“BYTE” ME!
Protecting Your Backside in an Electronic Discovery World
(Not Just for Litigators)
### KBA Officers and Board of Governors

<table>
<thead>
<tr>
<th>Position</th>
<th>Name</th>
<th>Phone</th>
<th>Location</th>
<th>Email Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>President</td>
<td>David J. Rebein</td>
<td>(620) 227-8126</td>
<td>Dodge City</td>
<td><a href="mailto:drebein@rebeinbangerter.com">drebein@rebeinbangerter.com</a></td>
</tr>
<tr>
<td>President-elect</td>
<td>Linda S. Parks</td>
<td>(316) 265-7741</td>
<td>Wichita</td>
<td><a href="mailto:parks@hitefanning.com">parks@hitefanning.com</a></td>
</tr>
<tr>
<td>Vice President</td>
<td>Ernest C. Ballweg</td>
<td>(913) 491-6900</td>
<td>Overland Park</td>
<td>ernie@jbtlaw kc.com</td>
</tr>
<tr>
<td>Secretary-Treasurer</td>
<td>Thomas E. Wright</td>
<td>(785) 232-2200</td>
<td>Topeka</td>
<td>tew@wright thenson.com</td>
</tr>
<tr>
<td>Executive Director</td>
<td>Jeffrey J. Alderman</td>
<td>(785) 234-5696</td>
<td>Topeka</td>
<td><a href="mailto:jalderman@ksbar.org">jalderman@ksbar.org</a></td>
</tr>
<tr>
<td>Immediate Past President</td>
<td>Richard F. Hayse</td>
<td>(785) 232-2662</td>
<td>Topeka</td>
<td><a href="mailto:rhayse@morrislaing.com">rhayse@morrislaing.com</a></td>
</tr>
<tr>
<td>KBA Delegates to ABA</td>
<td>Sara S. Beasley</td>
<td>(620) 724-4111</td>
<td>Girard</td>
<td><a href="mailto:beezleylaw@ckt.net">beezleylaw@ckt.net</a></td>
</tr>
<tr>
<td></td>
<td>Hon. David J. Waxse</td>
<td>(913) 551-5434</td>
<td>Kansas City, Kan.</td>
<td><a href="mailto:judge_waxse@ksd.uscourts.gov">judge_waxse@ksd.uscourts.gov</a></td>
</tr>
<tr>
<td>Kansas Delegate to ABA</td>
<td>Thomas A. Hamill</td>
<td>(913) 491-5500</td>
<td>Overland Park</td>
<td><a href="mailto:tahamill@martinpringle-kc.com">tahamill@martinpringle-kc.com</a></td>
</tr>
<tr>
<td>ABA Delegate at Large</td>
<td>Hon. Christel E. Marquardt</td>
<td>(785) 296-6146</td>
<td>Topeka</td>
<td><a href="mailto:marquardt@kscourts.org">marquardt@kscourts.org</a></td>
</tr>
<tr>
<td>Young Lawyers Section President</td>
<td>Paul T. Davis</td>
<td>(785) 843-7674</td>
<td>Lawrence</td>
<td><a href="mailto:pauldavis@sunflower.com">pauldavis@sunflower.com</a></td>
</tr>
<tr>
<td>KDJA Representative</td>
<td>Hon. Daniel L. Love</td>
<td>(620) 227-4620</td>
<td>Dodge City</td>
<td><a href="mailto:dlove@16thdistrict.net">dlove@16thdistrict.net</a></td>
</tr>
<tr>
<td>District 1:</td>
<td>Kip A. Kubin</td>
<td>(815) 531-8188</td>
<td>Kansas City, Mo.</td>
<td><a href="mailto:kubin@kc-lawyers.com">kubin@kc-lawyers.com</a></td>
</tr>
<tr>
<td></td>
<td>Lee M. Smithyman</td>
<td>(915) 661-9800</td>
<td>Overland Park</td>
<td><a href="mailto:smithyman@smizak-law.com">smithyman@smizak-law.com</a></td>
</tr>
<tr>
<td>District 2:</td>
<td>Gerald R. Kuckelman</td>
<td>(913) 367-2008</td>
<td>Atchison</td>
<td><a href="mailto:aca@journey.com">aca@journey.com</a></td>
</tr>
<tr>
<td></td>
<td>Jeffrey S. Southard</td>
<td>(815) 329-8527</td>
<td>Lawrence</td>
<td><a href="mailto:jeff_southard@hotmail.com">jeff_southard@hotmail.com</a></td>
</tr>
<tr>
<td>District 3:</td>
<td>Dennis D. Depew</td>
<td>(620) 325-2626</td>
<td>Neodesha</td>
<td><a href="mailto:dennis@depewlaw.biz">dennis@depewlaw.biz</a></td>
</tr>
<tr>
<td></td>
<td>William E. Muret</td>
<td>(620) 221-7200</td>
<td>Winfield</td>
<td><a href="mailto:muret@winfieldattorneys.com">muret@winfieldattorneys.com</a></td>
</tr>
<tr>
<td>District 5:</td>
<td>Martha J. Coffman</td>
<td>(785) 271-3105</td>
<td>Topeka</td>
<td><a href="mailto:m.coffman@kcc.state.ks.us">m.coffman@kcc.state.ks.us</a></td>
</tr>
<tr>
<td></td>
<td>Teresa L. Watson</td>
<td>(785) 232-7761</td>
<td>Topeka</td>
<td><a href="mailto:twatson@fisherpatterson.com">twatson@fisherpatterson.com</a></td>
</tr>
<tr>
<td></td>
<td>Gabrielle M. Thompson</td>
<td>(785) 537-2943</td>
<td>Manhattan</td>
<td><a href="mailto:thompson@klsinc.org">thompson@klsinc.org</a></td>
</tr>
<tr>
<td></td>
<td>Rachael K. Pirner</td>
<td>(316) 630-8100</td>
<td>Wichita</td>
<td><a href="mailto:rkpirner@twgfirm.com">rkpirner@twgfirm.com</a></td>
</tr>
<tr>
<td></td>
<td>Mary Kathryn “Kathy” Webb</td>
<td>(316) 263-5851</td>
<td>Wichita</td>
<td><a href="mailto:kwebb@msqk.com">kwebb@msqk.com</a></td>
</tr>
<tr>
<td></td>
<td>Gerald L. Green</td>
<td>(620) 662-0537</td>
<td>Hutchinson</td>
<td><a href="mailto:jerry@gh-hutch.com">jerry@gh-hutch.com</a></td>
</tr>
<tr>
<td></td>
<td>Hon. Kim R. Schroeder</td>
<td>(620) 428-6500</td>
<td>Hugoton</td>
<td><a href="mailto:judge263@pld.com">judge263@pld.com</a></td>
</tr>
<tr>
<td></td>
<td>Glenn R. Braun</td>
<td>(785) 625-6919</td>
<td>Hays</td>
<td><a href="mailto:grbraun@haysamerica.com">grbraun@haysamerica.com</a></td>
</tr>
<tr>
<td></td>
<td>Melissa A. Taylor Standridge</td>
<td>(913) 551-5405</td>
<td>Kansas City, Kan.</td>
<td><a href="mailto:melissa_taylor_standridge@ksd.uscourts.gov">melissa_taylor_standridge@ksd.uscourts.gov</a></td>
</tr>
<tr>
<td></td>
<td>Michael A. Williams</td>
<td>(816) 292-2000</td>
<td>Kansas City, Mo.</td>
<td><a href="mailto:mwilliams@lathropgage.com">mwilliams@lathropgage.com</a></td>
</tr>
</tbody>
</table>

### Kansas Bar Association Districts

![Kansas Bar Association Districts Map](image-url)
Our Mission:
The Kansas Bar Association is dedicated to advancing the professionalism and legal skills of lawyers, providing services to its members, serving the community through advocacy of public policy issues, encouraging public understanding of the law, and promoting the effective administration of our system of justice.

The Journal of the Kansas Bar Association 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 (ISSN 0022-8486) is published by the Kansas Bar Association, 1200 S.W. Harrison, P.O. Box 1037, Topeka, KS 66601-1037; 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. POSTMASTER: Send address changes to The Journal of the Kansas Bar Association, P.O. Box 1037, Topeka, KS 66601-1037.

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.

For advertising information contact Suzanne Green at (800) 211-1344 or e-mail sgreen@ksbar.org. Publication of advertisements is not to be deemed an endorsement of any product or service advertised unless otherwise indicated.

Is the law a profession, or is the law a business? Do you find career satisfaction in what you do, or are you in it just to make money? Are you happy and satisfied in your career or disillusioned and burned out? These are real questions facing real lawyers in our modern society.

As the law has become more complex, it seems that the law has also become more impersonal. Lawyers are now more specialized than they have ever been and yet seem to be less valuable as advisors than in the past. It is not unusual to read about lawyer dissatisfaction and depression. Is it possible to balance family, community, and career? I see many unhappy lawyers. I cannot help but ask myself why? As with many things, a return to simplicity might bring some clarity.

Henry David Thoreau lived near Concord, Mass., in the mid-1800s. He was appalled at the way "civilization" was complicating lives without necessarily making them better.

He observed:

The mass of men lead lives of quiet desperation. What is called resignation is confirmed desperation.

Thoreau’s personal solution was to retreat to Walden Pond. Near its banks, he built a cabin and lived there for more than two years.

My purpose in going to Walden Pond was not to live cheaply nor to live dearly there, but to transact some private business with the fewest obstacles; to be hindered from accomplishing which for want of a little common sense, a little enterprise and business talent appeared not so sad as foolish.

During those two years, he completed a book and discovered how simply a person could live if they had a mind to. He grew his own food. As life became simpler, he saw it more clearly.

I went to the woods because I wished to live deliberately, to front only the essential facts of life, and see if I could not learn what it had to teach, and not, when I came to die, discover that I had not lived. I wanted to live deep and suck out all the marrow of life, to live so sturdily and Spartan like as to put to rout all that was not life.

Who among us would not do well to simplify their life? As you look at your career and your job, couldn’t all of us cut out some of the activity in favor of practicing the sort of law that we always envisioned for ourselves? In short, couldn’t all of us use a recalibration of our aim? Couldn’t we use an injection of a little passion into our approach?

Here again, Thoreau has much to offer:

If one advances confidently in the direction of his dreams and endeavors to live the life which he has imagined, he will meet with a success unexpected in common hours.

In short, perhaps all we need to do is simplify a little bit, aim a little higher, and live with passion and then we too can say:

My life is like a stroll upon the beach. As near the ocean’s edge as I can go.
Young Lawyers Section News

Develop Your Practice With the YLS

By Eric Kraft, Duggan, Shadwick, Doerr & Kurlbaum P.C., Overland Park

A couple of years ago, when I served as the president of the Young Lawyer Section (YLS), you may recall that I promised that the YLS was going to help you become the lawyer you wanted to be. One of the biggest surprises that I learned during my term was that the young lawyers in Kansas did not want their YLS to simply offer a forum to get together, talk, and have a drink or two. While that has its place, it was not the most important feature of YLS membership. Resoundingly, the members indicated that they wanted more than a cocktail and a good conversation. If you haven’t noticed over the past several years, the YLS is delivering that promise.

In 2005, the YLS offered its first-ever track of CLEs at the KBA Annual Meeting in Vail, Colo. This was repeated at the 2006 Annual Meeting in Overland Park. Due to its success, the YLS is once again offering a track of CLEs at the 2007 Annual Meeting in Wichita, June 7-9. These CLEs are still being developed, but our emphasis, as in years past, will be to offer CLEs by young lawyers for young lawyers. If you are aware of a topic or a speaker you would like to see in June, please let me or our president, Paul Davis, know.

More of an immediate benefit, however, is the independent YLS CLE seminar this month. This CLE, titled “Nuts and Bolts of the Law,” is designed to provide young lawyers with the basic skills needed to perform many of the jobs that we are asked to do. As you are most likely aware, there are jobs that your firm would rather hand off to the young associate to “get their feet wet.” These include workers’ compensation claims, divorces, criminal cases (including traffic tickets), collection of judgments, and avoidance of ethics traps. We have been fortunate to gather some very well-known speakers who will be able to guide you through these processes. When you are done, you may be able to return to your firm and teach the old guard a thing or two! Mark your calendars for March 16 for this CLE, which will be presented at the Topeka and Shawnee County Public Library at 10th and Washburn. You will receive six hours of CLE credit, and I guarantee you will learn something you didn’t know before you came — something that will make your life easier and your practice smarter.

Additionally, we have a section benefit that you can take advantage of right now, while reading this column: the KBA YLS discussion list serve. Do you ever have a question that you believe you should know, but you can’t find the answer and don’t want to look bad in front of your employer? Do you have questions about salary, lateral moves, different legal markets, different areas of the law, partners who give you fits, or time and practice management? Or do you simply want to see if someone has already done what you have been asked to do? The YLS discussion list serve can be a valuable resource for those questions as well as a plethora of others. Simply post a question to the list serve and you can be connected to hundreds of other young lawyers in the state. You can imagine how valuable this resource can be — but it won’t provide you any value if you do not sign up!

To sign up for the list serve, simply send a blank e-mail to YoungLawyers-subscribe@ksbar.org. After that message is received at the KBA offices, you will get a confirmation e-mail, which asks you to reply to it to verify your e-mail address. Once that is done, you are connected! It is that simple. After you have been enrolled through these steps, you can pick the brain of other young lawyers simply by sending an e-mail to the list serve.

But we haven’t forgotten about those of you who like to have a good conversation over a cocktail. If you paid attention, you know about the happy hour the the Young Lawyers sections of the Kansas, Missouri, Kansas City Metropolitan, and Johnson County bar associations and the Lawyers Association of Kansas City had on Feb. 15 at the Granfalloon on the Plaza in Kansas City. If you are kicking yourself for missing out on this great time, don’t worry; the YLS is currently planning social events in Lawrence, Topeka, and, of course, Wichita at the Annual Meeting. Keep your eyes open for news on those developments.

So how can the YLS offer such great benefits to our members? Simply put, the YLS board makes it happen. We have some very dedicated and innovative people serving on the board this year, and you are seeing some great results. If you would like to make sure that you are a part of that team, send an e-mail to me at ekraft@kc-dsdlaw.com or to YLS President Paul Davis at pauldavis@sunflower.com. We will ensure that you are considered for our board starting in June when Amy Fellows Cline assumes the post of president. And, if you know Amy, you also know that the YLS will continue to be a dynamic and valuable resource for attorneys across the state.

Eric Kraft is an associate with the law firm of Duggan, Shadwick, Doerr & Kurlbaum P.C. in Overland Park and can be reached at ekraft@kc-dsdlaw.com or by calling (913) 498-3536.

KBA Annual Meeting

June 7-9, 2007
Wichita, Kansas
Volunteer for the Elder Law Hotline!

These are just a sampling of the myriad of questions taken by the Kansas Elder Law Hotline (Hotline). If you can answer any of these questions, you can help someone in need. Volunteering is convenient for you and invaluable to Kansas senior citizens. As a Hotline attorney, you volunteer a three and one-half hour block of time every other month. Calls will be transferred to your office, along with demographic information about each client. You will be able to work in the comfort of your own office while being “on call” for the Hotline. The two shifts are Monday through Friday, 9 a.m. – 12:30 p.m. or 1 – 4:30 p.m.

The Kansas Elder Law Hotline is a project of Kansas Legal Services Inc., which is funded in part by the Kansas Bar Foundation and Kansas Bar Association.

The Hotline is available to persons who live in Kansas and are age 60 or older. There is no income eligibility to participate in this program. Volunteers should expect to talk to clients of widely varying economic and social backgrounds.

The Elder Law Hotline provides Kansas senior citizens access to an attorney to advise them about legal questions in a variety of legal issues and referrals to other resources for additional assistance. You will be referred elder law clients from your area with cases like probate, estate planning, guardianship/conservatorship, personal injury, etc.

Hotline volunteers with malpractice insurance will become members of the KBA Lawyer Referral Service (LRS) and be listed on a special elder law referral panel at no charge. LRS rules, including remitting 10 percent of fees more than $300, apply to this elder LRS panel.

Senior citizens face many complex legal problems. As a Hotline participant, you can provide guidance to senior Kansans. Please consider volunteering for the Kansas Elder Law Hotline. To volunteer, contact Meg Wickham, manager of public services, at (785) 234-5696 or at mwickham@ksbar.org.

You can make a difference!

Need Clients?

Join the KBA’s Lawyer Referral Service

- LRS is not just for low-income clients; this service is for anyone needing an attorney.
- The call center screens each call and matches an attorney with the client.
- An average of 300 calls are answered each month.
- In the past year, LRS generated more than $750,000 for participating attorneys.
- LRS attorneys must be a KBA member to receive the discounted annual fee of $85.
- To print a PDF of the LRS application, go to http://www.ksbar.org/LRS/trs07.pdf.
- To join the LRS online, go to http://www.ksbar.org/LRS/join.shtml.
- To have an application mailed, faxed, or e-mailed, contact Meg Wickham, manager of public services, at (785) 234-5696 or at mwickham@ksbar.org.
2007 KBA Nominating Committee Nominations

The KBA Nominating Committee recently met and nominated candidates for KBA officers and a KBA Delegate to the ABA House of Delegates. Listed below are the officer candidates proposed. Biographical information for these and any additional candidates will be published in the *Journal of the Kansas Bar Association* prior to the voting deadline.

### 2007 KBA Officers Nominations

- **KBA President:** Linda S. Parks, Wichita
- **KBA President-elect:** Ernest C. Ballweg, Overland Park, and Thomas E. Wright, Topeka
- **KBA Vice President:** Timothy M. O’Brien, Overland Park
- **KBA Secretary/Treasurer:** Hon. Benjamin L. Burgess, Wichita, and H. David Starkey, Colby
- **KBA Delegate to the ABA House of Delegates:** Sara S. Beezley, Girard

### Open Seats on the Board of Governors

There will be five positions on the KBA Board of Governors up for election in 2007. Candidates seeking a position on the Board of Governors must file a nominating petition — signed by at least 25 KBA members from that district — with Jeffrey Alderman by Friday, March 9, 2007. If no one files a petition by March 9, the Nominating Committee will reconvene and nominate one or more candidates for open positions on the Board of Governors. KBA districts with seats on the Board of Governors up for election in 2007 are:

- **District 1:** Incumbent Kip A. Kubin is eligible for re-election. Johnson County
- **District 2:** Incumbent Jeffrey S. Southard is not eligible for re-election. Atchison, Brown, Doniphan, Douglas, Franklin, Jackson, Jefferson, Leavenworth, Miami, Nemaha, Osage, Pottawatomie, and Wabaunsee counties
- **District 7:** Incumbent Laura L. Ice is eligible for re-election. Sedgwick County
- **District 9:** Incumbent Hon. Kim R. Schroeder is eligible for re-election. Clark, Comanche, Edwards, Finney, Ford, Grant, Gray, Greeley, Hamilton, Haskell, Hodgeman, Kearney, Kiowa, Lane, Meade, Morton, Ness, Pawnee, Rush, Scott, Seward, Stanton, Stevens, and Wichita counties
- **District 11:** Incumbent Melissa A. Taylor Standridge is eligible for re-election. Wyandotte County

### KBA Delegate to ABA House of Delegates

The Kansas Bar Association has two KBA Delegate positions to the ABA House of Delegates. The term of incumbent Sara S. Beezley is up for election in 2007. She is eligible for re-election for a two-year term.

For more information:

Petitions for the Board of Governors or KBA Delegate to the ABA House of Delegates can be obtained by contacting Becky Hendricks at the KBA office at (785) 234-5696 or via e-mail at bhendricks@ksbar.org.

Elections will be held by secret ballots mailed in April for any contested positions. Uncontested nominees will be declared elected. All terms for elected officers and board members will commence at the conclusion of the KBA Annual Meeting in Wichita, June 7-9, 2007.

If you have any questions about the KBA nominating or election process or serving as an officer or member of the Board of Governors, please contact Rich Hayse at (785) 232-2662 or at rhayse@morrislaing.com or Jeffrey Alderman at (785) 234-5696 or at jalderman@ksbar.org.

---

1. Nominations for officers and KBA Delegate to the ABA House of Delegates can also be made prior to March 9, 2007, by submitting a petition signed by 50 regular members of the KBA to the KBA executive director.
Like most of us, every morning attorney Grant D. Griffiths gets dressed and eats breakfast with his family before heading to the office. Unlike most of us, Griffiths’ commute is short — so short, in fact, that it takes him less than a minute to get to his office, which is located in the basement of his home in Clay Center.

“I moved my office to my home in January 2005,” Griffiths said. “I became discouraged by the high overhead cost of a downtown office. I also determined that I did not need an office downtown to have a busy practice.”

Griffiths mainly handles family law cases, including a large number of divorces each year; he said most clients have actually stated they were relieved they did not have to take the chance of being seen going in and out of a law office.

“I have never lost a client because I have a home office,” Griffiths said. “In fact, most appreciate the fact that I work out of my home … they feel they avoid the glaring eyes of those they know if they were visiting a law office.”

Griffiths does not meet clients in his home; instead, he meets them at different locations, depending on the comfort level of the client. He does make house calls when appropriate, but usually meets clients at the courthouse, other offices that provide conference rooms, or a local coffee shop.

“The biggest advantage [to working from home] is low overhead,” Griffiths noted. “In addition, I can work when I want, and the commute is only a few steps compared to a long drive for some to get to the downtown office. Having my office in my home also gives me more flexibility to work when I want and to spend more time with my family.

“You have to have the right personality and work habits, because working at home can have its distractions. Make sure you have a space in your house that you can actually go to and separate yourself from the rest of the home. And set ground rules for yourself, your spouse, and your children.”

Griffiths said he uses technology to its fullest advantage and, because he doesn’t have a traditional office, he also does not have traditional office help. He has one “virtual” legal assistant who also works out of her home when he needs her help. They exchange documents and items she works on via e-mail; he also dictates items for her to do and sends her those files electronically. He uses similar technology with his clients as well.

“I exchange documents and other information with my clients via e-mail,” he said. “I also use a Treo 650 Smartphone1 and, if I am not in the office, I call forward my office phone to my Treo so I am always available to take a call … unless, of course, I am in court and then voicemail gets it. I also receive faxes via e-mail, so I can give those my attention if I’m out of the office.”

Griffiths recently started using a product called Basecamp, which enables him to provide clients with access to their entire file via Adobe Portable Document Format (PDF) as well as exchange messages. Additionally, Basecamp has a feature that lets him post court dates and other important schedules in his clients’ files, which they have access to.

Griffiths also forgoes the traditional advertising route used by most attorneys. Rather than running ads in the yellow pages, he has four Web logs (blogs) that he posts to several times a week with information that his readers can use and understand “in a form they are comfortable with.”

“Traditional advertising is very expensive,” Griffiths noted. “The yellow page, for example, is expensive and the return on investment (ROI) is not what it should be. Once you place

---

FOOTNOTES
1. Personal Digital Assistant (PDA)-type cellular phone that includes e-mail, Web access, calendaring, and other wireless capabilities.
the ad, you are done. You can’t change the ad. You can’t add
to it. You can’t provide your potential clients with anything
when they visit the yellow pages.

“In addition, it now appears that roughly 75 percent of
those looking for professional service providers go to the In-
ternet before they even think about reading or using the yel-
low pages. With a blog, you can change your site as often as
you want. We live in an Internet generation, and with a blog
you can reach more people.”

Griffiths also noted that search engines typically favor blogs
because each time you post to them you provide fresh infor-
mation, which attracts the search engine and, in turn, visitors.
He uses Lexblog, a professional blog design firm created for
lawyers, which provides training and support to both novice
and expert bloggers.

“The blog has been a wonderful marketing tool,” Griffiths
said. “And the ROI has been tremendous; on average, I receive
between 15 and 20 inquiries and two to three new clients each
week.”

Because of his expertise on working out of a home office,
he was approached to co-author a book on the subject. The
is scheduled for release the end of March.

He was also interviewed for the upcoming book, “The New
Rules of Marketing and PR,” by David Meerman Scott, which is
due out in June. Griffiths has been featured in several
online articles, including “This isn’t Kansas anymore Toto” by
Kevin O’Keefe, the president and founder of Lexblog; “Mar-
keting For Law Firms” by Charles Brown, and “Kansas fam-
ily and divorce lawyer builds his business through blogging” by
Meerman Scott. Most recently, he was interviewed for an
article written by Su Bacon, titled “Blogging the law has many
rewards,” which ran in the Feb. 6 online special issue of the
Kansas City Star. In fact, if you Google the words “Kansas
family law,” Griffiths is ranked number one and number two
on the results page.

Griffiths, who was born and raised in Clay Center, gradu-
ated from Kansas State University at the age of 35 with a de-
gree in political science. After he received his law degree in
December 1997 from Washburn University School of Law, he
opened his own solo practice.

“I am the only lawyer in my family,” Griffiths said. “My
interest in the law began while I was selling real estate in Man-
hattan, Kansas. I enjoyed the contract law part of real estate,
and that sparked my interest.”

Griffiths is a member of the Kansas Bar Association, the
KBA Family Law Practice section, and the Clay Center Cov-
enant Church. He and his wife, Tina, have four children:
Clark, 23; Cane and Cole, 22; and Clay, 14.

He can be reached at gdgrifflaw@mac.com or (785) 632-
6612.

Grant’s Legal Blogs

1. Kansas Family and Divorce Lawyer:
   http://kansasfamilylawblog.lexblog.com/
2. Home Office Lawyer:
   http://homeofficelawyerblog.com
3. Kansas Criminal Defense Attorney:
   http://gdgrifflaw.typepad.com/kansas_criminal_defense_a/
4. Grandparent Visitation:
   http://www.grandparentvisitationblog.com/
A Nostalgic Touch of Humor

Larned State Hospital: Urban Legend in Johnson County

By Matthew Keenan, Shook, Hardy & Bacon, Kansas City, Mo.

Most parents, at some point, become skilled at storytelling. Lawyers, particularly trial lawyers, are even more adept at this art. In the former case, the audience may start as toddlers, but eventually they become teenagers. It’s my experience that the toughest audience are teenage boys. They can be living, breathing skeptics of most things that any father wants to sell them. So as both a parent and a litigator, I refined my art and discovered the best stories were ones that had an undeniable part of truth, with a sprinkle of fiction, which also had the potential to scare the heck out of them.

Now, as you may know, growing up in western Kansas always provides the inventory of tornado stories, which dovetails nicely with the “Wizard of Oz.” The best stories were, without question, ones that arose from Larned and that city’s largest employer, Larned State Hospital (LSH). LSH was real, of course, having been established in 1914 to provide care and treatment for the mentally ill in the western half of Kansas, but gained additional responsibilities with the opening of State Security Hospital in 1939.

So Larned is where the truly crazy people were sent. And calling it a hospital added to the mystique. That moniker conjures up notions of prisoners coming and going through waiting rooms, showing their insurance cards, and then heading out of the emergency room to do more violence. And in truth from time to time people would “escape” from the place and head to the nearest “big town” — Great Bend. For some reason, they would take off on those days when my two brothers and I were out on the town for nine to 10 hours, taking care of whatever business occupied us that day. That happened pretty much every day.

Based on my own focus groups, there were always a couple stories that were true home runs. One was the night my older brother, Tim, and I were fishing in the Walnut Creek, adjacent to the hospital. The same night, some prisoners decided to take a stroll outside the prison boundaries for some food. For some reason, they would take off on those days when my two brothers and I were out on the town for nine to 10 hours, taking care of whatever business occupied us that day. That happened pretty much every day.

Based on my own focus groups, there were always a couple stories that were true home runs. One was the night my older brother, Tim, and I were fishing in the Walnut Creek, adjacent to the hospital. The same night, some prisoners decided to take a stroll outside the prison boundaries for some food. For some reason, they would take off on those days when my two brothers and I were out on the town for nine to 10 hours, taking care of whatever business occupied us that day. That happened pretty much every day.

But the one A+ story was too good to be true. And it wasn’t true. Not in the least. And that was the story of Psycho Santa — the worker who had a penchant for disposing of boys at the local mall — which for purposes of my story was always Metcalf South Mall. And one day “Santa’s helper” had his share of spoiled kids and gave them a Christmas present a couple days early. So the nut case was convicted of murder and sent to, you guessed it, LSH. The story went that Santa escaped in full costume, along with the long knife, which he kept in his bag of toys, of course. Psycho Santa ended up in our front yard, on Christmas Eve, circa 1965. And my 4-year-old brother, Marty, went ahead and opened the front door. Just when Santa started to show my kid brother his sack of “goodies,” the cops arrived, and he was sent back to show proof of insurance. And over scout campouts, bonfires, and school retreats, Psycho Santa became urban legend.

In the summer of 1999, two of my sons were in summer camp, leaving my third son, Robert, bored out of his mind. He was 9 years old, and when I suggested we head west, he jumped at the notion. The trip agenda included a stop at Fort Larned, where we saw where Gen. Custer stayed and other things of interest. The trip was already magical. But what happened next I could not have expected.

It was time for the Larned Hospital visit. I myself had not seen it in maybe 30 years. As we drove up to it, I circled my car to the front entrance. In red brick, sitting at the entrance, there it said, “Larned State Hospital.” The enormity of it all hit my son. He stared, blinked slowly, and then turned his head to me and said, “Can we get a picture?” Sure, I thought. We parked, and just as he was posing in front of the sign, a policeman’s car came speeding toward us, almost out of nowhere. No sirens, no lights, just driving very fast. A man jumped out of the car and walked quickly to where we stood. The man even scared me. He had bad teeth, bad hair, and bad breath. “No photos allowed here sir. You will have to leave.” I came a long way and was not prepared to give up. After all, I was a lawyer and knew my rights! I spoke. “I’m sorry. I thought this was the entrance and not a secure area. Can’t I get a photo?” “Absolutely not.” My son was petrified. So was I. And as I hit the gas, and circled around to the south end of the parking lot, the worker who had a penchant for disposing of boys at the local mall was now at the hospital entrance. He had bad teeth, bad hair, and bad breath. “No photos allowed here sir. You will have to leave.” I came a long way and was not prepared to give up. After all, I was a lawyer and knew my rights! I spoke. “I’m sorry. I thought this was the entrance and not a secure area. Can’t I get a photo?” “Absolutely not.” My son was petrified. So was I. And as I hit the gas, and circled around to the south end of the complex, we drove by a sign that said, “Walnut Creek.” Twenty miles later, about the Barton County line, the color returned to Robert’s face. And the legend of Larned State Hospital took on an entirely new dimension.

About the Author

Matthew Keenan grew up in Great Bend and attended the University of Kansas, where he received his B.A. in 1981 and his J.D. in 1984. For the last 21 years, Keenan has practiced with Shook, Hardy & Bacon. He may be reached at mkeenan@shb.com.
KBA Committees and Sections Seek Volunteers

The KBA relies heavily on members who volunteer their time, talent, and energy to committees, panels, and sections. The KBA's standing committees and panels function throughout the year, along with task forces appointed for specific tasks. In addition, the KBA has 20 sections (including the Young Lawyers Section) that focus on specific practice areas and help develop legislative proposals and CLE offerings. This time of year, we collect information from individuals who are willing to serve on committees, panels, or sections.

Below is a volunteer form that you can use to let incoming KBA President Linda Parks know of your interest as she considers appointments for the coming year. Section volunteer forms will be forwarded to the appropriate section officers.

KBA Committee and Section Call Form

Please designate which committee/panel you are interested in serving on. If indicating more than one committee/panel, please number your choices for first, second, and third preferences.

( ) Annual Meeting (Topeka 2008)
( ) Awards
( ) Bench-Bar
( ) Continuing Legal Education
( ) Diversity
( ) Ethics Advisory
( ) Ethics Grievance Panel
( ) Fee Dispute Resolution Panel
( ) Journal Board of Editors
( ) Law-Related Education
( ) Lawyers Assistance Program
( ) Legal Aid and Referral
( ) Legislative
( ) Media Bar
( ) Membership
( ) Nominating
( ) Paralegals
( ) Standards for Title Examination

Please designate the section(s) to which you belong and are interested in serving as an officer or volunteer, e.g., to help with section newsletters, review legislation, develop CLE programming, etc. Please number your choice to indicate first, second, and third preferences.

( ) Administrative Law
( ) Alternate Dispute Resolution
( ) Bankruptcy & Insolvency Law
( ) Construction Law
( ) Corporate Counsel
( ) Corporation, Banking & Business Law
( ) Criminal Law
( ) Elder Law
( ) Employment Law
( ) Family Law
( ) Government Lawyers
( ) Health Law
( ) Insurance Law
( ) Intellectual Property Law
( ) Litigation
( ) Oil, Gas & Mineral Law
( ) Real Estate, Probate & Trust Law
( ) Solo & Small Firm
( ) Tax Law
( ) Young Lawyers Section

Name ______________________________ Telephone ___________________________
Address ______________________________ KBA/Court # __________________________
City __________ State ______ Zip Code __________ E-mail __________________________

Please return by April 30, 2007, to
KBA Committees and Sections Coordinator
P.O. Box 1037
Topeka, KS 66601-1037
Fax (785) 234-3813
Ethics and First-Year Legal Education

By John Kitchens, Washburn University School of Law

I remember my first legal writing class. When the professor entered the room, I sat forward in my chair, waiting for those first words that would teach me how to write all those really cool documents that make the judicial system work. I was ready for anything except what she said, “The first thing you need to know is that you have an ethical obligation as an officer of the court.”

Ethics? It was only the first week of law school. I thought she was jumping the gun, but I was wrong. My contracts professor, a tall man in an impeccable suit and glasses who looked as if he had forgotten more than I would ever learn, had similar advice: “Your job is to make your client whole and be fair to the other guy.”

Law school is challenging for incoming students because they have to put the big picture together case by case. Learning ethical responsibility is no different. By consciously weaving ethical responsibility throughout the learning process, law professors teach that ethical responsibility is not only our professional obligation, but also a matter of the utmost importance to our clients.

When my legal writing professor discussed Peters v. Pine Meadows Ranch Home Association, a recent decision by the Utah Supreme Court, I was appalled. Peters, a land owner, was unhappy about fees he thought the defendant homeowners’ association had improperly levied against his property for roadway maintenance and other subdivision improvements. His attorney filed his claim and lost, both in district court and on appeal. His attorney knew that the Utah Supreme Court was his client’s last chance, so he decided it was time to pull out “the big guns.”

In his petition for certiorari and appellate brief, counsel for Peters argued that the Utah Supreme Court of Appeals erred by intentionally fabricating facts and by misapplying precedent. The Utah Supreme Court noted that the court of appeals had indeed misstated a relevant fact and had misstated the holding in a binding Utah case. The Court acknowledged that appellate counsel had an ethical obligation to his client to note the lower court’s factual error and the incorrect interpretation of Utah precedent. Yet the Court chastised Peters’ counsel for attributing an improper motive to the Utah Court of Appeals:

Should a lawyer be faced with genuine judicial misconduct, there are appropriate avenues available for him or her to address it, both within the context of a particular case and in a separate proceeding before the Judicial Conduct Commission. To make bald and unfounded accusations of judicial impropriety in briefs filed with this court is not such an avenue. In so doing, counsel has overstepped the bounds of appropriate appellate advocacy.

The Court concluded by striking the appellate brief, declining to reach the merits of the legal issues on certiorari, affirming the result reached by the court of appeals, and assessing attorney fees against Peters counsel.

Generally, it is quite appropriate for appellate counsel to argue that a lower court misstated a precedential holding, at least when there is a legal argument to support such a viewpoint. However, Peters’ attorney went too far as an advocate by accusing the court of appeals of fabricating evidence. Under the circumstances, the Utah Supreme Court correctly declared that the content of the appellant’s brief was unacceptable.

Yet the client in Peters felt the consequences of his attorney violating the ethical standards of our noble profession by going too far as an advocate. Instead of making his client whole and performing his duty as an officer to the court, Peters’ counsel hurt his client’s cause and failed in his ethical obligations. The Utah Supreme Court took a moment to remind us all not to get too caught up in advocacy and not to forget our ethical obligations to the judicial system we serve.

I am pleased and proud to be part of a legal community that stresses the importance of ethical behavior while looking out for the client’s best interest. My contracts professor tells us often — and it bears repeating — that our job as attorneys is to make our clients whole when they’ve been wronged, not to litigate and take the other guy for all he’s worth. If I behave ethically, the solution to my client’s problems is within easier reach. The attorney for the other guy will be much more hospitable to an attorney who only wants to find a reasonable way to resolve the client’s problem.

FOOTNOTES

2. Id. at ¶ 3.
3. Id. at ¶ 4.
4. Id. at ¶¶ 5-6.
5. Id. at ¶ 5.
7. Id. at ¶ 7.
8. Id. at ¶ 8.
9. Id. at ¶ 23 (citing Utah R. App. P. 24(k)).

Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings, and free from burdensome, irrelevant, immaterial, or scandalous matters. Briefs, which are not in compliance, may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

10. Id. at ¶ 7.
11. Id. at ¶ 13.
12. Id. at ¶ 1 (striking the appellant’s brief because it contained “irrelevant and scandalous materials” that insulted the Utah Court of Appeals panel).
13. Id. at ¶ 19 (“Unfortunately, the substantial amount of objectionable content in his briefs made irrelevant the potentially sound legal arguments he was making.”)
14. Id. at ¶ 21 (“There is a misconception among some lawyers and clients that advocacy can be enhanced by personal attacks, overly aggressive conduct, or confrontational tactics.”)
I’m also a better law student because my classmates are ethical people. I wouldn’t learn half as much as I do without my classmates. They’re willing to help me when I need it, and I’m willing to give quality help in return. The cost of acting unethically is too high, both for clients and the judicial system. Washburn Law students are taught the better way: to strive to become honest, hard-working officers of the court and to make their clients whole — not by openly disparaging the judicial system or its officers, but by solving their clients’ legal problems.

About the Author

John Kitchens is a first-year law student at Washburn University School of Law, where his classmates affectionately refer to him as the “Strict Constructionist.” He wants to read “Blackstone’s Commentaries” and “Sutherland’s Statutory Interpretation” from cover to cover before leaving law school. He earned his undergraduate degree in English writing from Washburn University. He eventually wants to become chief justice of the Kansas Supreme Court, a position he considers “the coolest job ever.”

Kansas Bar Association

is making available to ALL members

Health Programs

<table>
<thead>
<tr>
<th>Health Insurance</th>
<th>Long-Term Care Insurance</th>
<th>Life Insurance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>Home Care</td>
<td>Term</td>
</tr>
<tr>
<td>Employees</td>
<td>Assisted Living Care</td>
<td>Universal</td>
</tr>
<tr>
<td>Student Plans</td>
<td>Nursing Home Care</td>
<td>Survivorship (2nd to Die)</td>
</tr>
<tr>
<td>Short-Term Coverage</td>
<td></td>
<td>Key Person</td>
</tr>
<tr>
<td>Medicare Supplements</td>
<td></td>
<td>Executive Benefit Life</td>
</tr>
<tr>
<td>International Travel Insurance</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

• Disability Income • Critical Illness • Dental •
• Vision • Accident Policies • Cancer Policies •

Rates and availability may vary by state.

KBA Association Health Programs
12721 Metcalf Ave. Ste. 100, Overland Park, KS 66213
Phone: (888) 450-3040 • Fax: (913) 341-2803
Visit us at www.associationpros.com
E-mail us at help@associationpros.com

Receive enhanced insurance benefits for yourself, your family, or your employees (both full- and part-time)!

Help is just a click away.

Even if you’re not ready to call, we’re always ready to help. At KALAP online, you can get information, learn about our services, or submit an anonymous question. We’re there for you 24 hours a day. We understand the stresses you face as a lawyer and your concern for privacy. KALAP offers free and confidential support because sometimes the most difficult trials lie outside the court.

Kansas Lawyers Assistance Program
Helping you with life’s trials.
1-888-342-9080
Attorney Workrooms at Federal Courthouses are a Welcome Respite for Kansas Attorneys

By Jill A. Michaux, Neis & Michaux P.A., Topeka

Attorneys practicing in the Kansas federal courts now have a room to call their own in each of the three Kansas federal courthouses.

Nicely appointed workrooms have been established in the Robert J. Dole U.S. Courthouse, Kansas City, Kan.; the Frank Carlson Federal Building and U.S. Courthouse, Topeka; and the U.S. Courthouse, Wichita, where attorneys can work, check e-mail, make phone calls, or relax between hearings.

The Kansas City workroom is located on the west end of the first floor past the jury assembly room, last door on the left. The Topeka workroom is in the northeast corner of the first floor. The Wichita workroom is in the basement.

Two comments recently left in the Wichita workroom proclaim the project a success:

“This is great! Quiet and a good way to maximize use of time and escape.”

“Very nice and helpful.”

The rooms have been beautifully furnished with sofas and chairs as well as computer work stations, desktop computers, a printer/scanner/copier, and wireless Internet access.

“The idea for attorney conference rooms in each courthouse originated with our bench-bar committee and district, magistrate, and bankruptcy judges unanimously and enthusiastically endorsed it,” U.S. District Court Judge Monti L. Belot, chair of the committee, said. “Each room provides a comfortable, quiet place for lawyers (sorry, not clients) to work or relax while in the courthouse. Computer terminals and printer/copy machines are available in each room, as well as wireless Internet access for personal laptops or PDAs. The courthouse staff in each location hope that the lawyers will use and enjoy their conference rooms.”

The rooms were furnished using funds from the U.S. Dis- trict Court Bar Registration and Disciplinary Fund, a $20 fee each lawyer pays annually for admission to practice in the Kansas federal courts.

“I know I speak on behalf of all our judges in saying that we are very pleased to have been able to make this space available to lawyers who come to our courthouse,” said Chief Judge John W. Lungstrum, “and to have been able to make such good use of the bar registration funds to accomplish the task. We are proud of the high quality of lawyers who appear before us and find it fitting that they be able to make use of an area like this for work or just to catch their breath during a busy day.”

The desktop computers are configured with Microsoft Windows operating systems and open source software compatible with software commonly used by attorneys in their work with the U.S. District and Bankruptcy courts. Installed are Firefox (Internet browser), an e-mail client, OpenOffice (word processing, spreadsheet, and presentations), Adobe Acrobat Reader (to view PDF files), CutePDF (to create PDF files), IrfanView (photo and graphic file format viewing), and Windows Media Player (video and sound playing).

OpenOffice Writer will open Microsoft Word or Corel WordPerfect files. Attorneys will be able to create or edit documents, convert them to PDF, and file them with the court through the electronic case filing system from the workrooms.

The CD/DVD drives are enabled on the desktop computers. Attorneys will want to bring computer files on compact discs or e-mail files to themselves using a Web-based e-mail client and account. Access by other removable media, such as floppy disks and thumb drives, has been disabled for security reasons.

The “My Documents” folder is available to use to temporarily save documents created on the computers. This folder is purged daily. Files can also be saved to a compact disc or e-mailed.

High-speed Internet connectivity is available on the desktop computers. Wireless connectivity is available for attorneys who bring their own laptop computers or PDA devices. A 802.11g or 802.11b wireless adapter and WPA/TKIP encryption is required to access the Internet from the workroom. The latest encryption key will be provided in a notebook next to the desktop computers in the workroom and will be changed periodically.
Web-based e-mail clients such as Yahoo, Hotmail, or Google G-Mail can be used. GoToMyPC clients cannot be used because of security configurations in place.

The attorney workrooms were suggested three years ago by the U.S. District Court Bench-Bar Committee, then chaired by the Hon. Kathryn H. Vratil. Anticipating a need to have electronic access to computer files because of electronic case filing, the committee also suggested the change in local court rules allowing electronic communication devices to be brought into the courthouses by attorneys.

In 2005, the court changed D. Kan. Rule 83.2.4 and now allows attorneys who display their U.S. District Court bar registration card to bring cell phones, computers, PDAs, and other electronic communication devices into the courthouses. Cameras are still prohibited, however.

Attorneys will want to bring their Kansas Bar Association member numbers so they may use the workroom to do last minute legal research using Casemaker.

About the Author

Jill A. Michaux is a partner in the firm of Neis & Michaux, P.A., Topeka. Her practice emphasis is consumer bankruptcy. Michaux served on the U.S. District Court Bench-Bar Committee from 2003-2006.

She received her Bachelor of Science in Journalism from the University of Kansas in 1977 and her juris doctorate from Washburn University School of Law in 1982.

Michaux is a member of the Kansas Bar Association Journal Board of Editors and is past president of the Kansas Bar Association Bankruptcy and Insolvency Section.

Michaux is a judge for the municipal court of the city of Rossville.

Robert K. Weary Award

The Board of Trustees of the Kansas Bar Foundation established the Robert K. Weary Award in 2000 to recognize lawyers or law firms for their exemplary service and commitment to the goals of the Kansas Bar Foundation.

Despite his objection, the Board of Trustees selected Bob Weary as the initial recipient of the award in recognition of his decades of service to his community, the Kansas Bar Foundation, and the legal profession in Kansas. Tragically, Mr. Weary passed away in early 2001.

Mikel L. Stout was the recipient of the 2006 Robert K. Weary Award. He was honored for his dedication to fostering the welfare, honor, and integrity of the Kansas legal system and to enhancing public opinion of the role of lawyers in our society.

Nominations for the Robert K. Weary Award should be submitted to Jeffrey Alderman, KBF executive director, P.O. Box 1037, Topeka, KS 66601-1037, by March 30, 2007.

IAMLOST@ksbar.org — Is this you?

Having trouble logging on to Casemaker and the members-only area of the Kansas Bar Association Web site at www.ksbar.org?

Ask yourself these important questions:

1. Am I using the same e-mail address I have on file with the KBA as my user name?
2. Do I even have my e-mail address on file with the KBA?
3. Am I using my unique KBA member ID number and not my Supreme Court number as my password?
4. Do I have my caps lock option on?
5. Do I need to call the KBA and ask for help?

Answers:

1. I recently changed my e-mail address, so I need to update the KBA.
2. I haven’t yet provided the KBA a valid e-mail address; therefore, I won’t be able to login. I need to verify and update my information with the KBA.
3. I can find my KBA member ID number on my membership card or I can call or e-mail the KBA to obtain my number.
4. I remember the KBA Web site is case sensitive so I have to enter my e-mail address just as it is listed at the KBA.
5. That is what the KBA is there for.

Online: www.ksbar.org  •  Call: (785) 234-5696  •  E-mail: info@ksbar.org

The Kansas Bar Association — Always valuable; now priceless!
CHANGING POSITIONS

Nineveh Alkhas has joined Sonnenschein Nath Rosenthal LLP, Kansas City, Mo.

Matthew D. All has been named vice president and general counsel for Blue Cross and Blue Shield of Kansas, Topeka.

Robby L. Anderson and Brian M. Holland have been promoted to membership status at Lathrop & Gage L.C. Kansas City, Mo.

Jennifer M. Hannah has been promoted to partnership status at the firm’s Overland Park office.

Nancy S. Roush has joined the firm’s Kansas City, Mo., office.

Nancy J. Andervich has joined the First National Bank, Hutchinson.

Catherine McVay Barker has joined Riling Burkhead & Nitcher Ch., Lawrence.

Stacy L. Bye has joined CBIZ BCK & W Insurance Service, St. Joseph, Mo.

Amie L. Bauer has joined the Gusenius Law Office P.A. in Lindsborg, and David Page has joined the firm’s McPherson office.

John W. Brooms has joined Hinkle Elkouri LLC, Wichita.

Chad Michael Crum has joined Davis & Munley Law Firm, El Dorado.

John D. Dunbar has joined McDowell Rice Smith & Buchanan P.C., Kansas City, Mo.

David Matthew Durgin has joined Optimistics Inc., Overland Park.

John Jay Miller has joined the City of Lawrence Legal Services.

Theresa Fette-Warner has joined Kyler, Kohler, & Ostermiller LLP, Las Vegas.

Jack W. Green Jr. has joined the Travelers Insurance Company, Overland Park.

Leslie Kathleen Harrell-Latham has joined Redmond & Nazar LLP, Wichita.

Ann Henderson has joined KVC Behavioral Health Care, Olathe.

Annette Hollingsworth has joined Swiss RE GE, Overland Park.

Harold A. Houck has joined Payless Shoe Source Inc., Topeka.

Lisa J. Johnson has become county counselor for Franklin County, Ottawa.

Michael R. Kauphusman has been elected as shareholder and director of the firm of Wallace, Saunders, Austin, Brown & Enochs Chtd., Overland Park.

James M. Kirkland has joined RED Development Inc., Kansas City, Mo.

Scottie S. Kleypas has joined Husch & Eppenberger LLC, Kansas City, Mo.

Norbert C. Marek Jr. has been elected the Wabaunsee County attorney.

Joseph L. McCarville III has been appointed as the District Court Judge, Division III in Reno County, Hutchinson.

Scott E. McPherson has joined the Rice County Attorney’s Office.

Angela Lynn Nadler has joined Bryan Cave LLP, Kansas City, Mo.

Matthew Overstreet has joined Fulcher, LaSalle, Brooks & Daniels, Kansas City, Mo.

Jesse Thomas Paine has joined the Johnson County District Attorney’s Office, Olathe.

John E. Patterson has joined Fairchild & Buck P.A., Lawrence.

William C. Reppart Jr. has joined Davis & Thompson, Grove, Okla.

Shauna Lynn Ripley has joined Polsinelli Shalton Flanagan Suelthaus P.C., Kansas City, Mo.


Walter F. Schoemaker has become staff attorney at the Kansas Health Policy Authority, Topeka.

Kitra R. Scharitz has joined Morrison, Frost, Olsen & Irvine LLP Manhattan.

Linda S. Skaggs has joined the EB Group, Olathe.

Starla Borg Sullivan has joined the Sedgwick County Public Defender’s Office, Wichita.

Brian J. Thomas has joined Preferred Physicians Medical, Shawnee Mission.

Jason W. Thompson has joined the Office of Revisor of Statutes, Topeka.

Mark A. Wilkerson has joined Caplan and Earnest LLC, Boulder, Colo.

CHANGING PLACES

Shawn R. DeJarnett has started his own firm, 204 E. Lincoln, Ste. 103, P.O. Box 583, Wellington, KS 67152.

The Law Offices of Daniel E. Doherty has moved to 7300 W. 110th St., Ste. 925, Overland Park, KS 66210.

Fletcher & Rohrbaugh LLP has moved to 601 N. Mur-Len, Ste. 20, Olathe, KS 66062.
Obituaries

James Donald “J.D.” White

James Donald “J.D.” White, 82, a long-time Wichita attorney, died Jan. 14. Born in Wichita Falls, Texas, April 26, 1924, White graduated from high school in Ardmore, Okla., in 1942. He then joined the Army Air Corp’s enlisted reserve to qualify for the Civil Aeronautics Authority’s Civilian Pilot Training program, which he completed and was licensed as a commercial pilot. In June 1942 he began his three years of World War II active duty, during which he was trained and commissioned as a combat glider pilot.

After the war he graduated from the University of Oregon in 1948. In 1951 he graduated from Harvard Law School, at which time he was recalled to active duty in the U.S. Air Force and served two years as an Air Force JAG officer. Most of White’s 50 years in Wichita were spent in solo practice, specializing in oil and gas law.

His parents, Ernest and Nell White; his brother, Ernest Dale White; and one granddaughter preceded him in death. He is survived by his wife, Berta Lou, Wichita; his sister, Elsie Carol Moore, of Pearland, Texas; a son, Wayne M. White, El Dorado; two daughters, Cynthia C. Branch and Melinda L. White, both of Wichita; and two granddaughters.

Members ...

(continued from Page 16)

Gunderson, Sharp & Walke LLP has moved to 5301 W. 75th St., Prairie Village, KS 66208.

David Scott Hoffman has relocated to the INVISTA offices in Washington, DC.

Klamann & Hubbard P.A. has moved to 929 Walnut St., Ste. 800, Kansas City, MO 64106.

Clinton W. Lee has started his own firm, Law Office of Clinton W. Lee, 128 Sharon Dr., Lawrence, KS 66049.

Charles F. Moser has started his own firm, Moser Law Office P.A., 113 W. Greeley Ave., P.O. Box 429, Tribune, KS 67879.

Tara L. Scrogin has moved to 1327 N. Umbrella Ave., Broken Arrow, OK, 74012.

Debra Snider has started her own firm, Snider Law Office LLC, Attorney at Law, 100 E. Park St., Ste. 6, Olathe, KS 66061.

Stephen J. Ternes has started his own firm, Ternes Law Firm Chtd., 135 N. Main St., Wichita, KS 67202.

Wyatt M. Wright has relocated from the Wichita office of Foulston Siefkin LLP to their Overland Park office.

MISCELLANEOUS

David J. Brown has been selected by the Attorneys Computer Network Inc. to assist in development of computer software.

Pendleton & Sutton LLC has become a member of the Association of Credit and Collection Professionals.

Robert M. Pitkin has been named 2007 chairman of the board of the Heart of America Chapter of Associated Builders and Contractors.

Editor’s note: It is the policy of The Journal of the Kansas Bar Association to include only persons who are members of the Kansas Bar Association in its Members in the News section.
Preserving Family Harmony in Estate Planning

By Robert M. Hughes, Bever Dye L.C., Wichita; Real Estate, Probate, and Trust Law Section president

When we meet with a client to discuss the planning of his or her estate, a fair amount of emphasis is given to saving taxes, management of the property, and the ultimate disposition of the client's property after death. Often little consideration is given to family harmony. Yet, most clients, if asked, would state that asset preservation/disposition is second in importance to the preservation of family harmony after the client's death. We have all been confronted with the family where the surviving parent is the "glue" that holds the family together. When that person passes away, disagreements and feelings of not being treated fairly that have lain dormant for decades come bubbling to the surface, often to the long-term detriment of the relationship between the now deceased client's surviving family members. Yet, if we as lawyers spend a little more time probing into the family dynamics, I believe that we can better counsel our clients, allowing us to participate in preserving the family harmony.

Although there are many estate planning decisions that impact family harmony, selection of the executor or successor trustee upon the death of the surviving parent likely has the most impact. However, little thought is often given to who should serve as fiduciary. I have had many clients almost automatically state that the oldest child should be the fiduciary, even though the eldest child is not always the best selection. When examining the matter a little closer, I may find that the client has suggested the eldest child simply because he or she is the oldest. To avoid favoritism, the client could name more than one child as a fiduciary, even though this in turn can raise issues if not all of the children are named or if the children do not get along. At the same time, whether one child, more than one child, or all of the children are named, the dynamics of the child's past relationships with other siblings, as well as with the now deceased parent, impacts the child's judgment. Adding in-laws to the mix often further complicates the matter.

Another issue is what fee, if any, is the family member to receive for their efforts as a fiduciary? A child who serves for no fee may be resentful, especially when it does not appear that his or her siblings appreciate the time-consuming task or its complexity and responsibility. On the other hand, if the child takes a fee, other family members may feel that the family member receiving a fee is trying to receive a larger share of the estate.

If a child is serving as fiduciary and makes an unintended error in asset management, the child can be subjected to personal liability. Such potential personal liability can be both emotionally and financially devastating. The client can relieve the child from negligence in the will or trust, which the courts typically will honor; however, this does nothing for the family members that are left with no recourse for the harm caused by the negligence of the family member serving as fiduciary.

Another issue that may crop up is how to distribute tangible personal property equally among the family members, particularly if there are several items that more than one child desires and neither the will nor trust gives specific direction. Providing that the "executor shall distribute, as in their sole discretion" places the family member serving as fiduciary in a no-win situation.

Numerous other issues can arise, which the lawyer should discuss with the client, such as: is a formal accounting to be provided; how is the family farm or closely held business to be distributed between the "active" family member and "passive" family members; are gifts to children to be taken into account in distributing the client's estate; are loans to children to be forgiven or taken into consideration in distributing the estate; if a child has provided services or care to a parent, is there a concern that the child may make a claim for services provided after the parent has passed away, and should this be addressed in the testamentary document; and if a parent intends to provide unequal shares of their estate to their children how should this be addressed to mitigate the perception that such treatment carries? These are only a few of many such issues that may arise and should be considered by the lawyer in counseling clients.

Tim O'Sullivan has written a law journal article on the impact of family harmony, pointing out numerous issues and offering solid suggestions to assure that such family harmony remains intact. I have read the article and it is excellent. I encourage each of you to do so as well. It is titled, "Family Harmony: An All Too Frequent Casualty of the Estate Planning Process," and it will be published in the spring 2007 issue of the Marquette University Elder's Advisor.

Finally, on an unrelated topic, I heard that rather than make a New Year's resolution, we should instead make a "goal." I encourage each of us that are members of this section to make it our goal to recruit one individual who is not a member of our section to become a member in 2007.

About the Author

Robert M. Hughes, Bever Dye L.C., Wichita, practices in the areas of taxation, trusts, estates, wills, probate, asset protection, succession planning, and business planning. He received his undergraduate degree from the University of Kansas in 1978; his J.D. from Washburn University School of Law in 1982; and his LL.M. in taxation from Southern Methodist University, Dallas, in 1983. He is admitted to practice in the U.S. Supreme Court, 10th U.S. Circuit Court of Appeals, U.S. Tax Court, U.S. District Court for the District of Kansas, and Kansas state courts.

Hughes is a member of the American, Kansas, and Wichita bar associations. He is also a member of the National Academy of Elder Law Attorneys and the Wichita Estate Planning Council.

Hughes can be reached via e-mail at rmhughes@beverdye.com.

Editor's note: This article was first published in the winter 2007 edition of the The Reporter, which is published by the KBA Real Estate, Probate, and Trust Law Section.
On the Duty of Candor to the Tribunal

By Hon. Steve Leben

It seems simple enough. Lawyers have a duty of “candor toward the tribunal.” Most of the time, it is simple enough. Yet a Westlaw search shows 16 published Kansas disciplinary cases from 2000 to date involving alleged violations of this rule. Perhaps a quick review might be helpful.

Model Rule 3.3 provides that a lawyer may not:

• make a false statement of material fact or law to a tribunal;
• fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
• fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the client’s position and not disclosed by the opposing lawyer; or
• offer evidence that the lawyer knows to be false.

These duties continue to the end of the proceeding — and the rule specifically provides that the duty of candor trumps the normal rules of confidentiality. Thus, you may be forced to reveal confidential information if you would otherwise violate Rule 3.3.

An initial issue — what constitutes a “tribunal” — is resolved by the definitional sections of the Model Rules. Tribunals include “all courts and other adjudicatory bodies.” In addition to courts, then, if you’re appearing in front of an administrative agency operating in its adjudicatory role, it’s a tribunal and the duty of candor applies. With that preliminary issue resolved, let’s look at each of the provisions of Rule 3.3.

Its prohibition of making false statements of material fact or law, and of failing to disclose a material fact when that failure would assist the client in committing a criminal or fraudulent act, are straightforward. They may require some care in considering their application to specific facts, but the rule itself is not complicated.

The duty to disclose adverse law relates to “legal authority in the controlling jurisdiction,” not to “controlling authorities.” Thus, you may not leave out adverse decisions of the Kansas Court of Appeals on the theory that only decisions of the Kansas Supreme Court are truly “controlling.” And no distinction appears in the rule regarding published or unpublished opinions. So it would appear that you must disclose unpublished appellate cases that are clearly against you — those too constitute “legal authority in the controlling jurisdiction.”

The most complicated part of the rule relates to the presentation of false evidence. A lawyer may not present evidence he knows is false, may refuse to offer evidence he reasonably believes to be false, and must “take reasonable remedial measures” to correct the situation if he has already offered material evidence that he later learns was false. That duty to take remedial measures would continue until the end of the proceeding, which is usually considered to end when the judgment is final and the time for appeal has passed.

A lawyer may take a step-by-step approach to taking remedial measures. The first option would usually be trying to convince the client to correct the misrepresentation. If the client will not fix the situation, the lawyer may withdraw “if that will remedy the situation,” which is usually not the case. At that point, at least in civil cases, the duty of candor trumps the duty of confidentiality and the lawyer must disclose the situation to the court. In criminal cases, because of the overlay of constitutional rights, the situation is murkier, but a helpful 2002 KBA Journal article from Rick Kittel summarized the Kansas case law in the area.

A more detailed review of the problem of the lying witness — as well as other ethical issues involving witnesses — is found in Mark Hinderks’ 2003 KBA Journal article.

A final part of the rule further distinguishes the duties of lawyers, as professionals, from those of others, like pro se litigants. In an ex parte proceeding, such as a request for temporary orders in a divorce case or for a temporary restraining order in a noncompete case, a lawyer has a duty to tell the judge about “all material facts known to the lawyer,” even if adverse to the client. There often are adverse facts that need to be disclosed in an ex parte proceeding. In addition to being required by the rule, it’s also wise to make these disclosures: judges are always disappointed to find that they have issued an ex parte order without knowledge of a key fact.

About the Author

Hon. Steve Leben has been a district judge in Johnson County, Kan., since 1993. He is co-presenter of Ethics for Good, an annual legal-ethics CLE presentation in the Kansas City area that, since 1999, has resulted in the contribution of more than $100,000 to charity. Leben is the editor and a chapter author of the KBA’s Practitioner’s Guide to Kansas Family Law, first published in 1997 and supplemented four times thereafter. He also is vice president of the American Judges Association, is editor of Court Review (the quarterly journal of the American Judges Association), and received the Distinguished Service Award (presented nationally each year to a state trial judge for long-standing efforts to improve the justice system) from the National Center for State Courts in 2003.

FOOTNOTES

2. Id. § 3.3-5.
3. Comment to Model Rule 3.3 (emphasis added).
## MARCH

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Discovery in the ESI (Electronic Stored Information) Era</td>
</tr>
<tr>
<td>2</td>
<td>Chris Cotton</td>
</tr>
<tr>
<td>3</td>
<td>Telephone CLE</td>
</tr>
<tr>
<td>4</td>
<td>The “Iron Triangle” Response to High-Profile Litigation</td>
</tr>
<tr>
<td>5</td>
<td>Philip S. Goldberg</td>
</tr>
<tr>
<td>6</td>
<td>Telephone CLE</td>
</tr>
<tr>
<td>7</td>
<td>Young Lawyers – Nuts &amp; Bolts of the Law</td>
</tr>
<tr>
<td>8</td>
<td>Topeka &amp; Shawnee Co Public Library, Topeka</td>
</tr>
<tr>
<td>9</td>
<td>A Survey of Legal Solutions to Issues Faced by Gay, Lesbian, Bisexual &amp; Transgender Clients</td>
</tr>
<tr>
<td>10</td>
<td>Stinson Morrison Heckler LLP, Kansas City, Mo.</td>
</tr>
<tr>
<td>11</td>
<td>The Casemaker Explosion</td>
</tr>
<tr>
<td>12</td>
<td>Salina Public Library, Salina</td>
</tr>
<tr>
<td>13</td>
<td>Health Law Institute</td>
</tr>
<tr>
<td>14</td>
<td>Hilton Garden, Overland Park</td>
</tr>
</tbody>
</table>

## APRIL

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Brown Bag Ethics (includes box lunch)</td>
</tr>
<tr>
<td>2</td>
<td>Prof. Lynette F. Petty, Washburn Univ. School of Law</td>
</tr>
<tr>
<td>3</td>
<td>Topeka &amp; Shawnee Co Public Library, Topeka</td>
</tr>
<tr>
<td>4</td>
<td>Brown Bag Ethics (includes box lunch)</td>
</tr>
<tr>
<td>5</td>
<td>Stanton A. Hazlett, Disciplinary Administrator</td>
</tr>
<tr>
<td>6</td>
<td>Topeka &amp; Shawnee Co Public Library, Topeka</td>
</tr>
<tr>
<td>7</td>
<td>Family Law Institute</td>
</tr>
<tr>
<td>8</td>
<td>Wyndham Garden, Overland Park</td>
</tr>
<tr>
<td>9</td>
<td>Litigation All-Stars</td>
</tr>
<tr>
<td>10</td>
<td>Best Western Airport, Wichita</td>
</tr>
<tr>
<td>11</td>
<td>Brown Bag Ethics (includes box lunch)</td>
</tr>
<tr>
<td>12</td>
<td>Prof. David J. Gottlieb, Univ. of Kansas School of Law</td>
</tr>
<tr>
<td>13</td>
<td>Topeka &amp; Shawnee Co Public Library, Topeka</td>
</tr>
</tbody>
</table>

### Featured Seminar

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>Appellate Practice Symposium</td>
</tr>
<tr>
<td>21</td>
<td>Kansas Appellate Practice Handbook, Fourth Edition (New publication provided as seminar materials!)</td>
</tr>
<tr>
<td>22</td>
<td>Capitol Plaza, Topeka</td>
</tr>
<tr>
<td>23</td>
<td>Keeping the Gold in the Golden Years – Elder Law Video Replay</td>
</tr>
<tr>
<td>24</td>
<td>Multiple sites statewide</td>
</tr>
<tr>
<td>25</td>
<td>Bankruptcy Law: Teaching the Old Dogs Some New Tricks</td>
</tr>
<tr>
<td>26</td>
<td>Courtyard by Marriott, Wichita</td>
</tr>
<tr>
<td>27</td>
<td></td>
</tr>
</tbody>
</table>
## Wednesday, June 6

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>TBA</td>
<td>SOABs Board Meeting, Reception, and Dinner, Location TBA</td>
</tr>
</tbody>
</table>

## Thursday, June 7

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 a.m.</td>
<td>Registration opens</td>
</tr>
<tr>
<td>10:30 a.m.</td>
<td>Spouse outing @ Bradley Fair Shopping Center, Wichita</td>
</tr>
<tr>
<td>10:30 a.m.</td>
<td>Golf Tournament @ Terradyne Country Club, Andover</td>
</tr>
<tr>
<td>1 p.m.</td>
<td>Sporting Clays presented by Whitney Damon P.A., Topeka @ Michael Murphy’s &amp; Sons, Augusta</td>
</tr>
<tr>
<td>1 p.m.</td>
<td>Motorcycle Ride and Tour of Big Dog Motorcycles, Wichita</td>
</tr>
<tr>
<td>5 p.m.</td>
<td>YLS and Litigation Section Hospitality Suite</td>
</tr>
<tr>
<td>6 p.m.</td>
<td>Fellows Reception and Dinner</td>
</tr>
<tr>
<td>7 p.m.</td>
<td>Welcome Reception</td>
</tr>
</tbody>
</table>

## Friday, June 8

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>6:30 a.m.</td>
<td>Registration and Exhibit Area opens</td>
</tr>
<tr>
<td>7 a.m.</td>
<td>Sunrise CLE</td>
</tr>
<tr>
<td>7 a.m.</td>
<td>Fellows of the ABF Breakfast</td>
</tr>
<tr>
<td>7 a.m.</td>
<td>American Board of Trial Advocates Breakfast</td>
</tr>
<tr>
<td>7 a.m.</td>
<td>Washburn Law Association Board Breakfast and Meeting</td>
</tr>
<tr>
<td>8:45 a.m.</td>
<td>President’s Welcome</td>
</tr>
<tr>
<td>9 a.m.</td>
<td>Keynote Speaker — Dan Glickman</td>
</tr>
<tr>
<td>10:15 a.m.</td>
<td>General Session</td>
</tr>
<tr>
<td>12:05 p.m.</td>
<td>Law School Luncheons</td>
</tr>
<tr>
<td>1:30 p.m.</td>
<td>Afternoon CLE Presentations begin</td>
</tr>
<tr>
<td>5 p.m.</td>
<td>Dinner (on your own)</td>
</tr>
<tr>
<td>5 p.m.</td>
<td>Washburn University School of Law Reception</td>
</tr>
<tr>
<td>7:30 p.m.</td>
<td>The Wichita Bar Show @ Orpheum Theatre, Wichita</td>
</tr>
</tbody>
</table>

## Saturday, June 9

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>6:30 a.m.</td>
<td>Registration and Exhibit Area opens</td>
</tr>
<tr>
<td>6:30 a.m.</td>
<td>5K Legal Run-a-Round @ River Walk, Wichita</td>
</tr>
<tr>
<td>7 a.m.</td>
<td>“Eggs &amp; Issues” Membership Forum Breakfast</td>
</tr>
<tr>
<td>7:30 a.m.</td>
<td>Kansas Association of Defense Counsel Breakfast</td>
</tr>
<tr>
<td>8:10 a.m.</td>
<td>Legislative Update</td>
</tr>
<tr>
<td>9 a.m.</td>
<td>KBF Board of Trustees Meeting</td>
</tr>
<tr>
<td>9:10 a.m.</td>
<td>Judicial Review Update</td>
</tr>
<tr>
<td>9:30 a.m.</td>
<td>CLE Presentations begin</td>
</tr>
<tr>
<td>12:30 p.m.</td>
<td>“Brown Bag &amp; Bull” Section Roundtables and Luncheon</td>
</tr>
<tr>
<td>2 p.m.</td>
<td>KBA Board of Governors Meeting</td>
</tr>
<tr>
<td>6 p.m.</td>
<td>President’s Reception</td>
</tr>
<tr>
<td>7 p.m.</td>
<td>Installation &amp; Awards Dinner</td>
</tr>
</tbody>
</table>

A block of rooms has been reserved at the Hyatt Regency Wichita; please mention you are with the Kansas Bar Association when making your reservations. Price of rooms (if reserved by May 16): $108 single/double occupancy. Room reservations: Call (800) 633-7313 or (316) 293-1234 or visit www.ksbar.org/am2007.
“BYTE” ME!
Protecting Your Backside in an Electronic Discovery World
(Not Just for Litigators)

By Kathy Perkins
with Dave Deppe
I. Introduction

“To see confusion clearly is to understand.”¹ I harken back to a law school class motto in my effort to understand the capabilities and intricacies of today’s hardware, software, computer memory, and data storage systems in the context of our obligations—and opportunities—as lawyers. For a baby boomer, the developments are astounding. My newly acquired MP3 player holds substantially more data than the mainframe in the computer center when I was in college.

The courts, and we as practitioners, are just now realizing the extent and implications of the new technological era, which has permanently changed our communications, record keeping, data collection, and storage. The fallout is a little scary and can be enormously expensive and divisive for unwary litigants—and litigators. Wall Street brokerage firm Morgan Stanley & Co. Inc. v. Coleman Outdoor Co., against Morgan Stanley, in a Florida state court in 2005. A jury awarded investor Ronald Perelman $1.45 billion in a high profile fraud case, arising out of the sale of the Perelman $1.45 billion in a high profile fraud case, arising out of the sale of the Coleman Outdoor Co., against Morgan Stanley in a Florida state court in 2005. A jury awarded investor Ronald Perelman $1.45 billion in a high profile fraud case, arising out of the sale of the Coleman Outdoor Co., against Morgan Stanley in which electronic discovery sanctions played a major role.²

Perelman moved for sanctions due to Morgan Stanley’s destruction of e-mails and other noncooperative conduct in the course of electronic discovery. Essentially, the court granted the motion, found Morgan Stanley to be grossly negligent in turning over electronic documents, approved an adverse inference instruction due to spoliation, shifted the burden of proof for the fraud claim, and revoked the pro hac vice license of defendant’s trial lawyer, two weeks before trial.³ In the midst of this, Morgan Stanley declared it had become clear that the court had “lost all confidence in any statement or representation made” by lawyers for Kirkland & Ellis LLP. Moreover, Morgan Stanley had put the firm on notice of “a potential malpractice claim” arising out of its representation.⁴

If mega law firms and their deep pocket patrons are finding themselves in this much trouble over compliance with electronic discovery, where does that leave lawyers who practice alone or in firms with fewer resources for cost-conscious clients? This article will explore practical suggestions for reducing the risks of noncompliance and capitalizing on the benefits of new technology, following these basic principles:

- Educate yourself on technology and terminology (and/or team up with an expert);
- Know the rules and how the courts are applying them;
- Communicate aggressively and proactively with your clients; and
- Utilize electronic discovery with common sense and creativity.

A. What are we dealing with?

It is estimated that more than 90 percent of all information generated today is in digital form.⁵ Nearly all business activities are computerized. The federal government is mandated by the Government Paperwork Elimination Act (GPEA) to reduce or eliminate paper from its operations. Electronically stored information (ESI) differs from its paper counterpart in volume, location, kind, and volatility.

1. Differences in volume

It was estimated that daily e-mail traffic for 2003 was almost equal to annual deliveries by the U.S. Postal Service.⁶ If printed, a gigabyte (GB) of ESI would yield an average of 75,000 pages. The average user generates 2 GB of data per year, or 150,000 pages. Assuming 2,500 pages to a banker’s box, printing the typical user’s annual data output would fill 50 boxes if printed. Responding to a discovery request for a particular custodian’s data over a five-year period, as often is done in employment cases, becomes a monumental task.

FOOTNOTES

1. Professor Henry Steiner, First Year Torts 1983, Harvard Law School.
2. 1/18/06 Daily Rec. (Kan. City, Mo), 2006 SLNR 1129685.
6. Id. at 14.

THE JOURNAL OF THE KANSAS BAR ASSOCIATION
while the “creation” and “accessed” time stamps in the operating system reflect the instant it was copied. To the untrained eye the document appears to have been altered.

Many organizations have retention policies under which they purge e-mail and associated electronic documents according to a schedule. Other companies have purchased metadata scrubbing software that removes deletable fields of metadata from files attached to e-mails or residing on the network. Failure to take appropriate measures to secure the integrity of ESI in litigation leads to allegations of destruction of evidence (spoliation), whether intentional or unintentional, and to sanctions for discovery abuse. Scrubbing equates to shredding after there is a reasonable anticipation of litigation.

On the other hand, it can be harder to get rid of ESI than it is to shred a document. “Delete” does not mean “destroy” in the cyber world; it means “ignore” unless a specific utility is employed to truly erase the ESI. The file information remains on the hard drive as “ghost files” or in slack space on the drive. Computers abhor a vacuum and fill blank space with digital “packing material.” This is data left behind from previous files or from active working files. The data is not “saved” on the computer in lay terms, but it remains and can be retrieved years after it was originally created unless and until it is overwritten or forensically removed. Moreover, it can be transferred to other computers as unnoticed baggage during an upgrade or replacement of a computer system.

B. What do the rules say?

Even without the amendments to Rules 16, 26, 33, 34, 37, and 45 of the Federal Rules of Civil Procedure that went into effect Dec. 1, 2006, it is clear that the scope of discovery encompasses ESI. The U.S. District Court for the District of Kansas has also developed ESI Guidelines that indicate, among other things, counsel should become knowledgeable about their clients’ information management systems and operation; include electronic information in Rule 26(a)(1) disclosures; and communicate with opposing counsel about electronic discovery issues, including scope, cost, format, and how to address privileged material. Although ESI has not yet been addressed by Kansas statute or court rule, and although to date there have been no reported cases in the Kansas state courts on this point, it is reasonable to assume that ESI would be included within the scope of Kansas discovery requests and that the federal rules may well be used for guidance when issues arise.

Highlights of the amendments to the federal rules are:

1. Parties must discuss e-discovery issues

Rules 26(f) and 16(b) have been amended to require litigants, at the initial planning and scheduling stage of the litigation, to consider and address electronic discovery issues, including the form of production and the preservation of electronically stored information. At the initial planning conference, the parties’ attorneys must discuss:

a. Preservation of ESI

Note that this is the first time the concept of preservation has been addressed by the federal rules. The integrity of metadata, not just the content of the document or system, must be preserved. By this point in the litigation a party should have a preservation plan in place. Information technology (IT) staff or a consultant should be involved to preserve existing information and build in tools to “journal” e-mail on a progressive basis to remove end users’ ability to delete before they are captured for preservation.

b. Disclosure and discovery of ESI according to the committee notes, topics for discussion include:

- The parties’ computer systems (identifying e-mail server, network environment, work stations, peripheral devices, etc.);
- Identity of individuals with special knowledge of the systems (and who may be asked to give a Rule 30(b)(6) deposition);
- Subject matter and time frame of records;
- Source and accessibility; and
- Form(s) of production. What does the form of production mean in this context? “Native format” would involve production in the file format in which it was created, e.g., Microsoft Word as .doc, Excel as .xls, and PowerPoint as .ppt. Native format will include track changes, author notes, etc. By contrast, “static format” would involve converting documents to TIFF (tagged image file format) or PDF (portable document format). The parties can also agree that specified fields of metadata referenced to static images will be produced.

c. Inadvertent disclosure

The parties may agree on a protocol for protecting privilege and retrieval of ESI, e.g., so-called “quick peek” and “claw back” agreements.

2. ESI explicitly identified

Rule 34 now adds electronic data as a separate category of information subject to production, even if it never existed as a physical document. Note that in the revised Rule 34 the party requesting production of documents may specify

---

the form of production, native or static. The producing party may object and specify an alternative form. If the requesting party does not specify a form of production, the responding party must produce ESI in the form in which it is normally maintained (native) or an alternative form, which is reasonably usable. This might include static images linked to identifying fields of metadata. A party must produce ESI in only one form and may not convert from a form in which it is ordinarily maintained to one less usable. Rule 45, applicable to production, the responding party must produce ESI in the form in which it is normally maintained (native) or an alternative form, which is reasonably usable. This might include static images linked to identifying fields of metadata. A party must produce ESI in only one form and may not convert from a form in which it is ordinarily maintained to one less usable. Rule 45, applicable to nonparty subpoenas, has been correspondingly revised.

3. Retrieval of privileged information

New Rule 26(b)(5)(B) provides a mechanism to seek return of inadvertently produced privileged information. Upon notice, which sets forth the basis for the claim of privilege, the receiving party must return, sequester, or destroy the ESI and take reasonable steps to retrieve it if disseminated. The ESI may be submitted under seal to the court for a ruling. Be aware that this is not a rule of evidence, although there is currently consideration of an amendment to Rule 502 of the Federal Rules of Evidence, which would provide for no waiver in the event of inadvertent production.

4. Limited discovery of inaccessible documents

Under the authority of new Rule 26(b)(2)(B), parties need not provide discovery from sources identified as not reasonably accessible unless the other party can show good cause. Evaluation of whether inaccessible ESI must be subject to discovery will take into account issues such as relevance and cost. However, parties must still preserve ESI identified as inaccessible.

5. Safe harbor for good faith inadvertent destruction

New Rule 37(f) provides that no sanctions will be imposed where ESI is lost due to routine modification resulting in overriding or deleting data. This protection will only be available to a party that has acted in good faith to prevent destruction of ESI, including intervention with a litigation hold when the notice of the dispute arises.

6. Complying with the new rules

As a practical matter attorneys must work first with their client and then the opposing party to consider relevant ESI and develop a discovery and preservation plan at the initial stage of litigation with these goals:

- Preserve relevant information flawlessly;
- Meet and discuss method of preservation;
- Agree on file types with potentially responsive information;
- Propose search terms to identify potentially responsive documents of opposing party;
- Develop an e-discovery protocol that will be endorsed by the court; and
- Identify forms of production, including treatment of redacted documents.

C. One e-discovery journey through the court system

As of the completion of this article there were no reported Kansas state court e-discovery decisions. However, Kansas practitioners should be aware of several relatively recent e-discovery rulings by our federal judges, which are addressed below in the practical advice section. There are a growing number of federal and state court decisions throughout the country interpreting the obligations and limits of the discovery rules. The most cited are a scholarly series of opinions by U.S. District Judge Shira Scheindlin of the Southern District of New York. Zubulake v. USB Warberg started out as a relatively routine single plaintiff employment discrimination lawsuit, although the plaintiff was a very high income employee. Electronic discovery disputes protracted the Zubulake litigation for several years. It is an interesting case to explore because its series of opinions covers a wide range of e-discovery challenges and because we know what ultimately happened. With the sanction of an adverse inference instruction for failure to preserve and produce electronic data, the jury returned a verdict for more than $29 million in compensatory and punitive damages in April 2005. This is a noteworthy employment verdict, even in New York City.

Laura Zubulake worked as an equity trader for UBS. She filed a sex discrimination complaint with the Equal Employment Opportunity Commission (EEOC) and was fired within two months. She sued for discrimination and retaliation.

(continued on next page)


Zubulake requested production of “all documents concerning any communication by or between UBS employees concerning plaintiff.” The term “document” in the request was defined to include ESI. In response, UBS produced documents, including 100 pages of e-mails. Zubulake argued that UBS had not been diligent in responding to the document request because she herself had retained and produced approximately 450 responsive e-mail pages. An initial visit to the court resulted in an order that UBS produce for deposition a person with knowledge of its e-mail retention policies in an effort to determine whether backup tapes contained the deleted e-mails and, if so, the burden of producing them.

In Zubulake I, Scheindlin held that Rule 34 requires production of electronic documents that are currently in use and also documents that may have been deleted and now reside only on backup disks, so long as they are relevant to claims in the lawsuit. The court found that the disparity in the number of e-mails produced was indication enough that UBS had not searched adequately for ESI.

In Zubulake I, the court described the factors to be considered in determining whether to shift the financial burden of electronic discovery. Scheindlin noted the presumption that the responding party must bear the expense of complying with discovery requests and held as a first principle that cost shifting must not be considered in every case involving the discovery of electronic data:

Many courts have automatically assumed that an undue burden or expense may arise simply because electronic evidence is involved... This makes no sense. Electronic evidence is frequently cheaper and easier to produce than paper evidence because it can be searched automatically, key words can be run for privilege checks, and the production can be made in electronic form obviating the need for mass photocopying.10

The court held that deciding disputes regarding the scope and cost of discovery of electronic data requires a three-step analysis:

First, it is necessary to thoroughly understand the responding party’s computer system, with respect to active and stored data, considering cost shifting only when electronic data is relatively inaccessible (such as in backup tapes).

Second, because the cost shifting analysis is so fact intensive it is necessary to determine what data may be found on the inaccessible media, which may involve requiring the responding party to restore and produce responsive documents from a small sample of disks.

Third, in conducting the cost shifting analysis, the following factors should be considered, weighted more or less in this order:

1. The extent to which the request is specifically tailored to discover relevant information;
2. The availability of such information from other sources;
3. The total cost of production, compared to the amount in controversy;
4. The total cost of production, compared to the resources available to each party;
5. The relative ability of each party to control costs and its incentive to do so;
6. The importance of the issues at stake in the litigation; and
7. The relative benefits to the parties of obtaining the information.11

Scheindlin held that cost shifting should be considered only when electronic discovery imposes an undue burden or expense on the responding party, specifically when the ESI is in an inaccessible format. Scheindlin generally characterized two categories of documents as inaccessible — backup tapes (which generally employ some sort of data compression making restoration more time consuming and expensive) and erased, fragmented, or damaged data. The court ordered UBS to produce all responsive e-mails from accessible sources at its expense and samples of data from backup tapes at which point the court would conduct a cost shifting analysis.

Approximately two months after the court’s decision in Zubulake I, the parties returned with the results of the backup tape sampling and UBS renewed a request for cost shifting. In Zubulake III, Scheindlin reviewed the cost shifting factors from Zubulake I and ordered cost shifting with UBS paying 75 percent and Zubulake 25 percent of the consultants’ fees to restore the backup tapes. Significantly, she held that only the costs of restoration and searching be shifted, but not costs of reviewing and producing the documents.12

During the restoration effort, the parties discovered that some monthly backup tapes were missing. In addition there was evidence that UBS had deleted some e-mails after the initial EEOC charge, only some of which were available on the backup tapes. Zubulake sought sanctions against UBS for its failure to preserve the missing backup tapes and deleted e-mails. The court in Zubulake IV first considered when the obligation to preserve evidence arose, noting that it was when the parties knew or should have known that the evidence may be relevant to future litigation. Although Zubulake’s charge of discrimination was not filed until August 2001, the court held the duty to preserve attached in April 2001 because of UBS e-mails predicting a claim by Zubulake. “Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a ‘litigation hold’ to ensure the preservation of relevant documents.”13

The court found that UBS did not comply with its counsel’s directive to retain documents, issued when the charge was first

11. Id. at 324.
12. Scheindlin notes that the producing party has the exclusive ability to control the costs of reviewing the documents. “In this case UBS decided — as is its right — to have a senior associate at a top New York City law firm conduct the privilege review at a cost of $410 per hour. But the job could just as easily have been done (while perhaps not as well) by a first-year associate or contract attorney at a far lower rate. UBS could similarly have obtained paralegal assistance for far less than $170 per hour.” Zubulake III, 216 F.R.D. at 290.
filed, and that UBS had a duty to preserve the backup tapes, which were destroyed. However, the court denied Zubulake’s request to reconsider the cost shifting order to require UBS to pay the entire restoration cost. Zubulake also requested the court to order an adverse inference instruction due to the spoliation of evidence. The court denied this request, finding that Zubulake could not demonstrate the lost evidence would have supported her claims. UBS was sanctioned to the extent it was ordered to bear Zubulake’s costs for redepositing certain witnesses to inquire into issues related to the missing documentation.

During the redepositions required by Zubulake IV, Zubulake learned about additional deleted e-mails and about the existence of previously undisclosed e-mails preserved on UBS’ active servers for at least a period of time after the dispute commenced. Some of these e-mails were then produced — nearly two years after the initial requests — and some were lost altogether. This matter was back before the court on Zubulake’s renewed request for sanctions.

In Zubulake V, Scheindlin determined from evidence presented by the parties that:

• at least one of the alleged perpetrator’s e-mails had been lost altogether;
• there were four additional missing backup tapes;
• the alleged perpetrator had deleted e-mails from his active files and not provided them to counsel after counsel’s warnings to retain documentation; and
• relevant e-mails had not been timely produced because nobody requested them from UBS employees who had segregated them upon notice of the need to preserve.

The court discussed at length counsel’s duty to monitor compliance with a litigation hold order to preserve relevant documents. The court stated that “once a ‘litigation hold’ is in place, a party and her counsel must make certain that all sources of potentially relevant information are identified and placed on hold.” This requires counsel to become fully familiar with the client’s document retention policies and data retention architecture. “This will invariably involve speaking with information technology personnel, who can explain system-wide backup procedures and the actual (as opposed to theoretical) implementation of the firm’s recycling policy. It will also involve communicating with the ‘key players’ in the litigation, … in order to understand how they stored information.”

Further, it is not sufficient to notify all employees of a litigation hold and expect that the party will then retain and produce all relevant information. “Counsel must take affirmative steps to monitor compliance so that all sources of discoverable information are identified and searched.” Finally, counsel should instruct all employees to produce electronic copies of their relevant active files and to make sure that all backup media, which the parties are required to retain, is identified and stored in a safe place.

The court found that counsel failed to communicate the litigation hold order to all key players and failed to ascertain each of the key players’ document management habits. However, Scheindlin did note that at the end of the day, the duty to preserve and produce documents rests on the party. “Although more diligent action on the part of counsel would have mitigated some of the damage caused by UBS’ deletion of e-mails, UBS deleted the e-mails in defiance of explicit instructions not to.”

Scheindlin concluded UBS acted willfully and destroyed potentially relevant information and ordered these sanctions:

• First, the jury will be given an adverse inference instruction with respect to certain lost e-mails;
• Second, UBS is ordered to pay the cost of any depositions or re-depositions required by late production of e-mails; and
• Third, UBS is ordered to pay the costs of the motion.

As noted earlier, this case went to trial and, predictably given the adverse inference instruction, resulted in a very high verdict for the plaintiff.

D. Practical advice based on case law

1. Yesterday, today, and tomorrow — litigation or no litigation — proactively counsel clients on good electronic document retention practices.

One size certainly does not fit all and the time spent to develop a well-tailored program that can be and is, in actual practice, followed will ultimately pay dividends. Note the amendment to Fed. R. Civ. P. 37, which protects a party from sanctions if electronic information is lost as a result of routine, good-faith operation of its system. That said, once the policy is in place, failure to comply with it could lead to a spoliation finding, an adverse inference instruction, or even dismissal or default judgment. One company found itself under scrutiny for intentional spoliation and privilege waiver under the crime/fraud exception when discovery in a complex patent infringement dispute revealed a retention program featuring “Shred Day” on which employees were rewarded with pizza and beer after destroying some 2 million documents.

The Sedona Guidelines are an excellent and well-reasoned resource on this topic. They were developed by The Sedona Conference think tank, which is comprised of leading jurists, lawyers, experts, and academes. The guidelines themselves, each of which is bulleted by a number of illustrative principles and supported by extensive information, are:

a. An organization should have reasonable policies and procedures for managing its information and records.

b. An organization’s information and records management policies and procedures should be realistic, practical, and tailored to the circumstances of the organization.

c. An organization need not retain all electronic information ever generated or received.

d. An organization adopting an information and records management policy should also develop procedures that address the creation, identification, retention, retrieval, and ultimate disposition or destruction of information and records.

e. An organization’s policies and procedures must mandate the suspension of ordinary destruction practices and procedures as necessary to comply with preservation obligations related to actual or reasonably anticipated litigation, government investigation, or audit.

2. Communicate aggressively and proactively with your clients.

a. The moment you are aware of a dispute (from receipt of demand letter to service of complaint), notify the client in writing of the duty to preserve and institute a litigation hold.

Even if your client is a sophisticated business, it is not safe to assume they will implement a litigation hold without your guidance and the consequences could be severe. For example, in MasterCard International Inc. v. Moulton,22 the defendant failed to preserve e-mails until five months after a lawsuit for trademark infringement was filed despite knowledge of the lawsuit and a pending discovery request. The plaintiff moved for spoliation sanctions. The court held the defendant did not act in bad faith in deleting the e-mails but was grossly negligent. Although the plaintiff did not meet a burden to show the potential significance of the e-mails sufficient to warrant ruling certain key issues conclusively established, an adverse inference instruction was deemed an appropriate sanction.

Zubulake V clearly places a burden on counsel to take steps to prevent a client’s intentional or inadvertent destruction of electronic evidence. If and when you are faced with defending a Fed. R. Civ. P.30(b)(6) or K.S.A. § 60-230(b)(5) deposition of the client designee on the issue of records retention policies and efforts to preserve, a motion to compel, or another form of scrutiny, your own conduct may be subject to examination.

b. Be persistent in learning a client’s practices, systems, and retention policies and practices.

How many times has a client said, “That’s all we have,” and that little voice in your head is pestering you, wondering if that’s really true? While attorneys cannot be guarantors of their client’s conduct, a superficial effort to ensure compliance is not adequate to protect the client or yourself. The courts are increasingly dismissive of pleas of ignorance. In Anderson v. Crossroads Capital Partners LLC,23 the court was unimpressed by a plaintiff in a sexual harassment case whose computer was made available for examination by the defendant’s expert. Although she claimed it was the computer she used at the time in question, the expert determined it was manufactured two years later. Additionally, she had installed and run a file-wiping program, which she claimed was not intended to destroy evidence. The judge found the plaintiff’s “exceedingly tedious and disingenuous claim of naïveté ... defies the bounds of reason.”24

Insist upon early access to a business client’s information systems or technology (IS or IT) department to gain a better understanding about their systems and practices. Particularly if you represent an individual or small business, consider utilizing a consultant if you don’t have the expertise in your office. A recommended practice is requiring the client to complete a questionnaire about its practices and the identity of its key individuals, and then return it to you with copies of relevant policies.

Make sure the client understands that the litigation hold or preservation order might require disabling routine e-mail deletion practices. In United States v. Philip Morris USA Inc.,25 Philip Morris USA was fined a total of $2.75 million — $250,000 for each of 11 officers and managers who, for two years after a blanket data-preservation order was entered, continued their routine practice of deleting e-mail more than 60 days old. The 11 were also prohibited from testifying.

---

24. Id. at *8.
c. Take responsibility for making sure the information gets to everybody who needs to know.

Certainly Zubulake V, where a number of managers got the message to preserve data but were never asked to turn it over, illustrates the importance of diligently communicating requirements and monitoring compliance. In an ERISA class action case, Keir v. Unumprovident Corp.,26 the failure to involve IT staff in the negotiation of a data preservation order, followed by a relatively short delay (two weeks) between entry of the order and communication to IT staff, caused the loss of a fair bit of data. This unintentional failure to preserve was criticized by the court, which recommended the parties retain an expert to determine the full extent of the loss.

In re Prudential Insurance Co. of America Sales Practices Litigation27 was another case involving an ineffective method of communicating a preservation order requiring preservation of certain sales data. It led to widespread destruction of evidence and sanctions, including a $1 million fine, attorneys’ fees award, and an adverse inference. Specifically, the instruction was issued by bulk e-mail, typically ignored by the sales people who had to comply.

In Metropolitan Opera Association Inc. v. Local 100, Hotel Employees and Restaurant Employees International Union,28 failures in communication compounded by counsel’s misrepresentations to the court resulted in evidence destruction, including replacement of computers subject to discovery shortly before an on-site inspection. The end result? Judgment was entered against the defendant and attorneys’ fees awarded.

d. Effectively communicate the consequences of active refusal to cooperate, carelessness, flippancy, and spoliation to clients.

Counsel should advise their clients that intentional or accidental destruction of data, failure to adequately search, or misrepresentation about the efforts or data can result in sanctions ranging from fines, to payment of attorneys’ fees, to an adverse inference instruction, or even judgment. This may help motivate cooperation and avoid unpleasant surprises.

Case law varies on the standard for issuing sanctions. For example, the 8th U.S. Circuit Court of Appeals requires a finding of “intentional destruction indicating a desire to suppress the truth” before spoliation will yield an adverse inference instruction. Morris v. Union Pacific Railroad.29 The 2nd U.S. Circuit Court of Appeals gives trial judges discretion to consider “purposeful sluggishness” leading to destruction of discoverable data to be equal to spoliation.30

e. Take heed of metadata.

Recently, U.S. Magistrate Judge David J. Waxse, District of Kansas, ordered a party to produce the metadata for spreadsheets responsive to discovery requests in Williams v. Sprint/United Management Co.31 As noted above, metadata is information describing the history, tracking, or management of an electronic document. It may include file names, file locations, file type, dates and authors of the document, changes and modification dates, print-out dates, and names of recipients. Metadata may be altered intentionally or inadvertently and can be inaccurate in some circumstances, such as when a form document reflects the author as the template author rather than the drafting author.

When ordered to produce spreadsheets in the electronic form in which they were maintained, Sprint used special software to “scrub” the spreadsheets and remove the metadata, arguing that the metadata removed was irrelevant and contained privileged information. Sprint also argued that plaintiffs had never specifically requested the spreadsheets be produced with the metadata intact. Waxse held, however, that an order to produce electronic data “in the manner in which it was maintained” did not allow for the scrubbing of metadata prior to production.32

(continued on next page)

GTrust

Security for Generations

An Independent Trust Company

Unparalleled Competence
Uncompromising Integrity
Client-Centered Approach

EXPERT FEE-ONLY SERVICES INCLUDE:

INVESTMENT MANAGEMENT
ADMINISTRATION OF LIVING TRUSTS
FINANCIAL PLANNING
RETIREMENT PLAN ADMINISTRATION
CONSERVATORSHIPS
STRUCTURED SETTLEMENTS

We are proud to be the Investment Manager for the Kansas Bar Foundation

TOPEKA • OVERLAND PARK • WICHITA • LARNED
785.273.9993 • SECURITY@GTRUST.COM
WWW.GTRUST.COM

27. 306 F.3d 99, 110 (2nd Cir. 2002).
29. 373 F.3d 896, 901 (8th Cir. 2004).
30. Residential Funding Corp. v. DeGeorge Financial Corp. 306 F.3d 99, 110 (2d Cir. 2002).
32. Id. at 656.
The court’s ruling relied heavily on the Federal Rules of Civil Procedure and the (then proposed) amendments. The Sedona Guidelines and the scant available case law regarding discovery of metadata. Significantly, Waxse held that:

When a party is ordered to produce electronic documents as they are maintained in the ordinary course of business ... the producing party should produce the electronic documents with their metadata intact, unless the party timely objects to production of the metadata, the parties agree that the metadata should not be produced, or the production party requests a protective order. 35

The Williams opinion places the burden of objecting to production of metadata on the responding party. Appropriate objections to the production of metadata may be relevancy or an objection based upon the work-product and/or attorney-client privilege. 36

In Williams, the producing party also “locked” the spreadsheets’ cells and data, reportedly to ensure the integrity and prevent accidental or intentional alteration of the data. The court held there were more appropriate ways to ensure data integrity exists, suggesting as an example that the producing party could have run the data through a mathematical process to generate a “hash mark,” thereby creating the digital equivalent of a tamper-proof seal. 35

3. Utilize e-discovery with commonsense and creativity.

a. Notify the opposing party of anticipated electronic discovery at the outset.

At the commencement of a dispute, it is wise to evaluate the relevant electronic information you will seek and advise the other side. This can take the form of a “no spoliation” letter, reminding the party that it has a duty to retain relevant electronic data. The letter will be more effective in securing compliance and, if necessary, later moving to compel or for sanctions if it is narrowly and specifically tailored to material issues in the litigation.

b. Be prepared for a cost/benefit analysis whether you are seeking discovery or objecting to a response.

Zubulake I identifies cost shifting factors. Other courts have adopted similar factors, sometimes weighting them differently.37

As Schindel in Zubulake I, it is not necessarily true that electronic discovery is more costly than traditional paper review. However, it can be, especially when requiring expert assistance to restore “inaccessible” data or review computers and disks for deleted information. These costs should be taken into account when determining the scope of your discovery.

On the “benefits” side of the analysis, a party should have some support for a belief that relevant information will be uncovered. A plaintiff in an employment discrimination case contended there was a discriminatory e-mail but could not produce a copy of it. When defendant reported there was no such e-mail, plaintiff sought to have the court appoint a special master to conduct a forensic examination of the defendant’s computer system. The court denied the motion noting that the defendant’s belief of the existence of the e-mail was “at best [a] highly speculative conjecture.”38

Similarly, in Byers v. Illinois State Police, plaintiffs in a sex discrimination case requested discovery of e-mail backup tapes going back eight years. The court determined a cost/benefit analysis was necessary due to the enormous volume and substantial cost, found plaintiffs had not adequately shown the e-mails would support their case, and ordered the plaintiffs to bear the costs of licensing the defendant’s old e-mail program.

In another case the court directed a plaintiff, seeking discovery about a data entry she claims she made in the defendant’s computer system before she was discharged, to file a motion to compel if and when she was willing to retain a forensic computer expert at her own expense. 39

The volume of information available can also increase costs. Out of an abundance of caution, and not wanting to leave any stone unturned, lawyers often make sweeping production requests for “any and all documents in any way whatsoever related at all to ...” Be careful what you ask for — you might get it. A defendant in an unfair trade practices case requested “[a]ll documents, including but not limited to internal memoranda, internal e-mails, and correspondence with [IBM] or any other entity or person, referring or relating to actual or potential effects on Compuware’s business of any past, present, future, or contemplated conduct by IBM.” After initially objecting that the request was overbroad, the plaintiff responded by producing all of the requested documents, estimated in the “tens of millions,” on compact disks. Arguing that the production was overbroad, the plaintiff asked the judge to narrow the scope of its own request and order the defendant to index the documents on the CDs and designate those that were relevant to the subject matter of the dispute. The court denied the request. 40

Also consider potential long term ramifications, even if you are successful in getting costs shifted to responding parties. One court held costs of searching computer databases should be shared evenly by the party, but would be classified as court costs, making them recoverable by the prevailing party. 41

33. Id. at 652 (footnotes omitted).
34. Id. at 653-54.
35. Id. at 655.
38. 53 Fed. R. Serv. 3d 740 (N.D. Ill. June 3, 2002) (mem.).
c. Come to court with the cleanest hands possible.

Amended Fed. R. Civ. P. 37 will not only provide some protection for good faith efforts, but it will also help a party who has been diligent fare better when seeking the assistance of the court. For example, in Marcin Engineering LLC v. Founders at Grizzly Ranch LLC, a defendant’s motion for extension of time for discovery of the plaintiff’s expert’s work was denied. The court noted the motion had not been brought until five days before the deadline after defendant had delayed for five months reviewing the materials originally produced. Such delay and carelessness in requesting electronic discovery was, according to the court, not compatible with the showings of diligence and good cause necessary to extend discovery deadlines. The court also noted that it had repeatedly advised defendant that the proposed discovery, “when considered in the light of the amounts claimed as damages, made no economic sense.”

In Super Film of America Inc. v. UCB Films Inc., defendant had requested discovery of e-mails, documents, databases, and spreadsheets. Claiming it was beyond its knowledge and expertise to retrieve and produce these documents, plaintiff proposed that defendant could access its computers and retrieve data itself. The defendant objected and the court agreed the offer was an unreasonable attempt to shift discovery costs from the responding to the requesting party. The court rejected plaintiff’s claim that providing the discovery was burdensome and granted defendant’s motion for the discovery.

d. Consider offensive use

A defendant in a trade secrets action was successful on a summary judgment motion by presenting evidence from its own independent expert that a review of defendant’s computer systems revealed no evidence, including remnants, of the proprietary software plaintiff claimed had been stolen. The court held that where plaintiff did not conduct its own discovery into defendant’s system, its circumstantial evidence was not sufficient to meet its burden of proof.

e. Conduct discovery about computer systems and retention programs.

This approach certainly paid off in the Rombus case noted above, where the retention policy included a “Shred Day.” In Sennino v. University of Kansas Hospital Authority, Waxse overruled defendant’s objection to an interrogatory seeking information about its computer and e-mail systems. In addition to interrogatories and document requests, consider noticing a deposition of party designees who can describe the computer systems from data management to e-mail, types of hardware and software, retention policies (and practices which may be different), and efforts to comply with discovery requests in the case.

f. Take special precautions to preserve privilege and protect privacy.

Electronic data presents new challenges in the protection of privileged information and work product. The amendments to Fed. R. Civ. P.26(f) and 16(b) encourage the parties to set a process for inadvertent disclosures, but, absent those, a party might waive privilege and unnecessarily expose that information to scrutiny. One court found waiver when a party failed to timely identify a particular printout of customer contacts. The party argued the document was not generated until after the log was due, but the court held the failure to identify the database from which the printout was made would be deemed waiver.

U.S. Magistrate Judge James P. O’Hara, District of Kansas, addressed the issue of properly identifying e-mail chains in a privilege log in In re Universal Service Fund Telephone Billing Practices Litigation. Defendant AT&T had developed a privilege log that was the subject of a motion to compel and that the court found to be deficient as a result of an overly aggressive, imprudent litigation tactic. O’Hara rejected AT&T’s position that a single identification of an e-mail strand or string of e-mails on a particular subject is sufficient as to all the individual communications it contains. Noting that “electronic discovery is a rapidly evolving area in which litigants (and judges) often have little or conflicting guidance,” the court relied on well-established case law regarding privileges and privilege logs, as well as the “obvious and unavoidable byproduct of the rule advanced by AT&T would be stealth claims of privilege, which, by their very nature, could never be the subject of a meaningful challenge by opposing counsel or actual scrutiny by a judge . . .” rendering Rule 26(b)(5) a nullity.

As we gain access to electronic records, perhaps especially e-mail, it is also important to consider individual privacy interests. A computer forensic expert once told me he could ferret out multiple affairs in just about any company in an hour on the computer system. We need to take steps to avoid disclosure unnecessarily of individual’s medical, financial and other personal information, as well as social security numbers.

g. Don’t sign your name when you’re not sure.

Extra caution in ensuring compliance with ethics rules K.S.A. § 60-211 and Fed. R. Civ. P.11 is warranted when making commitments about electronic discovery. More than one lawyer has suffered credibility damage — and worse — having been misled by a client or simply been too relaxed about confirm-
This admonition extends to serving as local counsel. Do you trust the primary, out of state counsel enough to take the risk of representations to the tribunal about the completeness of e-disclosures? If not, insist upon undertaking your own investigation or consider withdrawing if refused. We should always be concerned about this role, but this is an area of greater risk and less developed means of risk avoidance than more traditional aspects of representation.

II. Conclusion

Electronic discovery provides us with both obligations and opportunities. Use it creatively but not with a scorched earth mentality. Focus the available time (your’s and the client’s) and money on evidence significant to the case. The access to such a greater depth and breadth of information should be exercised with an eye to professionalism, civility, and client resources.

About the Authors

**Kathy Perkins** is a managing member in the Kansas City, Mo., office of Constangy, Brooks & Smith LLC. Perkins represents employers in all aspects of employment law and has more than 20 years of experience in this area. She received her juris doctorate from Harvard University in 1983 and her B.S. in civil engineering from Kansas State University. She is a frequent speaker and published author on employment law subjects. Perkins is admitted to practice in Kansas, Missouri, the District of Columbia, and Idaho.

**Dave Deppe** is a founding partner of Focus Legal Solutions, a national litigation support company. Deppe is responsible for the management of forensic data collections and e-discovery productions nationwide. He has managed national data collections for Fortune 500 companies, governmental agencies, and top 50 national law firms. Deppe participated as an electronic discovery expert for Western Union and First Data Corp. in a matter with the Networks and Technology division of the U. S. Department of Justice in Denver. He has also provided expert testimony on behalf of several Kansas and Missouri law firms. Deppe’s experience has given him the unusual ability to mesh the legal requirements of discovery with practical, efficient technological solutions.

Kansas Bar Association Members:
Take Advantage of Premium Discounts
Up to 30% on Individual Disability Income Insurance from
Principal Life Insurance Company

During the course of your career, you are 3½ times more likely to be injured and need disability coverage than you are to die.
(Health Insurance Association of America, 2000)

The Verdict is in: **You and Principal Life are a winning combination.**

**For More Information Contact:**
**Jason Heffner, Financial Representative**
The Principal Financial Group
7300 West 110th Street, Suite 620
Overland Park, Kansas 66210
Phone: 800-245-8895, ext. 3533
E-mail: Heffner.Jason@principal.com

Insurance issued by Principal Life Insurance Company, a member of the Principal Financial Group®, Des Moines, IA 50392.
#4093062008
Civil

BREACH OF CONTRACT AND SUMMARY JUDGMENT
IVES ET AL. V. MCGANNON
JOHNSON DISTRICT COURT – AFFIRMED
NO. 93,978 – JANUARY 19, 2007

FACTS: Ives and Murrill purchased Regional Holding Co. Inc. (Regional) in 1987. They brought McGannon in as chief financial officer in 1994 with salary and stock options. Gold Banc offered to purchase Regional in 1999, allowing the officers to remain. After the purchase, Gold Banc had questions about Regional and the parties entered arbitration regarding setoffs. An arbitrator ordered Ives, Murrill and McGannon (IM&M) to pay Gold Banc damages. The situation between IM&M became tense and the three sued each other. A jury found in favor of McGannon on Ives and Murrill’s breach of contract and unjust enrichment claims. The jury found in Ives and Murrill’s favor on the contribution claim, but initially did not award monetary damages. The jury awarded McGannon $95,078, but only awarded Ives and Murrill $1.

ISSUES: (1) Breach of contract and (2) summary judgment

HELD: Court held that McGannon had the duty in 1998 to invest his concerns, and his failure to do so now bars his attempt to claim lack of knowledge. Court held that the trial court properly determined that all of McGannon’s claims were barred by the applicable statute of limitations. Court held the trial court did not err in denying McGannon’s claim for summary judgment based on his claim that the stock purchase agreement superceded the shareholder’s agreement, given the differing recollections of the parties. Court stated that due to the differences, the trial court correctly determined the issue was properly resolved by the jury. Court held the jury’s verdict was supported by the totality of the evidence and the trial court did not err by denying McGannon’s motion, judgment notwithstanding the verdict. Court held the trial court did not err in denying prejudgment interest to McGannon because his claim was not liquidated until judgment was entered by the jury. Court found the trial errors alleged by Ives and Murrill were harmless regarding testimony of an agreement involving the stock purchase and the trial court did not abuse its discretion in denying a new trial. Court stated that the jury properly considered all the evidence and that its verdict was supported by the evidence and denied Ives and Murrill’s claim concerning apportionment of the arbitration award. Court held the jury instructions were agreed to by all the parties and there was sufficient evidence to support the outcome of the damage award.

STATUTES: None

CHILD CUSTODY, EDUCATION DECISIONS, AND RELIGIOUS EDUCATION
YORDY V. OSTERMAN
SEDGWICK DISTRICT COURT
REVERSED AND REMANDED
NO. 95,203 – JANUARY 19, 2007

FACTS: Mother and father with joint custody of a kindergartner disagreed about whether the child should attend religious or public school. Father was a teacher and coach at the religious school. Mother wanted child to attend public school. District court concluded there is a presumption in favor of public schooling and when one parent objects to religious school, the proponent for attendance at a religious school must overcome the presumption in favor of public schools. District court granted mother’s motion to attend public school.

ISSUES: (1) Child custody, (2) education decisions, and (3) religious education

HELD: Court held that parents with joint custody have equal rights to make decisions in the best interest of their child, including decisions about education. Court held that when parents subject to the court’s ongoing jurisdiction during the minority of their child cannot agree on the school their child should attend, it is the task of the court to resolve the dispute in a manner that is in the best interest of the child. Court stated there is no presumption in favor of a child’s secular education.

STATUTE: K.S.A. 60-1610(a)(4)(A)
FACTS: Creekmore was employed by Southwestern Bell Telephone (SBT) from 1982 to 2002. She was terminated for a stated reason of misconduct. The terms and conditions of her employment were governed by a collective bargaining agreement with the Communication Workers of America (CWA), her union, had negotiated with SBT. The collective bargaining agreement provided that Creekmore was not entitled to paid vacation or severance pay if she was terminated for reasons of misconduct. SBT refused to pay Creekmore any severance or vacation pay upon her termination. Creekmore filed a claim with the Kansas Department of Labor (KDL). The KDL granted SBT’s motion to dismiss finding Creekmore’s claim was pre-empted by the federal Labor Management Relations Act (LMRA). The district court affirmed the KDL’s ruling on the motion to dismiss.

ISSUES: (1) Employment, (2) labor relations, and (3) pre-emption

HELD: Court held the district court did not err in finding that Creekmore’s state law claim was pre-empted by section 301 of the LMRA. Creekmore’s claim grew out of her employment relationship with SBT and her union’s collective bargaining agreement covering her employment. Although the term “misconduct” is not defined within the collective bargaining agreement, court indicated that it could not say that all that is needed is merely a passing reference to the agreement. Whether Creekmore was terminated for misconduct required interpretation of the collective bargain agreement. Construing the term misconduct necessitated interpretation of the of the collective bargaining agreement. Creekmore’s claim for severance and unpaid vacation was “substantially dependent” upon an analysis of the terms of the collective bargaining agreement. Consequently, the court held section 301 of the LMRA pre-empts state law jurisdiction over Creekmore’s wage claim and the KDL lacked jurisdiction to resolve the claim.

STATUTE: K.S.A. 77-601 et seq., -621(c)(1)-(8)
sibility of the carrier who had coverage on the date such expenses were incurred. The ALJ divided the costs. The board applied the last-day-worked rule and awarded Tull TTD compensation to be paid by all the carriers jointly and severally. The board also ordered permanent partial disability to be paid by Atchison and C&I in the amount of nearly $18,000 for 21 percent permanent partial disability. Berger was allowed credit for Tull's pre-existing impairment.

**ISSUES:** (1) Workers' compensation and (2) joint and several liability

**HELD:** Court held that the Kansas Supreme Court in *Kuhn*, 201 Kan. 163, clearly mandated that insurance carrier disputes must not be allowed to vex the speed and efficient mechanism for the treatment and payment of the claims of injured workers provided by our Workers' Compensation Act. Perhaps the prospect, of joint and several liability, may serve as an incentive to multiple carriers to resolve coverage disputes in a manner that will not delay treatment of an injured worker or otherwise impede the paramount objective of the Workers' Compensation Act. Court concluded the board did not erroneously construe or apply Kansas law in its order of joint and several liability of multiple insurers for temporary disability and medical benefits. Court also concluded there was substantial competent evidence to support the board's finding that Tull's employment tasks at Berger were less demanding and less stressful and thus her last day of work for Atchison was indeed the last day she performed the earlier work tasks. The court rejected the claims of Atchison and C&I regarding the due process by the ALJ allowing Tull to amend her application.

**STATUTES:** K.S.A. 40-2212; K.S.A. 44-501 et seq., -512a(b), (c), -520, -520a, -523(b), -534a(b), -567(a)(2), -569; and K.S.A. 77-621(c)(7)

---

**Criminal**

**STATE V. BALDWIN**

**BUTLER DISTRICT COURT – REVERSED**

**NO. 95,402 – JANUARY 26, 2007**

**FACTS:** Baldwin filed appeal challenging K.S.A. 2005 Supp. 21-4603d(a)(5), automatic extension of probation for six months following completion of program at Labette Correctional Conservation Camp (Labette). Court of Appeals examined jurisdictional question arising from district court's oral pronouncement during revocation and reinstatement of Baldwin's probation.

**ISSUE:** Conditions of probation

**HELD:** Issue of first impression in Kansas. As in sentencing, court's oral expression of terms of probation following revocation and reinstatement of probation controls over written words in memorializing journal entry. Exceptions to this rule are standard conditions of probation imposed by statute in every case, as the defendant has constructive notice of them. Assignment to Labette is a special rather than a standard condition of probation. In the particular case at issue, Baldwin was never ordered to attend Labette because there was no oral announcement of such assignment and journal entry's assignment to Labette is of no effect. Because Baldwin's probation expired months prior to state's attempt to revoke probation, district court had no jurisdiction to revoke probation and send Baldwin to prison. Challenge to K.S.A. 2005 Supp. 21-4603d(a)(5) is not addressed.

**STATUTES:** K.S.A. 2005 Supp. 21-4603d(a)(5), -4603d(4), 22-3716(b), -3716(d) and K.S.A. 22-3716(d)

---

**STATE V. BARNES**

**RENO DISTRICT COURT – AFFIRMED**

**NO. 95,939 – JANUARY 19, 2007**

**FACTS:** Barnes received presumptive sentence for drug convictions affirmed in 2002. In 2004 Barnes filed motion to correct illegal sentence, seeking retroactive application of *State v. McAdam*, 277 Kan. 136 (2004). District court denied relief, which was affirmed on appeal. While that appeal was pending, Barnes filed another motion to correct illegal sentence, challenging how he was charged and trial court's jury instructions. District court summarily denied motion as attacking the conviction rather than the sentence, and noted pending appeal. Barnes appealed. State argues the district and appellate courts had no jurisdiction for the second motion and appeal.

**ISSUES:** (1) Jurisdiction and (2) summary denial of motion to correct illegal sentence

**HELD:** District and appellate courts had jurisdiction to consider this matter. Motion to correct an illegal sentence is routinely treated as a K.S.A. 60-1507 motion if filed more than 10 days after sentencing. While Supreme Court Rule 183(c) prevents a defendant from pursuing a K.S.A. 60-1507 action while a direct appeal is pending, district court does not lose jurisdiction while an appeal is pending from a prior collateral motion. Here, Barnes' direct appeal was resolved in 2002, and the appeal pending when district court heard instant motion was related to denial of relief under *McAdam*.

No abuse of discretion in district court's summary denial of Barnes' motion. Trial errors asserted in the motion should have been asserted in direct appeal, and no exceptional circumstances excused Barnes' failure to do so.

**STATUTE:** K.S.A. 22-3504, 60-207, -1507, -1507(c)

---

**STATE V. MERRILLS**

**SEDGWICK DISTRICT COURT – AFFIRMED**

**NO. 95,117 – JANUARY 12, 2007**

**FACTS:** Concurrent sentences imposed for a controlling 494-month term on Merrills' conviction for aggravated robbery and attempted second-degree murder. In unpublished opinion, Court of Appeals reversed and remanded pursuant to *Appendri* and *Gould* for resentencing on aggravated robbery conviction. At resentencing, court overruled Merrills' objection to consideration of juvenile adjudications as criminal history for purpose of enhancing sentence and imposed high presumptive sentence for aggravated robbery to run consecutively to unchanged second-degree murder sentence for a controlling 308-month sentence. Merrills appealed claiming (1) use of juvenile adjudications violated *Blakely v. Washington*, 542 U.S. 296 (2004), and (2) imposition of consecutive sentences on remand was presumptively vindictive.

(continued on next page)
ISSUES: (1) Juvenile adjudications and criminal history score and (2) resentencing vindictiveness

HELD: State v. Hitt, 273 Kan. 224 (2002), controls. Use of juvenile adjudications in determining criminal history score is appropriate notwithstanding fact that such adjudications are not routinely the result of jury trials.

Under facts, where combined sentences imposed after remand for resentencing were less than original sentences, fact that the two sentences were run consecutively the second time as opposed to concurrently the first time does not show vindictiveness on part of sentencing court.

STATUTES: None

STATE V. ROSS

HARVEY DISTRICT COURT – REVERSED

NO. 94,503 – JANUARY 19, 2007

FACTS: Officer pulled over Ross for crossing over the solid white fog line. Once stopped, Ross was arrested for driving on expired license, and search of his car yielded evidence of drugs. Ross convicted of possession of cocaine; possession of drug paraphernalia; driving with canceled, revoked, or suspended license; and failing to maintain a single lane. Ross appealed from district court’s determination that stop of car was justified by reasonable suspicion that Ross had violated K.S.A. 8-1522(a).

ISSUE: Reasonable suspicion for traffic stop

HELD: K.S.A. 8-1522(a) requires vehicle to be driven within a single lane as nearly as practicable unless driver has ascertained that movement from the lane can be safely made. “As nearly as practicable” connotes something less than absolute, thus failure to maintain a single lane does not necessarily violate K.S.A. 8-1522(a). In articulating reasonable suspicion to justify traffic stop for violating K.S.A. 8-1522(a), totality of circumstances must make it appear to officer that not only did defendant’s vehicle move from lane of travel, but that it was not safe to do so. Under facts, brief crossing of fog line a single time was insufficient to establish reasonable suspicion for stopping vehicle. Conviction for violating K.S.A. 8-1522(a) is reversed. All other convictions also reversed, as evidence supporting these convictions was obtained as a result of the traffic stop.

STATUTE: K.S.A. 8-1522, -1522(a), -1567, 22-2402

STATE V. RUIZ-REYES

RENO DISTRICT COURT – REVERSED AND REMANDED

NO. 95,056 – JANUARY 12, 2007

FACTS: Ruiz-Reyes arrested in 2000 on various Reno County drug charges, including possession of cocaine with intent to sell. That case was indefinitely continued for resolution of charges in other counties. Based on his 2004 conviction in Ford County, Reno County amended its outstanding charge of possession of cocaine with intent to sell from a severity level 3 felony to a severity level 2 felony. District court denied Ruiz-Reyes’ objection to the enhanced classification. Ruiz-Reyes appealed.

ISSUE: Crime severity level enhancement

HELD: Based upon plain language of K.S.A. 65- 4161(b), severity level of a defendant’s instant offense may not be enhanced based upon a prior conviction that did not occur until after commission of the instant offense. State v. Bandy, 25 Kan. App. 2d 696 (1998), rev. denied 266 Kan. 1199 (1999), is distinguished.

STATUTES: K.S.A. 21-4710(a), 65-4160, -4160(c), -4161, -4161(b), -4161(c); K.S.A. 1997 Supp. 8-262(a)(1); and K.S.A. 1980 Supp. 21-4504(2)

Access to Justice Grant Applicants Sought

The Access to Justice Fund is administered by the Kansas Supreme Court and is intended as a source of grant funds for the operating expenses of programs that provide access for persons who would otherwise be unable to gain access to the Kansas civil justice system. Its purpose is to support programs that provide persons, who otherwise may not be able to afford such services, with increased access to legal assistance for pro se litigation, legal counsel for civil and domestic matters, as well as other legal advice and dispute resolution services.

Applications for grant funds will be due May 31, 2007. Grant application packets may be requested from the Office of Judicial Administration, 301 W. 10th St., Rm. 337, Topeka, KS 66612. Please direct telephone inquiries to Art Thompson at (785) 291-3748.

Annual John F. Kuether Memorial Golf Scramble

Sponsored by the Washburn Student Bar Association

Saturday, March 31, 2007

Lake Shawnee Golf Course, Topeka, Kansas

Continental Breakfast — 8 a.m. at the golf course
Shotgun Start — 9 a.m.
Lunch immediately following the Scramble

Entry Fee — $65 per person
(Includes breakfast, green fees, cart, and lunch)

Net proceeds go to the John F. Kuether Memorial Endowed Scholarship Fund, which provides scholarships to law students at Washburn University School of Law.

For additional information or to register, contact Kevin O’Keefe by e-mail at kevin.okeefe@washburn.edu or by phone at (785) 817-4929.
Appellate Practice Reminders . . .
From the Appellate Court Clerk's Office

Assignment of Cases to a General or Summary Calendar

Both the Supreme Court and the Court of Appeals have a General Calendar of cases assigned for oral argument and a Summary Calendar of cases which are not argued. See Supreme Court Rules 7.01(c) and 7.02(f). All cases in both appellate courts are subject to a screening process, that results in tentative assignment to the General Calendar or the Summary Calendar. Those cases designated for the Summary Calendar are ones in which argument is not deemed helpful to the court or essential to a fair hearing. The parties do have an opportunity to contest assignment to the Summary Calendar by filing and serving a motion for oral argument within 15 days after notice of calendaring has been mailed by the appellate clerk. Those motions are considered by the respective appellate courts.

In practice, the Supreme Court designates few cases for the Summary Calendar because most cases on the Supreme Court’s docket involve new issues of law. The Court of Appeals, however, actively uses the Summary Calendar to manage its larger annual caseload. In 2006 the Court of Appeals scheduled 1,230 cases for decision: 506 cases on its General Calendar for oral argument and 724 cases on the Summary Calendar. The 58 percent of cases assigned to the Summary Calendar would be a typical year.

There is a common misconception that cases assigned to the Court of Appeals’ Summary Calendar are easy cases. Some admittedly are, but many complex cases controlled by established law are also designated for the Summary Calendar. The Court of Appeals’ ultimate disposition of the case is certainly not forecast by designation to the Summary Calendar. The court’s internal research procedure does not change for the Summary Calendar. All cases are assigned to the court’s research staff for review of the record and preparation of an impartial bench memo to assist the assigned panel in making its decision. This research procedure is the same for both the General Calendar and the Summary Calendar.

For questions about these or other appellate court rules and practices, call the clerk’s office and ask to speak with Carol Green, Clerk of the Appellate Courts, at (785) 296-3229.
## CLASSIFIED ADVERTISEMENTS

### ATTORNEY SERVICES


### FOR SALE

**THE LAWBOOK EXCHANGE LTD.** Buys, sells, and appraises all major lawbook sets. Also antiquarian, scholarly. Reprints of legal classics. Catalogues issued in print and online. MasterCard, Visa, and AmEx. (800) 422-6686; fax: (732) 382-1887; [Send Email](mailto:www.lawbookexchange.com).

### REFERRALS

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

### OFFICE SPACE

**LOOKING FOR A CHANGE?** If you are presently in a firm or a sole practitioner and seeking a new environment, I have class A space at One Hallbrook Place next to the Hallbrook Country Club. Many attorneys are afraid to venture out alone because of the extraordinary start-up costs and overhead. I am in a position to be very flexible to assist you in starting a new direction in your career. I have one available office space left and it is a large window office (16 x 18). The office suite has two conference rooms, a kitchen, and all of the people are friendly. If you are interested, give me a call. Bryson R. Cloon, (913) 661-9600.

**LEAWOOD OFFICE SPACE.** Leawood attorney looking to share brand new, 1st floor space, one block off of 115th and Roe. This is a premium location with large offices and lots of windows. Includes conference room, copier/fax, and kitchen at an affordable price. Call Paul at Hentzen Law Firm, (913) 451-7900.

**SHARED OFFICES:** Windmill Village, Bldg. 2, 7111 W. 98th Terrace, #140, Overland Park, KS 66212. Nice office suites available now, 12 x 14 or 12 x 16, support staff space also available, includes use of large conference room, receptionist, incoming mail, package handling, kitchen area, janitorial services, and convenient unallocated parking. Nitsoko telephone system and Lamier copier available if needed. Lots of legal reference material available as well. Call Sherry at (913) 385-7990 or e-mail at Sherry@tomesdvorak.com.

**EXECUTIVE OFFICE SUITES** available in Leawood. Up to 12 full-service executive offices will be available in Leawood within one block of College and Nall in a 6,000 square foot office building. Each tenant will be charged a monthly base rent for the tenant’s office. The offices should be available on or about March 15, 2007. Call Glen Beal at (816) 524-6778 for more information.

### FOR RENT

**HAVE A NEED FOR A LUXURIOUS** conference room (14.5 x 19) for a client meeting or who knows what. Comes complete with local telephone service. Rent it for only $50 per use. Call Sherry at (913) 385-7990 or e-mail at Sherry@tomesdvorak.com.

### REAL ESTATE


### POSITIONS AVAILABLE

**LARGE WICHITA LAW FIRM** seeks paralegal with minimum two years’ real estate and/or commercial development paralegal experience. Must have excellent customer service and technical skills; intermediate-level knowledge of Microsoft Word, Excel, and Outlook; and strong analytical skills. Must also be willing to file and proofread legal documents. Contact Brandon L. Rice at (316) 262-9292 x100 or at brandon.rice@snellingwichita.com. All inquiries will be kept confidential.

**SEDGWICK COUNTY COUNSELOR’S OFFICE.** Duties include representation of county in civil matters and prosecution of county code violations. Candidate must work effectively with elected officials, administrative officials, employees, and public. Experience preferred. Salary range $53,540 – $78,178 depending on qualifications. Applications online at [Send Email](mailto:www.sedgwickcounty.org).

---

**KBA Annual Meeting**

**June 7-9, 2007**

**Wichita, Kansas**
Lost in the shuffle?

Set yourself apart from the others by advertising in the Kansas Legal Directory. Among all the legal directories on the market, the Blue Book stands out, truly the most user friendly hand held device on your bookshelf.

Stand out for a change!

- Smaller size & distinctive blue cover make our book instantly recognizable
- Each volume covers a single state, and is sold individually. Purchase only the ones that you need.
- Biographical listings appear in single-column page format, with larger type to make them easier to read.
- Color coded pages and tab dividers make it easier to move between sections

The Kansas Legal Directory

Official Directory of the Kansas Bar Association.

Legal Directories Publishing Company

Your Blue Book of Attorneys
9111 Garland Road
P.O. Box 189000
Dallas, TX 75218
800 447 5375
Fax 214 324 9414
www.legaldirectories.com
With Casemaker, it’s a whole new ballgame.

“I have found Casemaker extremely easy to use, right from the start, with the tutorial. I absolutely love this service and use it daily, as research is the whole of what I do. Thanks for introducing such a great product.”

Andrea “Arti” Rolfingsmeier, Kansas City, Kan.