediately removed from the home;
   (B) allowing the child to remain in the home is contrary to the welfare of the child; or
   (C) immediate placement of the child is in the best interest of the child; and
2. reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child’s home or that an emergency exists which threatens the safety of the child.

Once the court makes the above findings, it will place the child with one of the named resources designated in K.S.A. 38-2255(d), including DCF. If placed with DCF, it determines where the child will reside, i.e., either with a suitable foster family or other placement. If the child is removed from the parental home, the court should issue orders regarding authorized parental visitation and whether the placement has authority to place the child with a parent. The court should also adopt a proposed permanency plan, if it hasn’t adopted one already. Disposition orders may include other directives, but such are beyond the scope of this article. As long as the record reflects the above, a disposition hearing should survive appellate review.

The appeals court applies a preponderance of evidence standard for dispositional orders. If substantial competence evidence supports the court’s findings, the appellate court will uphold said findings.

**Finding of unfitness or termination of parental rights**

“When the child has been adjudicated to be a child in need of care, the court may terminate parental rights or appoint a permanent custodian when the court finds by clear and convincing evidence that the parent is unfit, by reason of conduct or condition, which renders the parent unable to care properly for a child, and the conduct or condition is unlikely to change in the foreseeable future.”

K.S.A. 38-2269(b)-(f) provides multiple considerations for the court in determining unfitness. Once the court has made a finding of unfitness, it must:

[C]onsider whether termination of parental rights as requested in the petition or motion is in the best interests of the child. In making the determination, the court shall give primary consideration to the physical, mental and emotional health of the child. If the physical, mental or emotional needs of the child would best be served by termination of parental rights, the court shall so order.
Once parental rights are terminated, the court may authorize adoption, appointment of a permanent custodian, or continued permanency planning. The court may also find unfitness but not terminate parental rights, which limits the court’s resulting orders to appointment of a permanent custodian or continued permanency planning.

The state must satisfy the same burden of proof here, i.e., clear and convincing evidence, as with adjudication. An appellate court will uphold the district court’s order if a “rational factfinder could have found it highly probable, i.e., by clear and convincing evidence,” that “the parent is unfit...and the conduct or condition is unlikely to change in the foreseeable future.”

As to orders appealable under the CINC code, that’s it. Post-termination provides no right to appeal. The district court’s orders are final. Why so restrictive compared to pretty much every other area of the law? Simple. Children need permanency. Imagine how long these cases would take, especially adoptions, if the same appeal rights applied to parents, grandparents, foster parents, etc. in a CINC case as in criminal, domestic, probate, or civil codes. In Kansas, the average length of out-of-home placements for adoptions is three years. Add to that the typical 18-36 months for a fully briefed and argued appeal, and five to six years would pass following the temporary custody hearing. What if such an appeal were successful? A child who hadn’t lived with a parent for upwards of six years could be thrown back into an environment that led a judge to find the parent unfit, or the court might be forced to remove the child from a solid adoption resource home. The goal in these cases is permanency for the children, and the sooner the better. Thus, it makes sense that the Kansas legislature has limited appeals to these orders. To do otherwise would not be in the children’s best interests.

Not so fast!

**ICWA**

Notwithstanding the above, two federal statutory schemes trump the Kansas CINC code, ICWA and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). If the child is eligible for enrollment in an Indian tribe, ICWA applies, which requires the court to make additional findings at various stages of litigation. Moreover, the tribe may move to remove a case from state court and litigate in a tribal court. While state courts may object to a transfer to the tribal court for good cause, doing so raises a whole new set of appealable issues, so it doesn’t happen often.

ICWA is a substantial piece of legislation that has spawned treatises, articles, week-long CLE programs, and textbooks in the hundreds of pages. Therefore, discussing more than the most basic ICWA issues would be impossible given the scope of this article. Nonetheless, CINC lawyers and judges must ensure that the record includes the basics.

The primary ICWA requirements are listed in 25 U.S.C. § 1912:

(d) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

The most substantial difference between an ICWA case and a standard CINC case is the heightened burden of proof for termination, i.e., beyond a reasonable doubt:

When the State seeks to terminate parental rights to an Indian child, the federal Indian Child Welfare Act requires proof beyond a reasonable doubt and support by expert testimony that continued parental custody would likely result in serious emotional or physical damage to the child. See 25 U.S.C. § 1912(f) (2012).

Additionally, the court must find clear and convincing evidence that the state made active efforts to locate a relative or tribe member for placement. It must also find good cause to not place the child in a tribe-approved placement; otherwise the tribe must approve a non-tribal placement.

**UCCJEA**

The UCCJEA applies when a dispute arises as to whether Kansas is the proper jurisdiction for a CINC case. These cases usually begin when a child who immediately prior to the instant filing lived in another state and is taken into custody on an emergency basis, i.e., the child has been abandoned or has been “subjected to or threatened with mistreatment or abuse.” At this stage the UCCJEA provides for emergency jurisdiction. This status expires if an action has commenced in the child’s home state and the Kansas court doesn’t receive a waiver from the other state’s court. Specifically,

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under K.S.A. 2017 Supp. 23-37,202, and amendments thereto, or that a court of this state would
be a more convenient forum under K.S.A. 2017 Supp. 23-37,207, and amendments thereto; or
(2) a court of this state or a court of the other state determines that the child, the child’s parents, and any person acting as a parent do not presently reside in the other state. 58

Absent these findings, any case can be appealed on jurisdictional grounds at any point, notwithstanding the appealable issues listed in K.S.A. 38-2273(a). 59 Additionally, the CINC practitioner should insist that the court make a record of all communications with the other state’s court, especially if that court waives jurisdiction. 60

Failure to comply with the UCCJEA’s requirements can result in a child being thrust into another jurisdiction to restart the long, arduous CINC process from ground zero, regardless of how long the case has taken to date. 61

Relinquishment v. Termination

“Prior to a hearing to consider the termination of parental rights, if the child’s permanency plan is either adoption or appointment of a custodian, with the consent of the guardian ad litem and the secretary, either or both parents may relinquish parental rights to the child, consent to an adoption or consent to appointment of a permanent custodian.” 62

Terminations are appealable; relinquishments are not. Hence, the most obvious impact of relinquishments on CINC cases is that they reduce case length by eliminating substantive appeals. This expedites permanency and benefits the child. Moreover, K.S.A. 38-2271(a)(1) presumes a parent who has been previously determined to be unfit is currently unfit; therefore, a parent’s lawyer is likely providing good advice to the client if the lawyer advises the parent to relinquish prior to the termination trial. The parent might be unfit to raise this child, but by relinquishing, there at least is hope for a future time to not be presumed unfit.

CINC practitioners and judges must make sure the relinquishment procedure complies with K.S.A. 38-2268. If the relinquishment isn’t to the DCF secretary, it can be on the record and not in writing. 63 However, such situations are usually for the purpose of a private adoption, so the Kansas Judicial Council consent to adoption form should be used since it contains relinquishment language. 64

Since relinquishment under this statute requires consent of the secretary, it usually involves relinquishment to DCF and not private parties. K.S.A. 38-2268(b)(2) mandates written relinquishments under this scenario, and they must comply with the Kansas Judicial Council relinquishment form. 65 This form contains language that the relinquishment was not obtained under duress and was freely and voluntarily given; however, given the fact that many of these cases proceed to termination or relinquishment due to opioid and methamphetamine addiction, 66 the court should make the record reflect that the parent isn’t under the influence of drugs, alcohol, or medications that inhibit understanding of the proceedings, and that there isn’t a medical or physical condition that impairs the ability to understand.

It’s about the kids!

While many parties have an interest in how a CINC case progresses and concludes—parents, grandparents, other relatives, as well as foster and adoption families—the court’s goal is to serve the child’s best interests. Most of the time, this results in reintegration with a parent. 67 Sadly, when parents seem unwilling to place their children’s interests ahead of their own by continuing to use drugs and alcohol and otherwise engage in behaviors incompatible with even the minimum standards of responsible parenting, case plan goals change to adoption or some other option that ensures the children are placed with adults who will provide for their needs. 68 When this happens, all stakeholders must put the needs of the children ahead of their own. This doesn’t mean that, for example, a grandparent who wants to adopt the child shouldn’t try to do so, but it does mean that lawyers representing such interested parties must zealously represent their clients within the parameters of the child’s best interests, and present all viable arguments, witnesses, and exhibits. The CINC lawyer must assume that there will be no opportunities to fight for his client’s rights in the future.

If lawyers know what can be appealed, use due diligence to ensure that all viable arguments are made to the court at every available opportunity, and advise their clients of the importance of full participation in each step of the CINC process, the CINC practitioner can be confident that the client’s and the child’s best interests have been served.

About the Author

Hon. Kevin Mark Smith is a judge in the 18th Judicial District, Sedgwick County, where he currently serves in juvenile court. Judge Smith practiced law in Kansas for more than 16 years before Gov. Brownback appointed him to the bench in Dec. 2015. He graduated cum laude in 1999 from Regent University School of Law where he served as Issue Planning Editor of Law Review.
10. Id.
12. Id. § (b). See also K.S.A. 38-2240(a) (in the civil code, parties in CINC cases are entitled to “the use of subpoenas and other compulsory process to obtain attendance of witnesses”).
13. Comment 8 to Kansas Rule 1.1 states, “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.” Knowing the court’s technological advances is included in this responsibility.
14. Id. § (a).
15. K.S.A. 38-2273(a).
16. The Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901-63) (ICWA), is a whole new can of worms the CINC lawyer must be aware of, but the substantial compliance issue it invokes are beyond the scope of this article.
17. In some jurisdictions magistrate hears CINC cases, and not all magistrates are licensed attorneys. While you can expect magistrates in jurisdictions with a substantial volume of CINC cases to have knowledge of the CINC code as well as the interplay of federal statutes, don’t assume anything. Know the burden and findings that apply and ask the judge or magistrate to make such findings.
18. K.S.A. 38-2243(b).
24. “The petitioner must prove by clear and convincing evidence that the child is a child in need of care.” K.S.A. 38-2250.
25. See K.S.A. 38-2202(d)(1)-(14) for CINC categories.
26. Id.
28. Id. at 697.
29. Id. at 704-5.
32. Id. at § (b).
33. Id. at § (c).
34. K.S.A. 38-2263.
35. See generally K.S.A. 38-2255.
37. Id.
38. K.S.A. 38-2269(a).
39. Id. at § (g)(1).
40. Id. at § (g)(2).
41. K.S.A. 38-2269(g)(3).
43. K.S.A. 38-2269(a).
45. In re D.T., 30 Kan. App. 2d 1172, 1175, 56 P.3d 840 (2002) (“the courts must strive to decide these cases in ‘child time,’ rather than ‘adult time’”).
46. “[T]he safety and welfare of the child [shall] be paramount in all proceedings under the code...” K.S.A. 38-2201(b)(1).
49. The Indian tribe determines if a child is eligible for tribal membership. See 25 U.S.C.A. § 1903(4)-(5).
52. Id. at 209, Syl. ¶ 1 (italics added).
53. Id. at 209, Syl. ¶ 4.
55. K.S.A. 23-37,201.
56. K.S.A. 23-37,204(a).
57. Id. at (d).
60. K.S.A. 23-37,110(d).
62. K.S.A. 38-2268(a). Note that the Guardian Ad Litem and the DCF secretary must consent to a relinquishment “if the child’s permanency plan is either adoption or appointment of a custodian.” Hence, the court may accept the parent’s relinquishment without anyone’s approval if it is offered before the case plan is adoption or custodianship.
63. Id.
64. https://www.kansasjudicialcouncil.org/sites/default/files/Consent%20To%20Adoption%20%282018-29%20.doc.
67. K.S.A. 38-2201(b)(2) acknowledges that the preferred placement of children in state’s custody is “in the child’s home and recogniz[es] that the child’s relationship with such child’s family is important to the child’s well-being.” For 2017, 59% of children in out of home placements were reunified with their parent(s). http://www.dcf.ks.gov/services/PPS/Documents/FY2017DataReports/FCAD Summary/LengthofstayFY2017.pdf.
If Not Properly Conducted, Kansas Grand Juries May Result in Due Process Violations

by Christina M. Wahl

INTRODUCTION

The recent decisions of State v. Turner and State v. Henry & Sons Construction Company, Inc. provide critical guidance to prosecutors for conducting a fair grand jury proceeding, and for defense counsel analyzing whether there has been grand jury abuse.

State v. Turner

In State v. Turner, 300 Kan. 662 (2014), a citizen grand jury was convened to investigate claims related to the Board of Public Utilities and the Unified Government. There was no specific reference to Mr. Turner or the consulting and legal work he did for BPU.1

The State’s chief investigatory agent directed the grand jury toward Mr. Turner by testifying that Mr. Turner’s consulting and legal work arrangement with BPU was an example of a no-bid contract. The agent also referred to an unrelated, 20-year old murder investigation. He testified that Mr. Turner’s name came up on both the BPU and the murder investigation, linking Mr. Turner to both cases.

The grand jury subpoenaed Mr. Turner to testify. Mr. Turner’s attorney objected to the appearance based on Mr. Turner’s privilege against self-incrimination. Mr. Turner was not excused, and the district attorney proceeded to ask Mr. Turner over 100 questions, which Mr. Turner declined to answer on the grounds it may incriminate him. After Mr. Turner’s appearance, the agent commented on Mr. Turner’s invocation of the Fifth Amendment and his constitutional and statutory rights.

The grand jury indicted Mr. Turner with two counts of theft and 55 counts of presenting false claims. BPU’s general counsel, Marc Conklin, who had approved Mr. Turner’s invoices, also was indicted. No other persons were indicted, and “none of the actual specific allegations in the petition used to convene the grand jury was the basis for any criminal charge.”2

Mr. Turner filed a motion to dismiss the indictment for grand jury abuse and violation of his constitutional rights.
The district court granted Mr. Turner’s motion and dismissed the indictment. The State appealed, and the Kansas Court of Appeals reversed the district court’s decision.3

Mr. Turner appealed to the Kansas Supreme Court, arguing that dismissal was appropriate because (1) the district attorney required Mr. Turner to repeatedly invoke his Fifth Amendment right to remain silent over 100 times in the presence of the grand jury, after being advised beforehand that Mr. Turner would invoke his constitutional and statutory right; (2) the State’s chief investigator impermissibly commented on Mr. Turner’s invocation of his Fifth Amendment right to remain silent after Mr. Turner was called as a witness; and (3) the State’s chief investigator repeatedly testified about, and linked Mr. Turner to, the unrelated murder case. The Kansas Supreme Court agreed.4

4 Key Holdings from Turner:

First, “[t]he right to remain silent is a deep-rooted, fundamental privilege.” Additionally, K.S.A. 22-3008(d) codifies the constitutional right for grand jury proceedings: “No witness shall be required to incriminate the witness’ self.”5

In Kansas, prosecuting attorneys should follow K.S.A. 22-3008(c), which provides that “[i]f any witness appearing before a grand jury refuses to testify or to answer any questions asked in the course of the witness’ examination, the fact shall be communicated to a district judge of the judicial district in writing, on which the question refused to be answered shall be stated. The judge shall then determine whether the witness is bound to answer or not, and the grand jury shall be immediately informed of the decision.” Here, the district attorney did not follow K.S.A. 22-3008 and instead “chose to ask a hundred plus questions, knowing that Turner could not refute the substance of the questions without waiving his Fifth Amendment right to remain silent.”6 “By that ploy, the DA could suggest to the grand jury what the State believed the facts to be. And perhaps more damning, the questioning could create the impression for each and every question that Turner refused to answer, he must have something to hide.”7

Second, the State and its agents cannot comment on a witness’ invocation of his Fifth Amendment and constitutional rights, and refusal to testify before the grand jury.

Third, “due process mandates that a Kansas grand jury should only issue an indictment based on legal evidence, rather than suspicion or conjecture.”8 Here, the agent presented evidence of an irrelevant murder investigation as part of the basis for which the grand jury should indict. This violated Mr. Turner’s due process rights. When “an indictment is potentially based on irrelevant evidence, the process has not attained the fundamental fairness required by due process protections.”9

Last, the burden of proving harmless error is on the party that benefitted from the error.10

Application of Turner in State v. Henry and Sons Construction Company, Inc.

Earlier this year, the Wyandotte County District Court addressed another case involving grand jury abuse.

The Kansas Attorney General’s Office had convened a grand jury that resulted in the indictment of the designers and operators of the Verruckt water slide at a Schlitterbahn waterpark in Wyandotte County, Kansas. Redacted portions of the grand jury transcript were produced to the defense, and those transcripts revealed that the State had allowed the grand jury to hear illegal and irrelevant evidence. The defendants moved to dismiss the indictments for grand jury abuse.

The abuse arose in three primary contexts: (1) the grand jury was shown a fictional, highly-dramatized made-for-TV video of the water slide; (2) the State’s expert testified about ASTM standards as legal requirements for building the water slide, when in fact they were not; and (3) the State’s expert referenced a prior death that occurred at a different water park, under different circumstances, in 2013.11

The District Court applied Turner and dismissed the indictments. The District Court explained that an indictment must be based on “legal evidence,” which has been defined as all admissible evidence, both oral and documentary, of such a character that it reasonably and substantially proves the point rather than merely raising suspicion or conjecture.12 Whether the evidence was “legal” is not about whether the evidence was obtained illegally or improperly, as the State argued.

The highly dramatized, made-for-TV video was not legal evidence. Showing the video to the grand jury was highly prejudicial to the defendants.13

The testimony about ASTM standards by the State’s expert was speculative and conclusive, and the type of insinuation that was disfavored by Turner.14 The expert’s reference to an unrelated death, even though not solicited by the prosecutor, exposed the grand jury to irrelevant and illegal evidence.15

The State benefitted from the errors by obtaining the indictments, and it had the burden of proving harmlessness.16 In analyzing whether the error was harmless, the question is not whether there is other non-prejudicial evidence to support a finding of probable cause, but whether any violations had an effect on the grand jury’s decision to indict.17 The District Court held that the defendants were denied the due process protections and fundamental fairness Kansas law requires, and the cumulative effect of the violations could not be deemed harmless.18 The indictments were dismissed. The State did not appeal.

Conclusion

Turner and Henry provide instructive guidance for conducting grand jury proceedings in a manner that should prevent grand jury abuse and due process violations.
2. Id. at 672. Mr. Conklin subsequently committed suicide. Id.
3. Id. at 672-74.
4. Id. at 674.
5. Id. at 676 (citing previous statute K.S.A. 22-3008(4), amended in July 2013).
6. Id. at 679-80.
7. Id. at 680.
8. Id. at 684.
9. Id.
10. Id. at 686.
12. Id. at 5.
13. Id. at 7.
14. Id.
15. Id. at 9.
16. Id. at 9.
17. Id. at 10.
18. Id. at 11.

Testimonials - Law Students on attending the KBA Annual Meeting:

“My experience at the KBA annual meeting far exceeded my expectations. I left with numerous new contacts who were willing to tell me about their career experience and what they enjoy most about practicing law in Kansas. As a law student, getting this type of experience in a relatively informal setting is invaluable. I am grateful for the KBA team for putting on such a fantastic event and am looking forward to this year’s annual meeting.”

Brett Sitts
J.D. Candidate, Expected May 2020
University of Kansas School of Law

“I was fortunate enough to have the opportunity to attend the Kansas Bar Foundation Dinner this past summer. After the Dinner, I felt inspired and encouraged by the community atmosphere that existed between KBA members, and I had the chance to make several connections in the legal field. I would strongly recommend anyone who has the opportunity to attend this dinner, as well as any other event during the KBA Annual Meeting.”

Cole Cummins
J.D. Candidate, May 2020
University of Kansas School of Law
Law professionals in Kansas can participate in the pro bono community through clinics, posted projects, or by volunteering to take on specific cases displayed on the site. Opportunities are regularly updated by Pro Bono Coordinators in the 11 statewide KLS field offices.

Please check back often for new and exciting ways to put your skills, experience and training to good use by helping your fellow Kansans.
“AROUND THE WORLD; Yugoslavia Arrests an American Citizen” ran the title of a cover article for The New York Times in 1986. The American citizen who was arrested and sentenced to seven years in prison by a panel of Yugoslav judges was my father.

My father, Pjeter Lek Ivezaj, embraced the United States Constitution when he became a United States citizen. It was his embrace of the Constitution that empowered him to become a human rights activist. For many centuries, Albanians and Serbians had fought for Kosova, a land which is now owned by the Albanians. Believing it was time to raise their voices, thousands of Albanian-Americans started a demonstration in Washington D.C. My father joined them, an action which resulted in his arrest and interrogation in Yugoslavia.

During the demonstration, Yugoslav agents had secretly photographed and identified the participants. After the demonstration, my father visited his hometown in Albania. While at the airport in Titograd, Montenegro (then part of former Yugoslavia), he was pulled aside by agents and asked to deliver information to the Yugoslavian Government regarding the protests that had taken place in D.C. The agents offered him the opportunity to be their spy, and in return, they would let him go; however, he refused and stated to them, “You can burn my body like the ashes of this cigarette, and I will not spy against my people.” Because my father refused to release the information about his community members, he was tried for “crimes against the state.” He was sentenced to serve seven years in prison, placed in solitary confinement, and endured 55 days of torture in Yugoslavia for exercising his rights as a U.S. citizen. In communist jails, political prisoners are mistreated. Although it was difficult for him to talk about, he detailed some of the forms of torture he endured.

In order to get my father to break his cultural code of honor, known in Albanian culture as “Besa,” Yugoslav officials and
prisoners beat him with police batons, burned him with lit cigarettes, urinated on his blankets while he was sleeping and lit them on fire, suffocated him and attempted to manipulate him into ending his own life. After hearing about the treatment my father was experiencing, the U.S. government intervened. With the pressure of the U.S. government, my father was released after seven weeks. He was listed as a prisoner of conscience by Amnesty International.

Every time I hear my father’s recollection of the torture he endured during this period, I find myself caught between two feelings: anguish for the pain he underwent and a feeling of pride for his courage and bravery. As American citizens, our civil rights are granted in the Constitution, and they are intended to preserve a citizen’s individual rights. These rights should always be protected, but often these rights are violated. The violation of my father’s human rights and constitutional rights as an American citizen was what compelled my decision to pursue a law degree.

I have always aspired to be a voice for the unheard. I strive to bring to justice those who have hurt others and strive to protect the rights of human beings. Law school has given me the opportunity to make these aspirations a reality. It has taught me that in order to properly advocate for your clients, you must be able to eloquently articulate your position. In order to do that, you must put in extensive work such as researching the ins and outs of the case and acquiring patience to put all the pieces together. As a first-year law student, I fell victim to the notorious Socratic method of teaching on multiple occasions. I vividly recall one day when I was given a verbal fact pattern and told to stand up and argue the defense side for a criminal law matter. With nothing other than the fact pattern that had been given to me, I had to quickly think of a defense for the defendant. That day showed me how imperative it is to really pay attention to detail because the details help build your case.

Law school has given me the opportunity to strengthen my skills in advocacy and taught me many valuable lessons. I’ve learned the immense value of research and the importance of presenting a coherent argument to one’s peers. When law school becomes overwhelming, I think about my father and remember that I am working towards becoming a voice for the unheard.

**About the Author**

Maria Dushaj is a second-year transfer student at Washburn University School of Law. She is originally from Sterling Heights, Michigan. She was class President in 2018 and is a member of the Albanian American Bar Association. Her legal interests include Criminal Law and Family Law. When she is not studying, she is likely watching Law and Order marathons.

Maria.Dushaj@washburn.edu

---

1. The Albanian word “Besa” translates to English as “trust” or “faith,” but the word carries a significant connotation. The gravity of the word is derived from the Kanun (a set of Albanian laws), which holds in practice that what is promised must be done. In other terms, Besa is a word or code of honor. The importance of this code of honor manifests amongst the Albanian people. When an individual or a group of individuals is in need, an Albanian exhibiting the essence of Besa, will protect that person, regardless of their race, religion, sex or national origin. This rectitude was manifested during the Holocaust when thousands of Jews were saved by Albanians because they held true to the principle of Besa. Yad Vashem, *Besa: A Code of Honor Muslim Albanians Who Rescued Jews During the Holocaust* (2019), [https://www.yadvashem.org/yy/en/exhibitions/besa/index.asp.](https://www.yadvashem.org/yy/en/exhibitions/besa/index.asp)
Members in the News

New Positions

Mark McFarland, a Lenexa lawyer with more than thirty years of experience, has joined Hinkle Law Firm LLC. McFarland’s practice includes serving design professionals, representing corporate clients and litigating business matters. He will office in Overland Park. Mark received his undergraduate degree from The University of Kansas with a B.A. in Philosophy and Political Science. He earned his J.D. from Washburn University School of Law. McFarland is admitted to practice in both Kansas and Missouri.

Pablo Mose has joined Rebein Brothers, PA. Mose has extensive experience from working at a national defense firm which has enhanced his focus on working with plaintiffs in need, helping them achieve the best outcome. He received his undergraduate degree from Emporia State University and earned his J.D. from The University of Kansas School of Law. At KU, Mose was a member of the Law Review, champion of the Moot Court tournament, and he won the top Trial Advocacy Award.

Justin Wilson was sworn in by Administrative Judge Jeffrey Gettler as assistant county attorney in the Montgomery County District Court House. Wilson graduated from Sedan High School, Coffeyville Community College and Wichita State University. He received his Juris Doctor from Syracuse University where he was president of the Federalist Society and an “arguing member” of the nationally ranked Syracuse University National Trial Team. With experience as an appellate attorney in the Las Vegas, Nev. District Attorney’s office, Wilson passed the Kansas bar earlier this year.

New Locations

Stacey Janssen has moved her practice to St. Louis-headquartered Sandberg Phoenix & von Gontard P.C., bringing more than 25 years of experience in elder law, estate planning, special needs planning, trust litigation, social security disability, patients’ rights, Medicaid, Medicare on behalf of families, senior citizens and clients with special needs. A graduate of the University of Kansas School of Law, she earlier served with Kansas Legal Services for 11 years where she was a Senior Citizen Law Project Coordinator and Elder Law Hotline Administrator. Her address is: 4600 Madison Ave., Suite 1000, Kansas City, MO 64112-3042

Notables

Maria DeGeer, the first female attorney in Kansas and the publisher of the first newspaper in the Scott City area is being memorialized with a planned statue in Scott City. Fundraising efforts have begun to raise the $66,000 needed to make the larger-than-life bronze statue. DeGeer was the original founder of Scott City. DeGeer was nationally known as an author and lecturer on the subject of women’s rights, temperance and prison reform. She was a close friend of Susan B. Anthony. DeGeer joined the Kansas Bar Association in 1887.

Stinson Leonard Street LLP earned a perfect score of 100 on the 2019 Corporate Equality Index, the nation’s premier...
benchmarking survey and report on corporate policies and practices related to LGBTQ workplace equality. The index is administered by the Human Rights Campaign Foundation. The firm’s LGBTQ initiatives include sponsorships and partnerships with the National LGBT Bar Association, Kansas City Lesbian Gay and Allied Lawyers (KC LEGAL), Minnesota Lavender Bar Association, Mid-America Gay and Lesbian Chamber of Commerce, hosting Continuing Legal Education seminars on LGBT legal issues; dedicated recruitment of LGBTQ attorneys and staff and continued engagement with our LGBTQ Employee Resource Group.

Obituaries


Robert Wayne “Bob” Christensen, 64, of Medicine Lodge, KS, died Thursday, March 28, 2019 in Medicine Lodge, KS.

He was born on January 22, 1955 in Ashland, Kansas, the son of Gladys Marie (Stegman) Christensen of Medicine Lodge, KS and the late Donald Raymond Christensen. On Nov. 22, 1986, he married Cindy (Platt) Christensen in Medicine Lodge, KS. She survives.

Bob was an attorney for over 36 years at his law practice in Medicine Lodge, KS and a life coach. He was a 1973 graduate of Hugoton High School, Hugoton, KS, and graduated from Wichita State University and Washburn University, where he received his Juris Doctor Degree. He was a follower of Jesus and a member of the Working Men of Christ, Brothers in Blue, Emmaus, Alliance Defending Freedom, and the Kansas Bar Association. Bob was an avid reader, runner, and cyclist. He was a devoted husband who adored his wife Cindy, a loving father, and a faithful friend to many.

Surviving in addition to his wife Cindy Christensen of Medicine Lodge, KS and his mother Gladys Christensen of Medicine Lodge, KS are one son, Cooper Christensen of Keystone, CO; three daughters, Eryn (James) Guy of Medicine Lodge, KS, Cori (Patrick) Todd of Dallas, TX, & Morgan Christensen of Dallas, TX; Five grandchildren, Piper Guy, Aiden Guy, Kian Guy, Dace Guy, & Charlotte Todd; three brothers, Mike (Sue) Christensen of Wichita, KS, Bruce (Kaye) Christensen of Alva, OK, & Greg Christensen of Allen, TX.

A Celebration of Life Service was held on Thursday, April 4, 2019 at the Medicine Lodge High School Track & Field with Rick Pyle, Mike Hoesch and Pastor Paul Stephens officiating.

The family requested no flowers, asking instead that people make a memorial contribution to either the Brothers in Blue, the Working Men of Christ, or the United Methodist Church, Medicine Lodge, Kan., in care of Larrison Funeral Home, 120 E. Lincoln, Medicine Lodge, Kan. 67104.

**Lawrence Schneider (1945 - 2019)**

Lawrence “Larry” or “Bunzie” Schneider died unexpectedly at home on April 10, 2019, in Topeka, Kansas, at the age of 73.

Larry is survived by his wife, Rita; brother, John; sisters, Eileen and Mary. He is preceded in death by his parents, Art and Mary Schneider.

Larry was born in 1945 and graduated from Hayden High School in 1963. With history and law degrees from Washburn University, Larry was a respected attorney until his death, providing legal counsel and tax services to his clients in the Topeka area. Prior to starting his legal practice, Larry served in the Army during the Vietnam War and worked for the United States Postal Service.

Larry was a gifted woodworker and enjoyed crafting clocks and furniture by hand. He was proud of his Irish heritage and was known to enjoy a pint of beer, a glass of wine and a cigar on occasion. Larry was truly a kind person and his family and friends often referred to his as “the nicest guy in America”. Larry now resides in Topeka Heaven and is smiling down on all of us.

A visitation and celebration of Larry’s life was held at Kevin Brennan Family Funeral Home, 2801 SW Urish Road, Topeka KS 66614. In lieu of flowers, please send donations to Helping Hands Humane Society, the VA Medical Center (for patient’s needs) and Mater Dei Parish, sent in care of the funeral home.

Condolences may be sent online to: www.kevinbrennanfamily.com.
NOW AVAILABLE AS A WEBINAR!

WEBINAR DATES:

Saturday, June 8  
Friday, June 14  
Monday, June 24  
Friday, June 28  
Saturday, June 29

LIVE PROGRAMMING TOPEKA ONLY

LIVE DATES:

Saturday, June 8  
Friday, June 14  
Wednesday, June 26  
Friday, June 28  
Friday, July 12  
Friday, August 9

Webinar Pricing:
KBA Member-Attend Both & Save- $240  
Non-Member- Attend Both & Save- $270  
KBA Member- One Session- $165  
Non-Member- One Session- $195

Live Pricing:
KBA Member- Attend Both & Save- $260  
Non-Member- Attend Both & Save- $290  
KBA Member - One Session- $185  
Non-Member - One Session- $215

For more information or to register visit:  
www.ksbar.org
2019 Solo and Small Firm CLE

Kansas Bar Association
Robert L. Gernon Law Center
Topeka

Friday, May 24, 2019

Program begins at 8:30 a.m. with a continental breakfast and adjourns at 12:00 p.m.

TOPICS:
Employment and Labor Law for Solo and Small Firm Practices: Everything You Want to Know (in 2 Hours), But Have No Time to Research
Presenter: John R. Dietrick, CEO and General Counsel, HR Partners, Topeka

Succession and Disaster Planning: Planning for Tomorrow, Today
Presenter: Danielle Hall, Office of Disciplinary Administration, Topeka

Registration Pricing:
KBA Member: $175
KBA Solo and Small Firm Member $150
Non-member: $200
Paralegal: $100
Student: $25
Printed materials: $10 (OPTIONAL)

For more information or to register visit:
https://www.ksbar.org/event/2019SoloandSmall
ATTORNEY DISCIPLINE

ORDER OF DISBARMENT
IN RE PATRICK GEORGE COPLEY
NO. 20,699—APRIL 9, 2019

FACTS: In a letter dated April 1, 2019, Patrick George Copley surrendered his license to practice law in Kansas. At the time of surrender, two disciplinary complaints were pending with the Disciplinary Administrator.

HELD: The Court accepts the surrender of Copley’s license and orders that he be disbarred.

CIVIL

CONTRACTS—EMPLOYMENT
PETERS V. DESERET CATTLE FEEDERS, LLC
HASKELL DISTRICT COURT—REVERSED AND REMANDED
COURT OF APPEALS—AFFIRMED
NO. 113,563—MARCH 29, 2019

FACTS: Peters supervised a cattle feedlot. He started the job in 2006, working for Hitch Enterprises as an employee-at-will. Hitch sold the business to Deseret Cattle Feeders in 2010. When the sale was announced, employees were told that there would be no layoffs and that employees would be retained by Deseret as long as they did their jobs. This message was reinforced by Deseret after it purchased Hitch. Peters continued to work in his existing position. He signed several contracts with Deseret but none that specified that he was working as an employee-at-will. Peters was terminated in 2011 because of a reduction in Deseret’s workforce—there was no evidence of misconduct or poor job performance. Peters filed suit claiming breach of an employment contract. The district court granted Deseret’s motion for summary judgment, finding that there was no evidence of an implied-in-fact employment contract. The court of appeals reversed, finding that disputed facts precluded summary judgment. The Supreme Court granted Deseret’s petition for review.

ISSUES: (1) Existence of implied-in-fact employment contract; (2) promissory estoppel claim

HELD: Parties can become contractually obligated by conduct or words. An implied contract must be mutual and cannot be created solely by an employee’s subjective understanding of employment terms. The parties’ intent is a fact question for a jury. The comments made by Deseret when it purchased Hitch create a jury question about whether an implied-in-fact contract existed. For that reason, summary judgment was inappropriate and the court of appeals correctly reversed the district court. A question remains about whether Peters’ employment with Deseret was at-will or through an implied-in-fact contract. Any estoppel issue must be addressed on remand.

STATUTE: K.S.A. 60-256

WORKERS COMPENSATION
ESTATE OF GRABER V. DILLON COMPANIES
WORKERS COMPENSATION BOARD—REVERSED AND REMANDED
COURT OF APPEALS—AFFIRMED
NO. 113,412—APRIL 12, 2019

FACTS: Graber was injured after he fell down some stairs while at work. Graber did not remember the accident, and there were no witnesses or any evidence to suggest how the accident happened. Graber applied for workers compensation benefits. An ALJ awarded him benefits, finding that the injury arose in and out of the course of his employment. Dillon appealed, claiming that because the cause of the accident was unknown, Graber’s injuries arose from an idiopathic cause and were not compensable. The Board agreed with Dillon, holding that after 2011 amendments to the workers compensation statutes, idiopathic falls are not compensable. The Court of Appeals reversed, holding that “idiopathic” means something personal or innate to the claimant. The Supreme Court granted Dillon’s petition for review.
ISSUE: (1) First impression question of the meaning of the term “idiopathic causes”

HELD: The legislative history does not address the “idiopathic causes” exclusion. “Idiopathic” means more than “spontaneous” or “unknown.” Rather, it is connected with medical conditions and is not a synonym for all unknown causes. For that reason, the idiopathic exclusion is narrow. It applies only if there is proof that an injury or accident arose directly or indirectly from a medical condition or medical event of unknown origin which is peculiar to the claimant. The case must be remanded for further factfinding by the Board.


HABEAS CORPUS—SEXUALLY VIOLENT PREDATORS IN RE CARE AND TREATMENT OF EASTERBERG ORIGINAL PROCEEDING—REMANDED TO THE DISTRICT COURT NO. 117,933—MARCH 29, 2019

FACTS: Easterberg was charged with rape and aggravated criminal sodomy in 2007. But he pled guilty to other offenses, and the sex crime charges were dismissed under the plea agreement. The journal entry of sentencing did not reflect that Easterberg's crimes were sexually motivated. Prior to Easterberg's release from prison, the Department of Corrections provided notice that Easterberg might meet the criteria of a sexually violent predator under the Kansas Sexually Violent Predator Act. The attorney general filed a petition seeking to have Easterberg civilly committed. Easterberg challenged the motion, claiming he did not fit the statutory criteria for a sexually violent predator. The district court disagreed, and Easterberg filed this original action in habeas corpus with the Kansas Supreme Court.

ISSUES: (1) Original jurisdiction; (2) eligibility for civil commitment

HELD: The State's argument that the court lacks jurisdiction because it could not have heard the case in 1859—at the adoption of statehood—is rejected. The state constitution allows the court to hear original actions and Supreme Court Rule 9.01 provides details on how parties should proceed. If Easterberg is truly not subject to the KSVPAP, any proceeding under that Act is illegal. Merely being charged with a sexually violent offense is insufficient to trigger involuntary commitment under the KSVPAP. The district court found at sentencing that Easterberg's crime was not sexually motivated. But there is no evidence about whether that was truly the case, or whether there was little incentive to make such factual findings because of Easterberg's guilty plea. For this reason, the case must be remanded for a determination as to whether Easterberg's sexual motivation was litigated in the criminal case. If it was, the State is estopped from arguing to the contrary in this proceeding, and Easterberg is ineligible for civil commitment. If it was not, the KSVPAP proceeding may continue.

CONCURRENCE AND DISSENT: (Johnson, J., joined by Luckert, J., and Malone, S.J.) The journal entry of sentencing is clear. There is no need to remand this case for more factfinding; the court should rely on the district court's prior finding that Easterberg's crime was not sexually motivated.

DISSENT: (Stegall, J.) Original actions in habeas corpus cannot take the place of appeals. Easterberg had remedies available in district court and should have used them. But since the court took jurisdiction, remand is the appropriate next step.

STATUTES: Kan. Const. art. 3, § 3; K.S.A. 2017 Supp. 59-29a02(a), -29a02(c), -29a02(d), -29a02(e), -29a02(e) (1), -29a02(e)(5), -29a02(e)(13), -29a03(a), -29a03(h), -29a04(a), -29a05(a), -29a06(a), -29a07(g), -29a20

DATE OF INJURY—WORKERS COMPENSATION KNOLL V. OLATHE SCHOOL DISTRICT NO. 233 WORKERS COMPENSATION BOARD OF APPEALS—REVERSED AND REMANDED COURT OF APPEALS—AFFIRMED NO. 116,167—APRIL 19, 2019

FACTS: Knoll filed a claim for workers compensation coverage and requested a hearing. The claim did not proceed to final hearing within three years, so the school district moved for dismissal. The ALJ denied that request, holding that under K.S.A. 2009 Supp. 44-523(f) Knoll had five years to either proceed to final hearing or request an extension of time. The Board affirmed that holding but the Court of Appeals reversed, finding that K.S.A. 2011 Supp. 44-523(f)(1) controlled Knoll's claim and required either a final hearing or a motion within three years. Knoll's petition for review was granted.

ISSUE: (1) Which version of K.S.A. 44-523 controlled Knoll's claim

HELD: The only issue is which version of the statute controls—the 2009 version, which allows five years, or the 2011 version, which allows three years. The beginning point for applicable law in a workers compensation case is the date of injury. For Knoll, that was in 2009. But when a law changes, the amendments apply to the worker if the changes are procedural in nature. Statutes of limitation are considered procedural, and the 2011 amendments to K.S.A. 44-523 were very similar to a statute of limitation. And the changes went into effect before Knoll filed her application for hearing. K.S.A. 2011 Supp. 44-523(f)(1) applies to any cases that were pending during its enactment where the claimant did not file an application for hearing until after the 2011 amendments took effect.

DISSENT: (Rosen, J.) The 2011 changes to K.S.A. 44-523 do not create a three-year time limit. While the 2011 statute was the correct one to apply to Knoll's claim, it does not bar the ALJ from considering Knoll's request for an extension of time.

ISSUE: (1) Motion for a new trial—date of mandate

HELD: A district court’s judgment becomes final the date the mandate is issued, except in cases where remand instructions are given and further proceedings are necessary. In this case, the February 2013 mandate was fully determinative of the issues and therefore rendered the judgment final. District court correctly found Phillips’ motion was untimely filed.


APPEALS—APPELLATE PROCEDURE—CRIMINAL PROCEDURE—MOTIONS—SENTENCING
STATE V. SALARY
WYANDOTTE DISTRICT COURT—AFFIRMED
NO. 116,406—MARCH 29, 2019

FACTS: Salary was convicted of first-degree premeditated murder and arson. A hard 50 life sentence was imposed for the murder conviction. The Supreme Court affirmed the convictions but vacated the hard 50 and remanded for resentencing, State v. Salary, 301 Kan.586 (2015). On remand, State chose to seek a hard 25 life sentence which a judge could constitutionally impose without a jury. At resentencing, the district court imposed the hard 25 sentence and denied Salary’s various pro se motions and letters, finding Salary was arguing issues that were raised or should have been raised in his direct appeal. Salary appealed claiming: (1) district judge erred in denying the motion to dismiss that Salary filed between his first appeal and his resentencing; (2) ineffective assistance of trial and appellate counsel; (3) district judge erred in denying Salary’s request for exculpatory evidence; and (4) district judge was biased and denied Salary right of allocation at resentencing hearing by not allowing him to present evidence of innocence.

ISSUES: (1) Motion to dismiss; (2) ineffective assistance of counsel; (3) request for exculpatory evidence; (4) allocation

HELD: Record in this case is reviewed under doctrine of res judicata, finding the district court did not err in denying Salary’s motion to dismiss at the resentencing hearing.

Salary failed to argue below that trial counsel’s performance was deficient regarding the admission at trial of photographs of the deceased, and the record had insufficient information to analyze this issue for first time on appeal. Salary’s claim of ineffective assistance by appellate counsel is rejected.

Reviewing the record, it is not clear what exculpatory evidence Salary seeks that he does not already have. Salary failed to provide record citations or supporting authority for this claim, or explain why the issue is properly before the court. The Issue is deemed waived or abandoned for noncompliance with court rules.

On remand, the hard 25 was the only available sentence once the State decided not to seek the hard 50, making any allocation error harmless.

WORKERS COMPENSATION
GLAZE V. J.K. WILLIAMS LLC
WORKERS COMPENSATION BOARD—BOARD OF APPEALS IS AFFIRMED, BOARD IS AFFIRMED NO. 115,763—APRIL 19, 2019

FACTS: Glaze claimed that he was injured while working for J.K. Williams, LLC, and he filed a motion for hearing. In 2016, Williams moved to dismiss claiming that Glaze’s claim should be dismissed because the claim had been neither heard nor settled within three years of filing the application for hearing. After the motion was filed, Glaze filed a request for extension of time. The ALJ granted Williams’ motion to dismiss, finding that K.S.A. 2011 Supp. 44-523(f)(1) required dismissal because Glaze did not request an extension of time within three years of the filing of his application for hearing. This decision was confirmed by the Workers Compensation Board of Appeals and again by the Court of Appeals. Glaze’s petition for review was granted.


HELD: K.S.A. 2011 Supp. 44-523(f)(1) unambiguously prohibits an ALJ from granting an extension of time unless the motion for extension has been filed within three years of the filing of the application for hearing.

DISSENT: (Rosen, J.) Justice Rosen would look beyond the majority’s grammatical reasoning when considering ambiguity. This statute is susceptible to multiple interpretations and for that reason, he believes the Legislature intended the three-year time limit to apply to a conclusive presumption of good cause.


CRIMINAL

CONSTITUTIONAL LAW—CRIMINAL LAW—CRIMINAL PROCEDUR—EVIDENCE—MOTIONS—SENTENCES—STATUTES
STATE V. BOYSAW
SEDGWICK DISTRICT COURT—AFFIRMED COURT OF APPEALS—AFFIRMED NO. 112,834—APRIL 19, 2018

FACTS: Boysaw was charged with aggravated indecent liberties with a child. He filed motion in limine to bar evidence of his criminal history or uncharged conduct. Finding probative value of the proffered evidence was not outweighed by prejudicial effect, district court allowed State to introduce evidence of Boysaw’s 1987 Nebraska sexual assault conviction, for purposes of showing both propensity and motive or intent and absence of mistake. Jury convicted Boysaw on the charged offense. Life sentence without parole imposed. Boysaw appealed claiming: (1) State provided insufficient evidence his conduct was intended to arouse or satisfy sexual desires; (2) admission of evidence of the Nebraska conviction violated fair trial guarantees in U.S. and Kansas constitutions; (3) district court erred in weighing probative value of prior conviction evidence against prejudicial effect; and (4) error to use the Nebraska conviction to sentence him as a habitual sex offender. Court of Appeals affirmed, 52 Kan. App. 2d 635 (2016). Review granted.

ISSUES: (1) Sufficiency of the evidence; (2) constitutionality of K.S.A. 2018 Supp. 60-455(d); (3) probative value of prior conviction versus prejudicial effect; (4) sentencing

HELD: Evidence of Boysaw’s intent was circumstantial but compelling enough on the record to provide more than sufficient evidence to prove elements of the crime.

K.S.A. 2018 Supp. 60-455(d) does not violate federal constitutional protections. Court outlines law in effect for admission of evidence under K.S.A. 60-455 in State v. Prine, 287 Kan. 713 (2009) (Prine I), the Legislature’s amendment of the statute in response, and rejection of the ex post facto challenge to application of the amended statute in State v. Prine, 297 Kan. 460 (2013) (Prine II). Given the historical use of propensity evidence in Kansas, coupled with safeguard of weighing probative against prejudicial effect of the evidence, the statute does not offend any principle of justice so rooted in traditions and conscience of the people of Kansas that it must be deemed fundamental. State constitutional argument is not decided because Boysaw failed to adequately brief why a different result should follow under state guidelines. Long history of coextensive analysis of rights under the two constitutions is noted for consideration in any future argument on this issue.

K.S.A. 2018 Supp. 60-455 and Fed.R.Civ.P. 403 are compared. In Kansas, the weighing of probative value versus prejudicial effect is a judicial construct rather than rule based. Factors to be considered in that weighing are set forth. In this case, district court’s analysis of the admissibility of K.S.A. 2018 Supp. 60-455(d) evidence is approved and upheld.

Boysaw abandoned his claim that the Nebraska conviction did not qualify as a sexually violent crime in Kansas, and his challenge to the constitutionality of K.S.A. 2018 Supp. 21-6626 was defeated by controlling caselaw.


APPEALS—CRIMINAL PROCEDURE—MOTIONS SENTENCES—STATUTES
STATE V. MURPHY
SHAWNEE DISTRICT COURT—REVERSED AND REMANDED NO. 117,315—APRIL 19, 2019
FACTS: Murdock was convicted of aggravated robbery and robbery. On appeal, Kansas Supreme Court reversed and remanded for resentencing, finding Murdock's prior out-of-state convictions must be scored as nonperson offenses, and holding the comparable Kansas offense should be determined as of the date the out-of-state offenses were committed. 299 Kan. 312 (2014). At resentencing, district court applied Murdock and scored the out-of-state convictions as nonperson felonies, resulting in a criminal history of C instead of A. Six months later, State v. Keel, 302 Kan. 560 (2015), overruled Murdock, holding the comparable Kansas offense is the one in effect at the time the current crime of conviction was committed. State then moved to correct Murdock's sentence. District court granted the motion and sentenced Murdock a third time, finding a criminal history score of A. Murdock appealed, arguing his second sentence was legally imposed under Murdock, and did not become illegal after Keel changed the law. While his appeal was pending, the legislature amended K.S.A. 22-3504 to state a sentence is not made illegal by a change in the law after the sentence is pronounced. Case transferred to Kansas Supreme Court, which granted supplemental briefing on retroactive application of the amended statute, and on Murdock's alternative argument based on State v. Wetrich, 307 Kan. 552 (2018).

ISSUE: (1) Legality of sentence

HELD: Under K.S.A. 22-3504, the legality of a sentence is controlled by the law in effect at the time the sentence was pronounced. Therefore, a sentence that was legal when pronounced does not become illegal if the law subsequently changes. K.S.A. does not give either party the benefit of later changes in the law, but does give both parties the opportunity to revisit a merits determination of legality in the limited circumstance when there is reason to think that determination was wrong in the first place. Here Murdock's second sentence was legally imposed according to the Murdock mandate, and Keel did not render Murdock's second sentence illegal. Reversed and remanded to reinstate Murdock's lawful sentence. Applicability of Wetrich and retroactivity of the amendment to K.S.A. 22-3504 is not considered.

CONCURRENCE (Biles, J.): Concurs in the result.

STATUTE: K.S.A. 2017 Supp. 21-5108(c), -5222

CONSTITUTIONAL LAW—CRIMINAL LAW—CRIMINAL PROCEDURE—EVIDENCE—MOTIONS—SENTENCES—STATUTES

STATE V. RAZZAQ

SEDGWICK DISTRICT COURT—AFFIRMED

COURT OF APPEALS—AFFIRMED

NO. 114,325—APRIL 19, 2019

FACTS: Razzaq was convicted of aggravated indecent liberties with a child. Court of appeals affirmed the conviction in an unpublished opinion. Razzaq's petition for review granted on claims that: (1) district court erred in allowing a State witness to introduce fact of Razzaq's prior convictions in Missouri for sex crimes, (2) K.S.A. 2918 Supp. 60-455(d) violates Kansas Constitution's right to fair trial; (3) Court of appeals inadequately addressed the speedy trial issue raised in supplemental briefing; and (4) constitutional error to use prior convictions to enhance sentence.

ISSUES: (1) Probative value of prior convictions versus prejudicial effect, (2) constitutionality of K.S.A. 2018 Supp. 60-455(d) under Kansas Constitution, (3) speedy trial, (4) sentencing

HELD: As held in State v. Boysew (Case No. 112,834, decided this date), safeguards in Kansas courts for admission of evidence of other bad acts resemble Federal Rule of Evidence 403, requiring a district court to weigh probative value of such evidence against the danger of unfair prejudice. In this case, the district court implicitly weighed the probative value of evidence of the Missouri convictions against danger of undue prejudice and did not abuse its discretion in admitting the evidence.

No violation of the Kansas Constitution. To the extent Razzaq argues that other states have found state constitutional violations in their bad-acts evidentiary statutes, no similarity to Kansas Constitution is shown.

STATUTES: K.S.A. 2018 Supp. 22-3402(b), 60-455(d); K.S.A. 2013 Supp. 60-455(d); K.S.A. 21-3504(a)(1)

CRIMINAL PROCEDURE—JURISDICTION—MOTIONS—POSTCONVICTION RELIEF
STATE V. ROBERTSON
BUTLER DISTRICT COURT—AFFIRMED
NO. 118,427—APRIL 19, 2019

FACTS: Robertson was convicted of first-degree murder, arson, and aggravated burglary. The Kansas Supreme Court affirmed the convictions and sentences on direct appeal, 279 Kan. 291 (2005), and rejected various post-conviction motions seeking relief under K.S.A. 22-3504 and K.S.A. 60-1507. Robertson then invoked jurisdiction under K.S.A. 22-3504 to file motion to correct illegal sentence and motion to dismiss for lack of jurisdiction. He alleged fatal defect in the charging document because it named him as an individual rather than sovereign, and used an incorrect (non-trust) version of his name. He also reserved rights not to perform under Kansas statutes that he construed as commercial contracts. District court summarily denied relief. Robertson appealed.

ISSUES: (1) Motion to correct illegal sentence, (2) motion to dismiss and K.S.A. 60-1507

HELD: Robertson cannot collaterally attack a conviction through a motion to correct an illegal sentence filed under K.S.A. 2018 Supp. 22-3504 that claims a defective complaint meant the district court lacked jurisdiction to convict. Personal jurisdiction distinguished from Robertson's reliance on subject matter jurisdiction caselaw.

K.S.A. 2018 Supp. 22-3504 provides no statutory basis for jurisdiction over Robertson's motion to dismiss. Even if liberally construed as a motion under K.S.A. 2018 Supp. 60-1507, the motion would be procedurally barred as successive and filed out of time.


KANSAS COURT OF APPEALS

CIVIL

CHILD CUSTODY
IN RE MARRIAGE OF BAHLMANN
RILEY DISTRICT COURT—AFFIRMED
NO. 120,019—APRIL 5, 2019

FACTS: When Rebecca Bahlmann filed for divorce, she received ex-parte temporary orders for custody and parenting time. After an extensive hearing, the district court adopted Rebecca's parenting plan. Bruce later filed several motions including the one at issue here—a motion to modify child custody in which he claimed that Rebecca had become physically and emotionally abusive to the children. Rebecca moved to dismiss these motions, denying any material change in circumstances. The parties filed a joint motion for mediation, and Bruce's attorney filed a motion for hearing on that motion. Rebecca appeared at the hearing with counsel and Bruce appeared only through counsel. At the hearing, the district court addressed Bruce's motion to modify and Rebecca's motion to dismiss that motion. Finding that Bruce's motion lacked specificity, the district court granted Rebecca's motion to dismiss the motion to modify. Bruce appealed.

ISSUES: (1) Standard to evaluate motion to dismiss; (2) merits of Bruce's motion to modify; (3) notice requirement

HELD: The district court had a good reason to not assume the truth of Bruce's factual allegations. Unlike a regular civil case, a motion to modify child support is different and the district court has the benefit of much more information. A child custody decree is res judicata with respect to facts existing at the time of the decree. A change is made only if there is a material change in circumstances. K.S.A. 2018 Supp. 23-3219(a) requires that allegations must be made with specificity, and that the moving party must file a verification or accompanying affidavit. Bruce's motion was not accompanied by an affidavit, although it purports to be a verified motion. Because there was never an agreed parenting plan between Rebecca and Bruce, he had the burden to show a material change of circumstances. The claims that Bruce put forward were not verified factual assertions and they lacked specificity as to time and place. If neither party requests oral argument, a district court may either set the matter for hearing or rule on the motion without a hearing. After Bruce and Rebecca filed their motions, the district court waited the requisite seven-day response time. Although ruling on the motion at a hearing that was ostensibly being held to consider the parties' motion for mediation is not ideal, it is also not error.

STATUTES: K.S.A. 2018 Supp. 23-3218, -3218(a), -3219(a), 60-206(c)(1), -207(a); K.S.A. 53-502(c)
FACTS: Short was involved in an accident which required the amputation of both legs – one below the knee and one above the knee. Short requested that Blue Cross and Blue Shield of Kansas, Inc. provide coverage for multiple prosthetics. One of the requested prosthetics was an Ottobock X3 Microprocessor leg and knee. Blue Cross denied coverage, citing the insurance contract which excluded from coverage “deluxe or electrically operated” prosthetics. Blue Cross acknowledged that a prosthetic leg was medically necessary, and it offered to pay the price of a standard knee. Short believed that Blue Cross should pay for the Ottobock X3, and he sued for breach of contract. During discovery, Short requested documents beyond the insurance contract in an attempt to delve into the policy behind Blue Cross’ denial. Blue Cross refused to provide them, on grounds that the case was a straightforward contract dispute. The district court agreed and refused to compel production of the documents requested by Short. The district court granted Blue Cross’ motion for summary judgment, finding that the Ottobock X3 was clearly excluded from coverage by the plain language of Short’s insurance policy. Short appeals.

ISSUES: (1) Whether insurance policy is ambiguous; (2) listings of exclusions; (3) summary judgment review; (4) scope of discovery

HELD: There is no dispute that a prosthetic knee is medically necessary for Short. The insurance policy provides enough detail to support the district court’s ruling that the policy is not ambiguous. The policy covers a nonelectric device that does what is absolutely necessary to treat the insured’s condition. If the insured wants a device that does more, Blue Cross will pay for a standard device and the insured can pay the difference. Because the policy is unambiguous, there is no need to apply doctrines of construction. This insurance policy does not contravene public policy. It is undisputed that the Ottobock X3 is an electronically operated device, which is excluded by the plain language of Short’s insurance policy. This case centers on application of a limitations clause, which involves questions of fact. For this reason, Short should have been given access to the documents he requested in discovery. The district court abused its discretion by failing to compel discovery. But the error was harmless.

Dissent: (Atcheson, J.) There is some ambiguity in the insurance contract and there remain questions of fact. For that reason, summary judgment was inappropriate. This case should be remanded for further proceedings.

STATUTES: No statutes cited.
then filed a motion for attorney fees which was granted in an amount in excess of $150,000. The State appealed.

**ISSUES: (1) Sovereign immunity; (2) injunction-bond rule; (3) reasonableness of attorney fees awarded; (4) award of appellate fees and costs**

**HELD:** Sovereign immunity is jurisdictional. K.S.A. 60-905(b) addresses the State’s liability for attorney fees if a temporary injunction is found to have been improvidently granted. In addition, case law provides that waiver can be premised on litigation conduct. The State’s liability exists even though it was not statutorily required to post a bond at the time the temporary injunction was granted. Under K.S.A. 60-905(b), recovery is limited to fees actually and proximately resulting from the effect of the temporary injunction itself. The attorney fees ordered by the district court were reasonable under the circumstances. This appeal exists because the State challenged the district court’s attorney fee award, which makes an award of appellate fees and costs permissible. Appellate fees and costs are awarded. But the amount billed by counsel was excessive, and the award is for a lower amount.

**STATUTE:** K.S.A. 60-905(b)

**CRIMINAL**

**EVIDENCE—SUPPRESSION—WELFARE CHECK**

**STATE V. MANWARREN**

**RENO DISTRICT COURT—AFFIRMED**

**NO. 119,520—APRIL 12, 2019**

**FACTS:** After receiving a tip, officers found Manwarren lying in a ditch. When the officers arrived on the scene, Manwarren rose to greet them. The officers began a welfare check and noted there was no indication of criminal activity, and Manwarren did not appear to be injured or intoxicated. Officers asked for and received Manwarren’s photo ID. Instead of returning the card to Manwarren, officers ran a warrant check which returned a warrant for failure-to-appear. After confirming the warrant, Manwarren was arrested. After he was handcuffed, Manwarren answered officers’ questions by admitting that he had drugs and scales in his backpack. Manwarren was charged with various crimes relating to this drug possession. Prior to trial, he filed a motion to suppress in which he claimed that the police impermissibly converted a welfare check to an investigatory detention without having reasonable suspicion of criminal activity. The district court agreed, finding that running a warrant check was beyond the scope of a welfare check where there was no reasonable suspicion of criminal activity. The State appeals.

**ISSUES: (1) Voluntariness of the encounter; (2) application of the attenuation doctrine**

**HELD:** The encounter between police and Manwarren began as a welfare check. But once the officer obtained and then kept Manwarren’s identification card, the encounter turned into a seizure. In the absence of any evidence of criminal activity, the warrant check went beyond the scope of a welfare check and evolved into an illegal detention. Very little time elapsed between the illegal seizure of Manwarren and the discovery of the drugs in his backpack. Police officers were polite and courteous and did not appear to know they were violating Manwarren’s rights. But running a warrant check as part of a welfare check is not a good-faith mistake. It is misconduct and should be punished by excluding the evidence discovered.

**STATUTES:** No statutes cited.
HUGE CHANGES PROPOSED FOR 2019 ANNUAL ATTORNEY REGISTRATION

By the time the May 2019 Journal is published, the Kansas Supreme Court will have considered monumental changes to the Attorney Registration Supreme Court Rules.

The proposed changes are required in anticipation of online annual registration availability starting 2019 and to provide procedural guidelines to change status.

Proposed changes in Rule 208 include the following:

• **THE GRACE PERIOD WILL BE ELIMINATED.** All registration forms and fees will be due by June 30. The late fee will automatically be assessed for registration forms and fees received after June 30.

• A status change that results in a lower fee (such as active to inactive) or no fee (such as active/inactive to retired) **MUST BE RECEIVED IN THE CLERK’S OFFICE OR SUBMITTED ONLINE BY JUNE 30.** An attorney must pay the registration fee based on the attorney’s status shown in the records of the clerk as of July 1.

• For this first year of implementation (Phase I), online registration will be available for attorneys to register, submit payments, and possibly edit some existing information. Status changes to active will not be accepted online. Changes to any contact information will still need to be submitted online at http://www.kscourts.org/appellate-clerk/attorney-registration/default.asp

• Online registration will be voluntary for 2019 and 2020 but will be mandatory in 2021.

Proposed changes in Rule 808 include the following:

• The annual CLE fee is due by June 30. A fee postmarked on or after July 1 must be accompanied by the late fee.

Make sure you stay updated on the proposed changes.

For questions about registration issues, call the Office of the Clerk of the Appellate Courts, Kansas Attorney Registration: registration@kscourts.org • (785) 296-8409.

We are here to help.
 Classified Advertisements

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 hour 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.

Litigation attorney position available at a small, downtown Wichita firm with a central Kansas firm that has a very predictable gross revenue. The firm limits its practice to estate planning, probate, 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.

Wanted. Lawyer with a minimum of 3 years’ experience practice in estate and business law with a desire to become the owner of a central Kansas firm that has a very predictable gross revenue. The firm limits its practice to estate planning, probate, trust settlement and business planning. Please send your resume to kslawyerrecruit2019@gmail.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 66603 or email to: gsep@gseplaw.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.

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

Attorney Services


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

Contract brief writing. Former federal law clerk and Court of Appeals staff attorney available to handle appeals and motions. Attorney has briefed numerous appeals in both the Kansas and federal appellate courts. Contact me if you need a quality brief. Michael Jilkja, (785) 218-2999 or email mjilkja@jilkalaw.com.


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

www.ksbar.org  |  May 2019  65
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 Direction Consulting, LLC. www.securedirection.net. (786) 444-1109. expert@securedirection.net

Social Security Disability Services. Your clients that are dealing with serious injuries or illness may have a claim for Social Security disability. A comprehensive CV, impeccable reputation and both criminal and civil experience equate to expert litigation support. Michael S. D’Angelo, CPP. Secure Direction 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

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@snyderlawfirmllc.com.

Manhattan Office Space for Rent. Located in the Colony Square office building in downtown Manhattan. One minute from the Riley County Courthouse. The available space consists of two offices and an area for a secretary/paralegal. Large reception area and kitchen. High speed internet. Open to either office sharing or “Of Counsel” arrangement. For more information, all 785-539-9300 or email to office@jrlaw.com

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

Office for Lease, Corporate Woods. Approximately 300 sf office space available within a working law firm. Convenient location to meet with clients, with access to conference rooms if needed. Comes with all the amenities of a working law firm: witnesses, notaries, fax/copy machine, internet, phone, etc. On the top floor of a building with a fantastic view. 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, rest-room. $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 2500 NE 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@caldwellandmoll.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 write Law Office, P.O. Box 67689, Topeka, KS 66667.
Need clients?
Need increased VISIBILITY?

Join
The Kansas Bar Association’s

Lawyer Referral Service

“... [LRS] is a good source for a steady flow of persons seeking assistance with the kinds of cases I handle. The benefits of working with LRS far exceed the costs of enrollment. It is the most effective use of advertising budget I can imagine.”

~ Joseph Seiwert, Snider & Seiwert LLC, Wichita

For more information about the KBA Lawyer Referral Service program, visit us online at www.ksbar.org/LRS or call 785-234-5696
A TRADITION OF SUCCESS

We have a long history of success inside and outside the courtroom. For over 40 years, we have maximized the value of cases referred to our firm and we will continue to do so into the future. If you have a client with a serious injury or death, we will welcome a referral or opportunity to form a co-counsel relationship.

The choice of a lawyer is an important decision and should not be based solely on advertisements.