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2017–18
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2018 KBA Awards Nomination

- Phil Lewis Medal of Distinction
- Distinguished Service
- Professionalism
- Pillars of the Community
- Distinguished Government Service
- Courageous Attorney
- Outstanding Young Lawyer
- Diversity
- Outstanding Service
- Pro Bono

Learn more about the awards online at http://www.ksbar.org/awards
2018 Awards of the KBA

The KBA Awards Committee is seeking nominations for award recipients for the 2018 KBA Awards. These awards will be presented in June at the KBA Annual Meeting in Overland Park. Below is an explanation of each award and a nomination form for completion. The Awards Committee, chaired by Sara Beezley, of Girard, appreciates your help in bringing worthy nominees from throughout the state of Kansas to the committee’s attention! Deadline for nominations is Friday, March 2.

Phil Lewis Medal of Distinction

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

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

Distinguished Service Award

This award recognizes an individual for continuous long-standing service on behalf of the legal profession or the public, rather than the successful accomplishment of a single task or service.

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

Professionalism Award

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

Pillars of the Community Award

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

• the variety/diversity of law practiced
• impact/high profile law work
• general contributions to the law and legal profession
• specific contributions to the legal profession
• mentoring and support for legal education
• contributions to the State/community
• notable civic activities
• periods of elected or appointed public/government service
• military service
• examples of volunteerism and charitable activity
• reputation in the organized bar, State and community

This award may be but need not be given every year. More than one recipient can receive the award in a one year.
Awards of the Kansas Bar Association (Con’t.)

**Distinguished Government Service Award**

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

**Courageous Attorney Award**

The KBA created a new award in 2000 to recognize a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession. Examples of recipients of this type of award in other jurisdictions include a small town lawyer who defended a politically unpopular defendant and lost most of his livelihood for the next 20 years, an African-American criminal defense attorney who defended two members of the white supremacist movement, and a small town judge who lost his position because he refused the town council’s request to meet monetary quotas on traffic offenses. This award will be given only in those years when it is determined that there is a worthy recipient.

**Outstanding Young Lawyer**

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

**Diversity Award**

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

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

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

**Outstanding Service Award(s)**

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

- No more than six Outstanding Service Awards may be given in any one year.
- Recipients may be lawyers, law firms, judges, nonlawyers, groups of individuals, or organizations.
Awards of the Kansas Bar Association (Con’t.)

Outstanding Service Awards may recognize:

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

Pro Bono Award(s)

This award recognizes a lawyer or law firm for the delivery of direct legal services, free of charge, to the poor or, in appropriate instances, to charitable organizations whose primary purpose is to provide other services to the poor.

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

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

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

Nominee’s Name _______________________________________________________________

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

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

______________________________________________________________________________
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______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

Nominator’s Name _____________________________________________________________
Address ______________________________________________________________________
Phone _______________________________ E-mail____________________________________

Return Nomination Form by Friday, March 2, 2018, to:

KBA Awards Committee
Attn: Deana Mead
1200 SW Harrison St.
Topeka, KS 66612-1806
The legal profession is seldom portrayed as a business. It is, instead, often romanticized as some sort of noble pursuit for truth and justice divested from the reality that the practice of law is a means of making a living, a business enterprise, subject to the same market pressures and common concerns as any other business. Courtroom dramas as depicted on the big and small screen seldom spend any time on the practical side of the profession as I am sure audience surveys would suggest that the daily cash flow concerns of a lawyer would garner little, if any, interest from the general public. The thrill of hiring staff, purchasing supplies, leasing space and other pleasures associated with running a business seldom form the basis for someone aspiring to pursue a career as a lawyer.

Yet, the practical side of the business of law is critical, not only to lawyers’ sustained ability to provide for themselves, but also to be able to effectively and adequately provide representation for their clients. The pressures of a failing or unstable business side to a law practice can cause more problems for a lawyer, whether financial, emotional, ethical or otherwise, than any other source. Nor is this business side concern limited to those lawyers running solo or small law firms. Lack of understanding of the business side of the profession can also cause problems for lawyers who are employed by governmental entities, businesses and large law firms. Adding to this problem is the fact that lawyers seldom come into the profession with a practical background in how to run or operate a business. A lawyer’s business operations are frequently run by
trial and error making it difficult to succeed and causing unnecessary anxiety and stress for the practicing lawyer.

Running a business or managing a career is hard work. It is easy to get overwhelmed when you are worrying about legal issues involved in the representation of a client’s case while at the same time trying to sort out issues concerning an office lease. Lawyers as business owners have to decide mundane matters which may have major consequences for their practice—whether and how much insurance to maintain, where to locate, how to advertise, whether and how many employees to hire, what equipment or technology to acquire and whether such equipment should be leased or owned. Even lawyers who are not business owners face business decisions which affect their careers such as how to evaluate job offers, how to market themselves to clients (internal or external) and how to manage and coordinate benefits and salary.

Like many other professional associations, the KBA provides services and resources for lawyers to assist them in learning how to run and operate successful businesses. Most of the services provided by the KBA are housed in Law Office Management Practice Services (“LOMAP”). LOMAP can provide KBA members with confidential and free law practice management help and resources. This includes everything from answering questions, providing consultations, offering professional development CLE, authoring a regular blog, developing forms and lending library resources to evaluating technology and vendors. LOMAP is designed to allow KBA members to access vast amounts of information available to help them run and manage the business side of their practice in a manner that is useful and not intimidating. Many of these services can be easily accessed through the KBA’s website or by telephone.

A key component of assisting KBA members with information necessary to effectively operate their law practices is the recently published 2017 Desktop Reference on the Economics of Law Practice in Kansas. This reference, which was last published in 2012, provides updated information on a multitude of factors relevant to the business of practicing law. The Reference was developed through a survey and covers topics such as billing rates, taxable income for Kansas lawyers and other aspects of law office economics. Hopefully, this resource will provide valuable information to assist lawyers with managing their firms and careers.

It is important for the health of our profession that each lawyer have and develop a successful legal career and business. The KBA as an organization is designed to assist lawyers in their professional development which includes providing guidance and resources to help attorneys in all aspects of the business of law. I hope each of you take advantage of these and other benefits provided by the KBA so you can enjoy successful and rewarding careers.

About the Author

**Gregory P. Goheen** is a shareholder at McAnany, Van Cleave & Phillips, P.A., where he has practiced since graduating from Southern Methodist University’s Dedman School of Law in 1993. He received his bachelor’s degree in 1990 from the University of Kansas. Greg is past President of the Kansas Association of School Attorneys and Fellow and past Trustee of the Kansas Bar Foundation.
I know you’re busy, so I’ll start big and go from there.
Be a mentor. Please.

Be a mentee. Because you must. If you stop learning, you’ll soon be obsolete professionally.

Almost all attorneys—even really, really good ones—can benefit by having someone with whom to consult.

Really, really good attorneys aren’t afraid to bounce ideas off other lawyers and ask if they’ve missed something. They know their good reputations will not suffer if others know they don’t know everything.

Lawyers who are not really, really good, at least not yet, may not know what they should “bounce off,” and might not have a lawyer friend who can answer the questions they do ask. They might be afraid that they’ll look dumb.

That is what I’ve seen sometimes, in my role as judge, when an attorney is faced with a problem or issue with which they are unfamiliar. The attorney will ask me for “guidance.” Maybe it’s because the lawyer thinks I should know, and it’s safer to ask me. I know the individual needs help and wants to do it right. But I can’t be co-counsel. I can’t give the “guidance” that attorney needs. I can’t be the one who advises the attorney on strategy or the law because I’m the judge, and I have to remain neutral. We all know that. And when I try to respectfully point that out to the attorney on the phone, I usually hear something like “Oh, of course. Thank you.”

But then what? Does the attorney take my advice and reach out? Or do they just plow ahead, doing their “best”?

I absolutely love to preside over hearings when each party is represented by a good lawyer. If it’s a trial, I usually get to just sit back and watch the action. Watch and learn. It’s exhilarating. I’m happy to confirm that I see a lot of good lawyers in action. I hope people believe that Judge Evelyn Wilson is a lawyers’ judge. I try to be.

Most attorneys are well-intentioned when they ask me for guidance. They don’t want to get into trouble or incur the old judge’s wrath by doing the wrong thing. I get that. But why isn’t their first inclination to hit the books or call a more experienced and respected lawyer to help them out? (Yeah, I can usually tell if they’ve looked it up in the statutes or case law, or called another lawyer.)

It’s going to take the effort of experienced, good attorneys to help solve this ongoing problem. Young, or inexperienced attorneys, need mentors—even if they don’t know it.

Greg Lee is the guy to call for a mentor in Topeka. His phone number is: 785-357-6311. He tells me that experienced attorneys are very willing to help. We have lots of “lawyers’ lawyers” in Kansas.

Just take that first step—reach out for assistance; reach out to assist.

On a final note. Different topic.

Congratulations to all of our Kansas Bar Foundation scholarship winners. As a member of the Scholarship Committee, it was my pleasure to learn about the applicants. They are all quite remarkable, and the committee wished we could give money to them all. I know for sure they will all succeed. They already have.

About the Author

Hon. Evelyn Z. Wilson is Chief Judge of Kansas’ Third Judicial District (Shawnee County). Before taking the bench in 2004, she practiced law for 19 years—seven years in northwest Kansas and 12 years in Topeka. Judge Wilson graduated from Bethany College and Washburn Law School.
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Confidential Help is There for Struggling Lawyers
by Clayton Kerbs

In the previous edition of the Journal, I wrote about the quality programming at the annual gathering of the Southwest Kansas Bar Association. At the 2017 meeting, Professor Janet Jackson of Washburn University School of Law presented on work-life balance, stress and substance abuse. For me, it was a very informative and convincing presentation. As President of the Young Lawyers Section, and a member of the YLS board for four years, I helped plan social and education events for young lawyers. Undoubtedly, most involve alcohol. Why is that? Why, as lawyers, is our first instinct to plan an event that involves alcohol being served?

This concept is fostered in law school as well. I remember several invitations to events that involved open tabs at Skinny’s. I understand it is an effort to lure law students into participating in something they probably should be participating in anyway, but are we instilling bad habits? Given the stresses of law school and law practice, shouldn’t we know better than to flood law students and young (and old) lawyers with free alcohol?

Numerous studies have examined the prevalence of alcohol use by law students and young lawyers, as well as the occurrence of depression. The numbers should be a wakeup call for us as a profession to confront the issue, to reach out to friends who are struggling, and to not let these common struggles become a “Scarlett Letter” when someone admits to having a problem and seeks help for the problem.

Law Students

In 2014, a survey of law students from fifteen law schools was conducted on the topics of substance abuse and mental health, and the results published in the Journal of Legal Education. The study was administered through a grant from the ABA Enterprise Fund, sponsored by the ABA Commission on Lawyer Assistance Programs, Law Student Division, Solo, Small Firm and General Practice Division, Young Lawyers Division and Commission on Disability Rights. Support was also provided by the Dave Nee Foundation.

Here are a few of the startling findings:

• Over 50% of law students surveyed had been drunk in the preceding thirty days
• 43% reported binge drinking at least once in the preceding two weeks
• 22% reported binge drinking two or more times in the preceding two weeks

A high percentage of law students drinking frequently may not be a surprise, but the more shocking statistics were in regards to those not seeking help for their unhealthy habits.
• Only 4% of those surveyed had ever spoken with a health professional about their alcohol use
• Over 60% of those surveyed admitted they did not seek professional help for fear of a negative effect on either bar admission or future employment

Lawyers

A joint study,1 released in early 2016 by the ABA Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation, examined substance abuse and mental health issues in lawyers. There was a large sample size of almost 13,000 practicing lawyers and the results, as you probably guessed, were concerning.
• 20% reported drinking levels consistent with problematic drinking; however, only 3% sought help
• 30% of young lawyers (those practicing less than ten years) reported problematic drinking habits
• 47% reported their drinking habit developed in the first fifteen years of practice
• 28% experience mild to high levels of depression and less than half sought help

Those not seeking help cited reasons such as concerns over confidentiality and negative impact on career advancement.

Anne McDonald, Executive Director of the Kansas Lawyer Assistance Program (KALAP), assures us that her organization serves both law students and lawyers. The assistance provided is 100% confidential, even in disciplinary proceedings. This assurance should remove a barrier for those needing help, but it clearly is not doing so on its own. We need to create a culture in our profession that encourages healthy habits and openness.

If you or a classmate or fellow attorney need help, KALAP can be reached at 785-368-8275.


About the Author

Clayton Kerbs currently practices in his hometown of Dodge City with his father, Glenn. Clayton’s practice consists of domestic and municipal law cases. He attended Creighton University and Washburn University School of Law. Prior to practicing law, Clayton worked for U.S. Senator Jerry Moran. Clayton is married to Leah; they have two sons, Porter and Chandler.
ckerbs@kerbslaw.com

NOTICE OF CONSIDERATION OF REAPPOINTMENT OF MAGISTRATE JUDGE AND INVITATION FOR PUBLIC COMMENT

The current term of the office of United States Magistrate Judge Kenneth G. Gale of Wichita, Kansas, is due to expire on August 1, 2018. The United States District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new eight year term.

The duties of a magistrate judge position include the following: (1) conduct of most preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) conduct of various pretrial matters and evidentiary proceedings on delegation from the judges of the district court; (4) and trial and disposition of civil cases upon consent of the litigants.

Comments from members of the bar and the public are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the court and should be directed to Timothy M. O’Brien, Clerk of Court, United States District Court, 259 Robert J. Dole U.S. Courthouse, 500 State Avenue, Kansas City, KS 66101. Comments must be received by 4:30 p.m., March 9, 2018.
Math and the Law:
A 2018 Journal Series

A Lawyer Who Works with Water Also Relies on Math
by Kenneth Titus

“If I were good at math, I would’ve been a dentist,” uttered a visiting professor teaching a first semester torts section to my law school class. Even after all the hours spent trying to figure out that statement, and all the jokes along the way, the question remains: do attorneys need to know math? Some attorneys enter law school with an engineering, science, or accounting background, but often it seems that they are drawn to specialties in tax law or intellectual property. How might those of us who are not mathematically inclined and who practice in other areas need to use math in our profession?

I have spent time working at the Kansas Department of Transportation, the Kansas Attorney General’s Office, and currently at the Kansas Department of Agriculture. In all of these roles, I have found myself surrounded by professionals who rely on math to accomplish their daily tasks, and as such, I have had to learn to speak their language. Engineers design roads and bridges and hydrologists measure water in the ground, in the river, and how it moves from point to point. It does not take long to figure out that when you are an attorney in an organization filled with engineers, planners, hydrologists, and scientists, it is important not only to learn as much as you can about your client’s craft, but to also learn how to communicate on a professional level with those folks who often are scientifically, not legally, minded.

Much of my current practice involves water law as I often work with the Division of Water Resources which acts according to the Kansas Water Appropriation Act.¹ The Division of Water resources is led by the Chief Engineer, and his duties are broad, requiring that he “control, conserve, regulate, allot and aid in the distribution of the water resources of the state for the benefits...of all its inhabitants....”² These duties manifest themselves in multiple ways, including granting new
water rights applications, approving changes to existing water rights, and bringing enforcement actions for overpumping and other violations of law. Further, impairment complaints can arise when someone with a newer, or junior, water right is preventing someone with an older, or senior, water right from using water that the senior water right is entitled to use. Another key duty comes in implementing tools contained in the Groundwater Management District Act to help preserve the life of groundwater sources such as the Ogallala Aquifer or to remedy streamflow impairments. Finally, there is substantial work related to the monitoring and enforcement of the four interstate water compacts that Kansas maintains with Colorado, Nebraska, and Oklahoma.

The pure amount of raw data involved in such water management can be intimidating at first, but it can be made less so if one learns the mathematical language and concepts used in the water world. For example, water is often measured in acre-feet, which is the volume of water required to cover an acre to the depth of one foot, or 43,560 cubic feet or 325,850 gallons. When dealing with surface water rights, the term cubic foot per second (cfs) is used and is a rate of withdrawal or release representing a volume of one cubic foot passing a given point during one second, which is equivalent to 448.83 gallons per minute or 86,400 cubic feet per day, or 1,983.5 acre-feet per day or 646,317 gallons per day. Municipalities usually think in gallons and farmers usually think in acre-feet or acre-inches, so it is important to be able to calculate and convert, as well as to conceptualize and communicate, all of these measurements.

Another common mathematical concept and term in law is “accounting.” Water is a basic commodity, and like any other commodity, it must be counted and tracked. This can result in complex accounting procedures that are especially prevalent in interstate water compacts. These models allow states to track the proper distribution of water among the various states and users as required by federal law. Understanding where the water is going and who is using it are critical to protecting the rights of downstream users, which is Kansas’ position in three of our four compacts. Being able to track water accurately and to understand the immense amount of detailed data that is produced is foundational information for annual compact meetings of the states, and can form the basis of litigation over water and potential damages. Conflicts can easily arise because states—including their respective attorneys—do not always agree on how to count and measure water.

Hydrologists also develop models of varying degrees of complexity which can simulate the effects of future withdrawals or be used to show the current effects of water use. Both the Republican River and Arkansas River Compacts use models to show how groundwater pumping affects streamflow. Models are also useful for intrastate purposes, such as to show how water tables are declining, whether an impairment exists, pumping effects on streamflow or the effect of potential changes on nearby water rights.

Legal practitioners in water quality will also find that many of the same skills are also required for their work. Along with some of the water quantity aspects I have described here, water quality requires precise measurements of various elements in the water as it is tracked at various points. There are numerous environmental laws and regulations in place to protect people and the environment, with each area of the law creating a special set of technical requirements.

Once an attorney is able to understand and communicate clearly with the client, there remains a need to convey this information to non-water professionals or the public in an understandable manner. Knowledge of water management and water law can vary greatly within the legal profession, much less the public, so knowing where to start a conversation is important. For example, technological advances have provided vast amounts of data to the average farmer, making them sophisticated irrigation operators. On the other hand, there may be many residents of towns and cities who have no idea where the water they use every day comes from. One of the responsibilities that falls onto the shoulders of an attorney in this, and other scientific-based fields, is making sure that the client, such as an engineer or hydrologist, is able to communicate his or her knowledge in an understandable way to people unfamiliar with water management.

As with any area of the law, being able to understand and communicate clearly with your clients is critical in water law, and one of the primary foundations for this is understanding the math involved in measuring, counting, tracking, predicting, and talking about the use of water. In this article, I have only brushed the surface of how water law intertwines with math, but the law, like many other fields, does not shy away from the topic—even though lawyers might.

1. K.S.A. 82a-701 et seq.
2. K.S.A. 82a-706.
3. K.S.A. 82a-1029 et seq.
4. K.S.A. 82a-519; 82a-520; 82a-528; and 82a-529.
5. See e.g., the Republican River Compact and the Arkansas River Compact.

About the Author

Kenneth Titus is Chief Legal Counsel at the Kansas Department of Agriculture where he advises the agency regarding water, animal health, and the various programs within the agency. He attended the University of Kansas School of Law and also received a Master of Arts in History from Kansas State University.
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The massive Consumer Electronics Show (CES) in Las Vegas is ongoing as I write this and promises an exciting 2018 for electronics and gadget shoppers. Some 4,000 vendors show up hawking their wares to almost 200,000 industry professionals from around the world. Big names like Samsung, Intel, LG and Sony appear in some of the same display halls as do tiny startups with nothing but a snappy video about their prototype. Prognosticators looking for the next big trend almost always get it wrong, but it is still fun reading the dispatches and trying to figure out what techies think or hope we consumers will want.

CES for Old People

At least one report coming from the tech site Gizmodo.com noted quite an interest in old people. That should be of interest to lawyers considering the continual aging of our profession. A few of the gadgets noted were:

- **e-Vone** – (e-vone.com) The French company has developed a line of custom shoes and sneakers with a host of embedded sensors. Accelerometers, gyroscopes, and pressure sensors can recognize when the wearer is struggling or has fallen while GPS and Bluetooth radios can connect to and alert emergency services and family. Anticipate $100-150 for the shoes and around $20/month for monitoring.

- **Hip’Air** – (hip-air.com) Replace your lame fanny pack from the ’90s with a hip belt with an integrated, automatically-deploying airbag. Sensors can recognize a fall happening and inflate the airbags within 0.08 seconds to cushion impact and prevent serious injury.

- **L’Oreal UV Sense** – (lorealusa.com) The cosmetic company continues to care about customers’ skin with a tiny 2mm by 9mm UV radiation sensor that sticks on a fingernail or sunglasses. The battery-free device communicates with apps to warn of exposure levels. Available in 2018 exclusively through dermatologists for about $40.

High-Tech Bathrooms

Some reports seem to suggest a disproportionate interest in electrifying and computerizing our bathrooms for some reason. Some of the highlights:

- **Toto Floatation Tub** – (toto-usa.com) The aim of this device is to make the user feel like they are floating weightlessly. Specially aimed jets combine with the buoyancy of water to lift you off the tub’s surfaces allowing a meditative experience—I guess. Just don’t spend too much time meditating on the $19,000 price tag.

- **Delta Alexa Faucet** – (deltafaucet.com) Alexa, the smart assistant from Amazon, can now control your tap. Pick a temperature and duration or amount of water and tell the faucet. It will turn on and deliver—hands-free.

- **Kohler Verdera Voice Lighted Mirror** – (us.kohler.com) In addition to managing your water faucets, Alexa can handle your lighted mirror adjusting brightness and all other Alexa functions. Pricing ranges from $800-1,300, depending on size.

- **Elmer Smart Shower** – Once again, Alexa finds herself managing your bathroom with integration into a shower system that provides full surround sound, temperature and...
other water control, and dispensing of essential oils. Tear out that old analog shower, and replace it with an always-listening, $3,000 model.

Kohler Numi Intelligent Toilet – (us.kohler.com) Yes. The toilet is Alexa enabled, too. This time, she apparently controls hands-free flushing, bidet, air drying, odor control as well as feet warmers, seat temperature, music, and lighting. The old-fashioned, remote-control model appears to be around $7,500 so expect a premium for bringing Alexa on-board.

Foldimate Laundry Folder – (foldimate.com) This simple robot does one thing—fold clothes. Insert an article of clothing into the top and collect it neatly folded from the bottom. The demonstration video indicates users will experience more sex, tea parties and football once freed from folding laundry – really! Just $980, but you will have to wait until 2019 for delivery.

Land and Air Travel

Autonomously driven, alternative fuel vehicles continue to fascinate CES attendees as well. Just imagine how useful windshield time could be if the vehicle drives itself.

Faraday FF91 – (ff.com) Faraday really wants to compete head-to-head with Tesla, and the FF91 is its entry into that battle. The FF91 is an SUV that can achieve 0-60 in 2.39 seconds, making it the fastest SUV on the market. No pricing yet, but they are sure they can ship in 2018.

Hyundai Nexo – (hyundaiusa.com) Hyundai heads a different direction focusing on the fuel source with one of the first consumer-ready hydrogen vehicles. The 120 kW engine is powered by hydrogen from three 700-bar tanks and a 1.56 kWh lithium-ion battery. The range is 350 miles with water as the only emission.

Volocopter – (volocopter.com) When autonomously driven, cars are not exciting enough; you need an autonomously driven passenger drone. This 15-rotor aircraft was pitched by Intel CEO, Brian Krzanich, during his keynote suggesting it to be a fun, safe ride just waiting for FAA approval.

ForwardX CX1 Suitcase – If autonomous cars and helicopters are too bold for you, then maybe an autonomous carry-on bag is more your speed. The regulation-size bag is fully motorized and can follow you through the busiest airport and conference hall at speeds of up to seven miles per hour. ■

About the Author

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

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I am mentally ill, and I want to be a lawyer. These aren’t disparate concepts.

But it doesn’t always feel that way.

I was diagnosed with Obsessive Compulsive Disorder (OCD) my junior year in high school. Before I was diagnosed and received treatment, I was an absolute mess. I didn’t sleep. I barely ate; I weighed under 90 pounds. I had panic attacks daily, and I had a fever or an infection almost every week. The doctors tested me for everything under the sun. At one point, a doctor looked at me and asked if what I was experiencing was “all in my head.”

Eventually, my parents pushed me to get psychiatric treatment. With the aid of medication, I have been able to alleviate my symptoms. My decision to go to law school was a scary one. While I thrive in high-stress environments, mental illness does, too. And law is anything but low-stress.

Individuals in the legal profession are prone to higher incidences of depression than the general population, and as many as one in four lawyers suffer from anxiety, social alienation, isolation, and depression.1 With higher incidences of depression, comes a higher rate of suicide. The National Institute for Safety and Health found that male lawyers age 20 to 64 are more than twice as likely to die from suicide than are men the same age in a different occupation.2

The high-stress, competitive environment of the legal profession is the perfect place for mental illness to flourish. And while our field has made strides in educating lawyers and future lawyers about mental health issues and ways to cope with the environment we work in, the profession is still not a place that is particularly friendly to people like me.

Bar applicants are often required to disclose information about their mental health, sometimes even whether they have been treated for mental health issues.3 To determine if I was
qualified to be a lawyer, some states would use the fact that I have a mental health diagnosis against me.

I could get into the long list of tics and odd personality traits I have, most of which stem from my OCD diagnosis. But that long list doesn’t interfere with my ability to do a good job. It doesn’t interfere with my professionalism or my intelligence.

In one job interview, the interviewer kept mentioning the importance of organization and detailed notes. I mentioned that I had OCD, so I was a big fan of organizing things. I still remember that long pause and the sinking feeling in my stomach. The interviewer asked if that would be a problem at work. If I would be uncomfortable doing things their way. I assured them that no, that would never be a problem. I left feeling like I misspoke.

I’ve always tried to be open about my mental illness. With openness comes discussion. And with discussion, I hope one day there will be more understanding about mental illness. But sometimes I doubt my openness in a field like law, where the slightest flaw can affect your future career.

Law is not unique in treating individuals with mental illness like something taboo. You can see this sort of thinking in our very own criminal justice system. Instead of putting money into mental health treatment or education, we, as a society, decided to incarcerate individuals with serious mental illness.

Serious mental illness affects men and women in jail at rates four to six times higher than the general population, according to a 2015 Vera Institute of Justice Report. And currently, there are 10 times more mentally ill people in jails and prisons than in state mental health institutions.

As mass incarceration becomes a more and more prominent topic, current and future lawyers will need to find solutions to this trend. They will need to face the taboo and have realistic and honest conversations about mental health and mental health treatment. Hopefully, amongst that group of criminal justice reformers and lawyers are people like me. People who are a little odd. Maybe those who do things a little differently. But people who understand what it means, what it feels like to have a mental illness. People who’ve experienced anxiety attacks and who know what it feels like when your mind feels like it has betrayed you.

I am mentally ill, and I want to be a lawyer. And I won’t let these be disparate concepts.

About the Author

Emily Brown is a third-year law student at the University of Kansas School of Law. She was diagnosed with Obsessive Compulsive Disorder in high school, and she openly discusses and writes about her mental illness to help lessen the stigma associated with being mentally ill. After she graduates, she hopes to become a prosecutor somewhere in the state of Kansas. In her free time, she yells about hockey and parents a 4-year-old German Shorthaired pointer.

2. Id.
3. Id.
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February 21, 2018 (Noon-1:00 PM)

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February 23, 2018 (Noon-12:50 PM)

Mesa CLE Webinar:
Lies, Damn Lies and Legal Marketing
February 28, 2018 (4:30-5:30 PM)
The Oxford comma: a punctuator fraught with controversy and contention. Opponents criticize its unnecessary linguistic obtrusiveness, while proponents glorify its ability to clarify and specify. This seemingly conceited diacritic has been giving lawyers, and society’s less pedantic, “pause” for years. For those unfamiliar, the Oxford comma, also known as the serial comma, is the punctuation device used between the penultimate item of a list and its coordinating conjunction. For example: “the first-year law student is doctrinaire, punctilious, and overly pompous.”

Recently, there has been a growing trend to eradicate the Oxford comma from use in modern grammar; both the Associated Press and the New York Times find it inconvenient and highbrow. Even the University of Oxford itself does not strictly adhere to its own comma. Waves of concern washed over the grammatical community when The University of Oxford Public Affairs Department disposed of its use in its official style guide. So aside from concerns of English correctness—and junior-high dogmatism—why should such a simple piece of grammatical minutia be cause for legal concern? Omitting the Oxford comma leaves room for syntactical ambiguity as to whether the final listed items should be interpreted jointly or separately. By way of example: “I would like to thank my lawyering professors, Justin Bieber and Snoop Dogg.” While it is self-evident that neither the Beebs nor Snoop is my lawyering professor, the law-trained reader must not conclude redundancy in statutory analysis. Because “shipment” and “distribution” must be interpreted separately, the rule against surplusage cuts against the defendant.

In a 29-page grammar lesson, the First Circuit held that because the statute’s plain meaning was ambiguous on its face, semantical discrepancies must be resolved using the canons of construction. Out of the canons argued, the court relied on the following two: the rule against surplusage, and the rule of parallel construction. The first instructs a court to “give independent meaning to each word in a statute and treat none as unnecessary.” Therefore, while “shipment” and “distribution” might appear synonymous to a layperson, the law-trained reader must not conclude redundancy in statutory analysis. Because “shipment” and “distribution” must be interpreted separately, the rule against surplusage cuts against the defendant.

In what might be the seminal class-action case for comma crusaders, milk-truck delivery drivers sued their employer for $10 million of overtime pay. Under Maine law, employees who work more than forty hours per week are entitled to time-and-a-half pay. But a statutory exemption precludes time-and-a-half pay for workers engaged in “[t]he canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of: (1) Agricultural produce; (2) Meat and fish products; and (3) Perishable foods.” Note the absence of punctuation between “shipment” and “or distribution.” This omission, whether intentional or inadvertent, creates two categories of employees: workers who package goods for distribution (favoring the plaintiffs) and workers who solely distribute the goods (favoring the defendant).
gerunds, and nouns are to be interpreted with other nouns, “shipment” belongs with “distribution” – not with the laundry list of gerunds. Therefore, the parallel interpretation cuts against the plaintiffs.

Adding to the confusion, Maine’s legislative drafting manual advises against using the serial comma altogether. So the First Circuit emerged from the grammatical thicket noting that all of these analyses were inconclusive. The court then applied a liberal construction analysis. Because public policy favors the health and adequate maintenance of hourly workers, “ambiguities in the state’s wage and hour laws must be construed liberally in order to accomplish their remedial purpose.” Based on this worker-friendly reading of the law, the court held for the plaintiffs, reversed summary judgment, and remanded the case for further proceedings.

In conclusion, the Kansas bar can glean two fundamental lessons from O’Connor. First and foremost, use the Oxford comma perpetually and without pause. Kansas legislative specification regarding comma usage is relatively thin; so is Kansas case law regarding the Oxford comma. It behooves all parties to clarify any shadow of ambiguity before problems arise. Second, and perhaps more important, the presence or absence of commas – be it Oxford or others – is wholly irrelevant to the essence of legal writing: conveying clear, unambiguous meaning through the written word. Let not any essential meaning hinge on a comma; when in doubt, add an unnecessary comma or another explanatory sentence. While commas might not literally save lives, they certainly mitigate legal risk and save us from experiencing unnecessarily expensive grammar lessons.

10. Id. § 664(3)(F).
11. O’Connor, 851 F.3d at 72.
12. Id. at 73.
13. Id. at 74 (quoting The Chicago Manual of Style § 5.212 (16th ed. 2010)).
15. 851 F.3d at 79.
16. Id. at 70.

About the Author

Harrison M. Rosenthal is a first-year J.D./Ph.D. student at the University of Kansas Schools of Law and Journalism, respectively. Aside from punctuational pedantry, Rosenthal’s research interests include First Amendment expression, press freedom, and communications law. Rosenthal has interned for the American Civil Liberties Union of Kansas and the Seventh Judicial District of Kansas, authoring reports on recidivism, court diversion programs, and the merits of judicial election.

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ON THE ROAD with... THE SUPREMES!
The Kansas Supreme Court has increased its public profile the past six years by conducting special sessions across the state.

To date, the Court has heard oral arguments in 14 communities, garnering considerable media coverage and drawing a far larger audience each time than typically seen in the justices’ courtroom in. During those trips across the state, justices also have met with thousands of students to talk about the judicial system and its role in government.

The Court’s venture outside the Kansas Judicial Center began in 2011. Justices marked the state’s 150th anniversary by returning to the state Capitol—its home from 1869 until 1978. There, justices heard oral arguments in the newly restored historic Supreme Court courtroom. The sesquicentennial celebration continued with special sessions in Salina, Greensburg, and Wichita.

"It was, to our knowledge, the first time in the Court’s history” that oral arguments had taken place outside Topeka, said Chief Justice Lawton Nuss.

"As we began to hold court in Kansas communities, we also began to refine our approach,” Nuss said. "Among other things, we started to hold oral arguments on college campuses so those students could easily attend.”

Then in 2015, at Fort Hays State University in Hays, Kan., the Court held its first evening session in an effort to reach even more members of the public. Nearly 700 people arrived to watch the Court in session. Each special session’s set of oral arguments since then has been at night.

"And about that time, we decided the justices would travel to surrounding schools during the afternoon,” Nuss said. "So our approach has evolved since January 2011.”
For the school visits, justices partner with local judges to talk to students about the court system in Kansas and what it takes to become a lawyer or a judge. One justice even leads students in a re-enactment of a Supreme Court case.

The Kansas Bar Association partners with the Court by providing two publications to give to students when the justices visit schools: "For the Record: A Guide to Your Rights and Responsibilities as a Young Adult" and "On Your Own: A Guide to Your Legal Rights and Responsibilities as an Adult."

Jamie Dawson, the head government teacher at Emporia High School, said the Court’s October 2017 visit to his city gave students a valuable lesson.

"The session itself was one that we used for all of our seniors and advanced students to see how the courts operate," Dawson said. "Typically, my kids are familiar with what they have seen on television shows, but they have no true idea about the appeal process and how arguments work. These traveling sessions are the best way to actually get students to see these cases and how the courts work."

Emporia High was one of seven area schools that hosted visits from a Supreme Court justice and an area judge in early October 2017. Justices and judges also visited Northern Heights High School in Allen, Chase County Junior-Senior High School in Cottonwood Falls, Hartford Junior-Senior High School in Hartford, Olpe Junior-Senior High School in Olpe, and Emporia State University. Students from Flint Hills Technical College in Emporia joined the Emporia State visit. Altogether, about 700 students participated.

Not only have the school visits been a successful outreach to students, Nuss said, but they have helped draw adults to the evening oral arguments.

"Many of those students like the afternoon experience so much that they also attend the evening oral arguments—often bringing their parents," Nuss said.

Dr. Mark Tremaine, an attorney who leads the Sterling College criminal justice program, said the special sessions are a valuable teaching resource. Since the traveling docket program began, Tremaine has taken student groups to watch oral arguments in Hutchinson, Winfield and Emporia.

"I prep them beforehand, so they see how the oral arguments work—that they’re not going to see a trial. Typically, afterward, they have an opinion on which attorney did better, which one presented better. And afterward, they get to visit with the justices. It’s been a really good experience for our students," he said.

About three-fourths of the criminal justice majors at Sterling plan careers in law enforcement, Tremaine said, while the remainder plan to attend law school.

Dawson, of Emporia High, said his students enjoyed the visit to their school by Justice Dan Biles and Lyon County District Judge Jeffry Larson and then were able to watch the Supreme Court justices at work that evening at Emporia State University.

"The ones who attended the evening session thought it was very interesting to hear the arguments being made by the different groups," Dawson said. "When we explain these things in class, often the students think they are going to be dry discussions and arguments, but most of them agreed, after watching it live, that it was extremely interesting and even kind of exciting to think about how the justices will rule."

"When we talked about it afterward, back in class, there were so many different ideas and takes on how they thought the justices should rule, and we had great discussion about what can and cannot be done by law," Dawson said.

In her visits to local schools, Justice Carol Beier uses an actual court case to draw students into the workings of the court. She, a local judge, and the students act out and vote on a U.S. Supreme Court case, New Jersey v. T.L.O., which deals with the search of a student’s purse at school and the vice principal’s discovery of marijuana.

"My colleagues and I always have a lot of fun during our school presentations," Beier said. "It is fascinating to hear the Fourth Amendment arguments the participants come up with on behalf of the student and the State, and the ultimate vote is usually split, just as it was in the original case. I hope the exercise gives the students a feel for the complexity of our jobs as justices."

The traveling court sessions have been a success on all fronts, said Nuss.

"We continue to receive great feedback from the communities where we hold oral arguments. And we receive great feedback from the students, faculty, and staff from the many schools we visit in the afternoons," he said.

The Court anticipates scheduling twice-yearly visits to Kansas communities for the foreseeable future. The dates and locations are announced about two months in advance. The special sessions, like the Court’s regular sessions in Topeka, can be watched live online at www.kscourts.org.

About the Author

Doug Weller, a communications specialist for the Kansas Judicial Branch, is a longtime Kansas journalist. He was a reporter and editor at The Pratt Tribune; The Hays Daily News; the Salina Journal; and The Register, the newspaper of the Catholic Diocese of Salina; and was design director of the short-lived B Magazine based in Lawrence. He earned a bachelor’s degree in journalism from the University of Northern Colorado. He and his wife live in Lawrence.
Bob,

I campaigned for you in 1968 with my law partner Wint Winter. You later signed my application to be admitted to the U.S. Supreme Court bar.

Congrats on the award. You deserve it most certainly. We are in great need of more statesmen and women, like you, in government today. We have lost the capacity for civil discourse.

God bless you.
Robert "Bob" Green
Ottawa Ks
Death is a thorny issue in the workplace. What works for one person may not work for another. In some ways, grief responses are totally diverse in that each person experiences grief differently. On the other hand, it is useful to examine grief through the lenses of ethnicity, gender, and age to better tailor a support system for colleagues.

**Ethnicity**

Grieving processes vary widely depending on the culture, but most practices relate to a spectrum of explicit and implicit support. Explicit support is assistance typically asked for by the bereaved. The help is framed as being specifically because of the loss. Friends and family will ask the bereaved if they need help, but the onus is on the bereaved to ask for specific assistance. One explicit support culture is Irish-American Catholics. Families may organize large wakes with food, tears, and stories about the deceased. Implicit support is inclusion in communal networks without discussing loss. This style is prevalent in Asian cultures which tend to avoid outward expressions of grief, but enjoy considerable implicit support. Towards the middle are many Islamic cultures which permit “weeping softly” and limits outward grieving to three days. The best advice is to take the time to learn about their culture, and identify which support system is their norm. This is also helpful when interpreting coworker responses to your own grief such as if an Asian American does not talk to you about your loss, but extends implicit support.

**Gender**

As a rule, the differences between the grieving processes of men and women is somewhat analogous to a severe romantic breakup. Women tend to experience more acute grief symptoms in the short term than their male counterparts. However, men take more time to process a severe loss and are more likely to suffer physical ailments and suicidal depression. Employers should consider that women tend to need more support in the early stages of grief, but they adapt and heal sooner whereas men may need a much more proactive approach over a longer period.

**Age**

There are three main age groups to consider. In Young Adulthood (25-35), most people solidify their sense of self. As such, grieving young adults may struggle with personal identity and severe loneliness. Coworkers should lean toward social interaction to help. In contrast, work tends to be a haven...
for Middle Adults (35-60) because many cope by “keeping busy.” It is not unusual for them to initiate projects with a single-minded focus. However, they also tend to self-isolate and have less patience for small inconveniences. Finally, Older Adults (60+) tend to see grief as a natural part of life, but are most likely to suffer physical ailments. Coworkers should avoid “disenfranchising” them of their grief by assuming they are better off emotionally than they are. Grief is a balancing act, the older you are, the more experience you have coping with loss, but you are also less resilient. The younger you are, you have less experience, but you are more resilient.

What can we do?

Amidst the varied cultural responses to grief, there are some steps coworkers and supervisors can take that would help most of them. In Sheryl Sandberg’s book, Option B, she writes about her Platinum Rule, “Treat others as they want to be treated.” Let the bereaved grieve at their own pace and if they want to work—let them. Many grieving people find the structure of work a helpful coping mechanism, but they feel overwhelmed or inadequate due to their emotional vulnerability. That is part of why many bereaved employees lose their jobs within a year of a death of an immediate family member. A strong support system at work can be the difference between a lawyer who stays and a lawyer who leaves.

Our default response to learning about a coworker’s loss is empathy. However, the cardinal rule of supporting the bereaved at work is that empathy is nice, encouragement is better. For example, after a meeting, tell bereaved colleagues that they brought up a good point, and you are glad they were there. One study has shown that this type of material support is especially effective when it comes from supervisors, likely because they are ones normally responsible for giving feedback. The same study indicated that the best way peers can help is by including the bereaved in social events and encouraging them to attend. People tend to distance themselves from the bereaved out of a desire not to bother them, but this behavior leads to compound loss or the loss of their colleague’s companionship.

Sir Arthur Conan Doyle once had his character Sherlock Holmes say, “The best antidote to sorrow is work, my dear Watson.” Granted in the story, the detective is using the phrase to cajole his old friend into joining him for a murder investigation, but it still speaks to the power of work—and a sensitive coworker—in healing from trauma.

2. Id. at 8.
6. Id. at 250.
9. Sandberg at 70.
10. Leger at 47.
11. Id. at 50.

About the Author

Diana Stanley is a 1L who just finished her first semester at KU Law. She is a member of the St. Thomas Moore Society and Women in Law.

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- pick up in person

Records Requested (be specific)

I will not use requested information for commercial purposes in violation of K.S.A. 45-230. (See page two)

Signature

Date (mm/dd/yy)

Deliver the completed form to the appropriate records custodian. Contact information for judicial branch record custodians may be found on the Kansas judicial branch website at www.kscourts.org.
The Kansas Open Records Act (KORA) imposes a duty on the state, its agencies and local government to make public records available unless a disclosure exception applies. This article will serve as a primer for public agency attorneys, private attorneys seeking access to records on behalf of their clients, and for seasoned KORA attorneys, an update on recent cases and legislative changes. For the genesis and history of this thirty-four year old law, the author recommends Theresa Schwartz's seminal Journal article.

General

The Kansas appellate courts have been unwavering in applying a liberal construction to the legislature's edict that public records are generally open for inspection. Disclosure exceptions are always narrowly interpreted and the burden of proving an exception is on the agency. The availability of records from other sources never excuses production. However, KORA does not require public agencies to create records or compile information.

What is a public record

KORA identifies what is and what is not a public record. A “public record” is “any recorded information, regardless of form, characteristics or location, which is made, maintained or kept by or is in the possession of: (1) any public agency; and (2) any officer or employee of a public agency pursuant to the officer’s or employee’s official duties and which is related to the functions, activities, programs or operations of any public agency.” This definition captures not only paper records, but also computer data, including emails. It also includes court records and records provided to a public agency by a third party.
What is a public agency

Similar to the definition of a public record, KORA identifies what is and what is not a public agency. A “public agency” is: (1) “the state or any political or taxing subdivision of the state”17 or any office, agency or instrumentality; 18 and (2) any other entity receiving or expending and supported in whole or in part by [public funds].”19

What is not a public agency

A “public agency” does not include: (1) “any entity solely by reason of payment from public funds for property, goods or services,”20 and (2) judges at the municipal, district court and appellate levels.

The affirmative definition of a “public agency” (i.e. state and local government) is more easily understood than the ambiguous provision excluding entities receiving public funds. The Kansas Attorney General has issued several opinions on the subject of when a private entity falls within KORA’s grasp—the conclusions of which vary depending on the facts but generally turn upon (1) the extent of the public funding; (2) whether the funds are for services traditionally provided by government; and (3) whether the entity was created by a governmental entity or statute.21

The most recent case exploring this conundrum is State v. Great Plains of Kiowa Cty., Inc.22 where a panel of the Kansas Court of Appeals concluded that financial records held by a private entity operating a county hospital are public records. Great Plains of Kiowa County (GPKC), a non-profit company established solely to operate the Kiowa County Memorial Hospital, leased the hospital from the hospital board of trustees. GPKC’s operation was funded, in part, by a county mill levy that provided about 20% of GPKC’s revenue—the rest being provided by federal grants and patient billings. When the county commissioners requested copies of vouchers for payment of professional and management fees and documents related to executive salaries, GPKC demurred on the basis that it was not a ‘public agency’ simply by virtue of its having received county funds, citing K.S.A. 45-217(f) (2)(A) ‘public agency’ not an ‘entity solely by reason of payment from public funds for property, goods or services of such entity.’

In an action filed by the county to enforce KORA,23 the district court concluded that the exception did not apply because it is limited only to vendors and not entities providing services directly to the public. In addition to ordering disclosure, the court levied the maximum civil penalty allowed by law—$500.24

A panel of the Kansas Court of Appeals—clearly irked by the hospital board of trustees’ failure to fulfill its statutory requirements to keep financial records open for public inspection25—concurred with the district court and held that GPKC’s operating records are public records. The court’s holding was based upon factors considered by Colorado courts when interpreting Colorado’s Open Records Act which served as a template for KORA.

The Colorado courts focus on a public agency’s involvement with the private entity by weighing the following factors: (1) the level of public funding; (2) whether there has been a commingling of funds; (3) whether the activity was conducted on publicly owned property; (4) whether the services were an integral part of the public agency’s decision-making process; (5) whether the private entity was performing a governmental function or a function which the public agency otherwise could perform; (6) the extent of the public agency’s involvement or control over the private entity; (7) whether the private entity was created by the public agency; (8) whether the public agency has a substantial financial interest in the private entity; and (9) for whose benefit the private entity was functioning.26

Key to the Kansas Court of Appeal’s decision, in addition to the funding, was that GPKC operated a publicly owned hospital and provided services directly to the public.

“GPKC has only one function – to operate the Hospital on behalf of the [hospital board]. As far as the record shows GPKC provides no services to any other entity, public or private. The [hospital board] cannot hide its records by delegating the operations to GPKC and violate its statutory duty to maintain adequate financial records pertaining to the operations of the County-created hospital. By assuming the role as the sole operator of the hospital on behalf of the [hospital board], GPKC’s operating records are deemed to be public records.”27

As of this writing, the decision is under review by the Kansas Supreme Court28 whose opinion will, hopefully, shed light on the circumstances under which KORA’s reach extends to private entities providing services to the public.

How to request a record; fees

All public agencies are required to adopt record request procedures which generally can be found on the agency’s web site.29 Most agencies provide a request form but any written request is sufficient.30 The agency can require the requestor’s name and address as well as proof of identity.31 If names and
addresses of individuals or business entities are requested, the record custodian may require that the requestor execute a certification that the requestor will not use the list to sell property or services or sell the list to a third party who does so. Statutory exemptions to the sale prohibition exist. Once the certification is received, the custodian must provide the records even if the custodian suspects that the requestor may use the list for the prohibited activities.

The custodian has three options: (1) grant access within three business days; (2) inform the requestor that access cannot be granted within three business days but will be available at a later date; and (3) deny the request within three business days. It is customary for an agency to provide a reason for denial but it is not required unless requested. The ‘three day rule’ does not mean that the records have to be supplied within those three days—only that the agency respond within three business days. The attorney general takes the rule seriously and will not hesitate to spank an agency for its cavalier disregard.

If the records exist and are not subject to copyright or a disclosure exception, the agency can request that the requestor pay a ‘reasonable fee’ for the records before the latter are produced. The fee cannot exceed the actual cost of furnishing the records, which can include the cost of staff time required to make the information available. KORA does not allow flash drives or other installable electronic devices, nor does KORA require that an agency produce copies of audio or visual items unless they were used in a public meeting. However, records that are electronic must be provided in that format.

Exceptions to Openness; Record Closure; Redaction

Not surprisingly, some public records are not open. Depending upon the type of record, state and federal laws may prohibit or restrict disclosure. Additionally, K.S.A. 45-221 lists 54 record categories that a public agency may refuse to provide. In other words, disclosure of public records falling in these statutory categories is discretionary. However, exceptions are narrowly interpreted by the courts and the burden of proving an exception is on the agency opposing disclosure.

“Meeting this burden requires more than generalized allegations, conclusory language, or mere arguments of counsel; a sufficiently detailed record must be provided to show the reasons why a claimed exemption applies to the materials requested.”

Non-disclosure provisions in contracts that are public records are void as against public policy. Also, records that could have been discretionarily closed (e.g. personnel records) become open if discussed at an open meeting.

Finally, access can be denied if the request places “an unreasonable burden” on the agency or if repeated requests “are intended to disrupt . . . essential [agency] functions,” but the burden is on the agency to prove by a preponderance of the evidence that refusal is justified.

If the request is denied, the agency must cite the closure exception but only if requested. Records containing both disclosable and non-disclosable information can be redacted to exclude the latter with the redaction costs assessed to the requestor.

Exception: Attorney/Client Privilege; Attorney Work Product

Records privileged under the Rules of Evidence or constituting attorney work product do not have to be provided. The two seminal cases addressing these exceptions involved media requests for attorney billing statements and prison correctional records. In Cypress Media, Inc. v. City of Overland Park, the Kansas City Star sued the city of Overland Park to obtain attorney fee billing statements from outside counsel. The city—while willing to provide the statements—insisted on redacting narrative statements as protected under both the attorney-client privilege and work product.

In ordering disclosure of the un-redacted billing statements, the Kansas Supreme Court honed in on the definition of ‘communication’ in the privilege statute. The Court rebuffed the city’s argument that the privilege applies to every interaction between an attorney and client but refused to adopt the Star’s argument that the privilege exists only when advice is given or received. The Court also rejected the city’s work product claim.
In *Wichita Eagle & Beacon Pub. Co. v. Simmons*, the newspaper sought documents received and generated by prison incident review boards whose task was to review incidents where parolees had been charged with murder. The boards’ purpose was to assess the potential for liability and public criticism. The Kansas Department of Corrections raised several KORA exceptions, including the work product statute.

Despite the fact that the reports had been prepared at the behest of the agency’s legal counsel, the Kansas Supreme Court found that there was insufficient potential for civil liability in light of the immunity bestowed upon parole officers by the Kansas Tort Claims Act. Accordingly, the Court found the agency’s assertion that the documents in question were prepared in anticipation of litigation lacking in ‘conviction or certainty.’

“While documents prepared specifically at the request or direction of legal counsel in anticipation of litigation need not be disclosed under the KORA exemption found in K.S.A. 45–221(a)(25), the subjective decision to mark records as ‘prepared in anticipation of civil litigation’ should not by itself imbue the records with the protection of this privilege when, in reality, there is no likelihood that litigation will ensue.”

**Exception: Employment Records; Employees and Applicants**

A public agency must provide the names, positions, salaries, service durations and employment contracts for officers and employees but can refuse to provide ‘personnel records, performance ratings or individually identifiable records pertaining to employees and applicants for employment.’ The purpose of this exception is to protect the privacy of employees, ‘save personal reputations and encourage qualified people to work for government.’ This exception would close the home addresses of public employees, including law enforcement officers, but would not close records regarding independent contractors retained by a public agency.

Recently, the Kansas Court of Appeals applied the disclosure exception for applications for appointed positions. In *Salina Journal v. Brownback*, the governor’s office rebuffed a media request to provide a copy of the applications of individuals who had applied for county commissioner vacancies in two newly created districts on the basis that the personnel record exception covered records for ‘applicants for employment’ which included applicants for appointed positions.

The district court, relying upon *Southwest Anesthesia Serv. v. Southwest Med. Ctr.*, concluded that applicants for appointed positions were ‘nonemployees’ and, accordingly, the disclosure exception did not apply. *Southwest Anesthesia Serv.* involved a request for records pertaining to physicians who were not employed by a county hospital but who were characterized as independent contractors. The Kansas Court of Appeals opined that the personnel record exception does not apply to independent contractors.

On appeal, the governor successfully distinguished *Southwest Anesthesia* because the latter did not involve applicants for employment. Refusing to apply KORA’s liberal construction mandate because K.S.A. 45–221(a)(4) is not ambiguous, the court reversed the district court and held the personnel record exception includes records pertaining to individuals seeking appointment as officers in public agencies.

**Exception: Criminal Investigation Records**

While an agency has discretion to provide or close criminal investigation records, if the agency does not disclose the records, a person can bring an action in the district court to require disclosure. Not surprisingly, the attorney general and the courts are protective of these records.

“Criminal investigation files are sensitive. Raw investigative files nearly always include the names of many innocent people. Where the files are open to public scrutiny, the potential for injury is great. In addition, if criminal investigation files are open, many people with information which might lead to a resolution of the investigation will refuse to disclose such information. Investigations will be badly hampered. Thus, only under very restricted circumstances may the district court require disclosure.”

When determining whether the disclosure exception applies, the first issue is determining whether a record is a ‘criminal investigation record’ which KORA defines as:

1. an audio/video recording captured on a law enforcement body or vehicle camera; or
2. records of an investigatory agency or criminal justice agency compiled in the process of preventing, detecting or investigating violations of criminal law.

*Police blotters, court...*
records, jail rosters, and traffic violation records are available unless the record involves a vehicular homicide.

In Seck v. City of Overland Park, the plaintiff sought law enforcement investigatory records pertaining to the apparent suicide of a former county commissioner arguing the records were not 'criminal investigation' records because the death was a suicide. Thus, the investigation did not entail detecting or investigating a violation of criminal law.

The court rejected the plaintiff’s claim relying upon Harris Enterprises, Inc. v. Moore which concluded that the exception’s intent is to protect innocent people whose names might surface in an investigation, either as suspect or informant. As the court explained, “until a death has been declared a suicide, it may be a potential homicide.”

Even if the records meet the definition of ‘criminal investigation records’ the agency still cannot be compelled to produce the documents unless an action is brought in district court. The district court, after reviewing the documents in camera, may order disclosure if:

1. The plaintiff establishes that disclosure is in ‘the public interest.’ The burden of proof is satisfied if the plaintiff can show: (a) there is a legitimate public interest; and (b) the records, if disclosed, will promote and serve that interest.

In Harris Enterprises, Inc. v. Moore, the Olathe Daily News requested the investigation records of a double homicide after the murderer was convicted. The Kansas Supreme Court upheld the district court’s decision not to compel disclosure on the basis that while there was a legitimate public interest, the plaintiff had not established that the records, if disclosed, would promote and serve that interest.

“The KORA does not contain a definition of “public interest,” nor has that concept been expressly defined by this court. The trial court noted that, in general, the term means more than “public curiosity.” The court further held that, to be a matter involving public interest, it must be a matter which affects a right or expectancy of the community at large and must derive meaning within the legislative purpose embodied in the statute.”

2. If there is a ‘public interest,’ the burden of proof shifts to the agency to establish that disclosure would: (a) interfere with prospective law enforcement actions, criminal investigations or prosecutions; (b) reveal confidential sources or informants; (c) reveal confidential investigative techniques; (d) endanger a person’s life or physical safety; or (e) reveal information relative to the identity of a sex crime victim. Upon request, the agency must reveal the statutory basis for closure.

Even if the court determines disclosure is in the public interest and none of the law enforcement-related factors exist, the court retains discretion to deny disclosure.

Finally, woe betide the district court that grants an agency’s motion to dismiss out of hand. In Green v. Unified Government of Wyandotte County/Kansas City, Trina Green filed a KORA action for police records involving the shooting of her son by law enforcement officers. She alleged that a public interest existed by virtue of the numerous media stories and the absence of a stated law enforcement-related factor (i.e. interference with law enforcement; confidential sources revealed etc.) Abjuring the rule of accepting as true the allegations for purposes of a motion to dismiss, the district court dismissed the petition—with prejudice—“based upon its findings and utilizing the discretion provided under K.S.A. 45-221(a)(10).” Finding an abuse of discretion, a vexed appellate court panel reversed and remanded the matter.

“We don’t know what “findings” the district court may have made; it didn’t provide any factual findings in its two-paragraph order. But a district court is not to make factual findings on a motion to dismiss for failure to state a claim. Instead, it’s supposed to accept the facts that have been included in the plaintiff’s petition. (Citation omitted).

Subsections (B) through (F) of K.S.A. 2016 Supp. 45-221(a)(10) do provide some factors the court must consider, such as whether disclosure would interfere with a criminal investigation (subsection [B] ) and whether disclosure would endanger anyone’s life or safety (subsection [E] ). But we don’t know anything about how the district court may have analyzed whether any of the potential harms listed in subsections (B) through (F) were likely to arise from disclosure because other than telling us the conclusion—that it was “utilizing the discretion” provided by the statute—it gave
no other information about how it had exercised its discretion. Instead, the district court appears to have simply decided that disclosure shall not be made whenever a law-enforcement agency objects, even though the statute clearly gives the court discretion to order disclosure in such cases.”

Before leaving this subject, note that the legislature recently addressed vehicle and body camera recordings by requiring law enforcement agencies to allow the subject of the recordings and certain other individuals to listen to and view the recordings.

**Exception: Administrative Hearings; Civil Litigation; Correspondence**

Administrative hearings and civil litigation records can be withheld if compiled in the process of investigating violations of civil law or administrative rules, but only if disclosure would interfere with a prospective adjudication or civil litigation or reveal a confidential source. Once the investigation is complete, the exception no longer applies.

Correspondence between a public agency and a private individual does not have to be disclosed unless the correspondence provides notice of an agency action or policy, or if the correspondence is shared with the public. For example, letters from members of the public to local governing body members and state agencies may be discretionarily closed, but notices from the Kansas Supreme Court to attorneys who have failed to timely register are open.

**Exception: Drafts; Opinions; Staff Recommendations**

Protecting an agency’s internal deliberations precludes disclosure of notes, drafts, memoranda, recommendations and any other records expressing opinions or proposed policies or actions. In *Fish v. Kobach*, the federal district court easily concluded that a draft of a possible amendment to the National Voter Registration Act authored by the Kansas Secretary of State and shared with the president-elect could be closed.

However, this exception evaporates if the documents are publically cited in a public meeting agenda or identified in a public meeting. Also, once a report is final, the preliminary working papers may be subject to disclosure.

**Exception: Personal Privacy**

Records containing personal information may be closed if disclosure would constitute “a clearly unwarranted invasion of personal privacy.” This phrase is defined as “revealing information that would be highly offensive to a reasonable person, including information that may pose a risk to a person or property and is not of legitimate concern to the public.”

The analysis begins with whether the records contain information of a personal nature. Social security numbers, dates of birth, and mother’s maiden names met this standard where a company seeking real estate information from the register of deeds balked at having to pay the cost to redact this information. Home addresses of public employees and information concerning law enforcement officers and their family members meet this standard, but not membership lists at city golf courses.

If the record contains personal information, the next step is to determine whether disclosure would constitute a “clearly unwarranted invasion of personal privacy.” This requires balancing the privacy rights of the individual against whether there is a legitimate public interest in disclosure.

This public interest may exist if release of the information would illuminate government conduct and contribute to the public’s understanding of government activities. It will not shield records just because the agency is uncomfortable with disclosure.

In the most recent attorney general opinion on disclosure of personal information, Attorney General Derek Schmidt concluded that the secretary of state could disclose to the federal government information from the voter registration database, specifically names, residence addresses, dates of birth and party affiliation of registered voters because state election law allows disclosure.

**Enforcement**

Any person, county/district attorney or the attorney general can enforce KORA in the district court where the public records are located. The plaintiff can recover costs and attorney fees at both the district court level and on appeal if the court finds that denial of access was not in good faith and with no reasonable basis in fact or law. However, if the defendant prevails, the same can be awarded upon similar findings. An award of attorney fees may be mandatory if the appropriate findings are made because of the statutory change in 2000 from “may award” to “shall award” in K.S.A. 45-222.
Only a person seeking access to records has a cause of action—not a person attempting to prevent an agency from producing the records. Hunter Health Clinic v. WSU, addresses a situation where employees of a public agency who were board members of a private agency used the public agency email system to communicate about the private agency. When the media made a KORA request to Wichita State University for emails relating to Hunter Health Clinic, the university—not caring a whit about emails having nothing to do with WSU—dutifully gathered the emails for production. Hunter filed a KORA action in district court to enjoin WSU from producing the emails.

Concluding that the emails were private records and that Hunter had a ‘significant personal stake’ in preventing release of the emails, the district court granted the injunction. The Kansas Court of Appeals reversed on the basis that KORA does not create a cause of action with respect to private records. Thus, Hunter lacked standing to make a KORA claim.

While the attorney general and county/district attorneys have always had the ability to enforce KORA, the legislature beefed up that authority in 2015 by bestowing upon the attorney general the power to enter into consent orders and consent judgments, issue findings of violations, and enforce orders and judgments in the event of non-compliance. If the attorney general has to file a court action to beefed up that authority in 2015 by bestowing upon the attorney general the power to enter into consent orders and consent judgments, issue findings of violations, and enforce orders and judgments in the event of non-compliance. Moreover, the attorney general may impose civil penalties up to $250 for consent orders and $500 for findings of violations. If the attorney general has to file a court action to enforce the office’s orders and findings, the court can require the recalcitrant agency to pay the attorney general’s court costs, investigation costs and attorney fees. Consent orders and findings of violations can be accessed on the statutorily required Wall of Shame.

Conclusion

KORA’s modest goal was to make it easier to get public records. Since that time, the world has changed. Emails and tweets splashed onto the internet, social media and cell phones capturing all sorts of government antics have given ‘transparency’ a new and unsettling meaning. Records once the subject of KORA requests are now accessible with the swipe of a finger or the click of a mouse. Still, KORA remains a serviceable tool in the quest for government accountability.

About the Author

Mary Feighny is the deputy city attorney for the City of Topeka. In that capacity, she advises the planning, public works, and finance departments. Prior to joining the city legal department, she was the deputy attorney general overseeing the Legal Opinions & Government Counsel division of the Kansas Attorney General.

2. K.S.A. 45-215 et seq.
3. K.S.A. 45-216.
4. Theresa Marcel Nuckolls (now Schwartz), Kansas Sunshine Law; How Bright Does It Shine Now? The Kansas Open Meetings and Open Records Acts, 72 J. Kan. B. Ass’n 28 (May 2003).
16. K.S.A. 2016 Supp. 45-217(g)(3)(C) (records of lump sum contributions for groups are public records).
a primer on the Kansas Open Records Act

non-profits receiving public funds annually in excess of $350 to make available documents showing receipts and expenditures.


29. K.S.A. 2016 Supp. 45-220(a); K.S.A. 45-226 (public agency must designate freedom of information officer); K.S.A. 45-227(KORA brochure required).


32. K.S.A. 2016 Supp. 45-220(b); 45-230.


36. The three day response time begins to run the day after the agency receives the request. See City of South Hutchinson Police Department Consent Order http://ag.ks.gov/docs/default-source/open-government-orders/2017-og-0003.pdf?sfvrsn=6


38. K.S.A. 45-218(d).


44. K.S.A. 2016 Supp. 45-219(c).

45. K.S.A. 2016 Supp. 45-219(c)(1)(2). Kan Att’y Gen. Op. No. 87-4 (1987) (actual cost does not include overhead costs.) Fees for legislative and judicial records can be found at K.S.A. 46-1207a and the Kansas Supreme Court Rules, respectively. K.S.A. 2016 Supp. 45-219(c)(3)(a). Fees for executive branch records are established by the agency heads, the amount of which can be appealed. K.S.A. 2016 Supp. 45-219(c)(5).


55. K.S.A. 45-218(e).

56. K.S.A. 45-218(d).


58. K.S.A. 60-426.


62. Note 60, supra.

63. K.S.A. 60-426(e)("communication includes advice given by a lawyer in the course of representing the client and includes disclosures of the client to a representative . . . of the lawyer incidental to the professional relationship.")

64. “The attorney work product doctrine does not offer a per se exemption for all records prepared by or for an attorney.” Cypress Media, 268 Kan. at 427.

65. Note 61 supra.


78. Note 76, supra.
79. K.S.A. 45-216.
83. K.S.A. 2016 Supp. 45-217(c)(1); K.S.A. 2016 Supp. 45-254 (Individuals who are subjects of police/vehicle camera and other statutorily-designated individuals may listen or view the recording upon request).
84. K.S.A. 45-217(c)(2).
85. Affidavits and sworn testimony supporting issuance of arrest and search warrants may be disclosed under certain circumstances. K.S.A 2016 Supp. 22-2302; 22-2502.
92. Id.
93. Id.
98. Id.
100. Green at 54 Kan. App. 2d at 120, 397 P.3d at 1213.
101. Id. at 1213.
115. Id.
117. Id. (photographs, home address, home telephone number, family members).
122. Presidential Advisory Commission on Election Integrity.
123. Unless the voter has requested nondisclosure pursuant to K.S.A. 2016 Supp. 25-2309.
129. Id.
130. 2015 Kan. Sess. Laws, Ch. 68.
131. K.S.A. 2016 Supp. 45-251; 45-253. County/district attorneys may utilize consent judgments as well.
Several KBA members, family members of KBA members, and firms have established scholarships to recognize law students for their determination, academic achievement, community service and desire to practice law in Kansas.

New for 2018 is the Hon. Richard D. and Cindy Rogers Scholarship.

“I want Dick’s legacy to be an inspiration, to encourage others to give their time and money, to mentor and give back to the legal profession and to the community. Through this scholarship, we honor his service through the years and express gratitude for the many opportunities he gave to his family and all those with whom he came in contact,” Cindy Rogers stated.

Congratulations to these outstanding students who will be honored at the February 15th Court Appreciation Dinner in Topeka.

Hon. Richard D. and Cindy Rogers Scholarship – $1,000

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

Curry Sexton / Washburn University School of Law

An Abilene native, Sexton grew up on a farm before attending Kansas State University and obtaining degrees in Business Marketing and Business Management while serving as a captain on the football team. A third-generation Washburn Law student, Sexton is currently a 3L assuming roles as a senior staff writer on the Washburn Law Journal, a council member on Washburn’s Moot Court team, and a trial team member on the Texas Young Lawyers Association trial team. With a rural Kansas background, Sexton plans to practice in Kansas upon graduation and admission into the bar.

“I am especially humbled and honored to receive the Hon. Richard D. and Cindy Rogers Scholarship. Judge Rogers was a tremendous advocate for the state of Kansas and many people throughout. I hope to make even a margin of the impact on those around me as Judge Rogers did in his lifetime and in his career as an attorney and a judge.”
Case, Moses, & Zimmerman P.A. Law Student Scholarship – $1,100

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

Brandon Fortman/Washburn University School of Law

Fortman, a 3L, is originally from Wichita, Kan., where he graduated from Wichita State University with a BA and MA in English. Fortman lives in Olathe with his wife Meghan, their three children, William 8, Mason 4, and Clara 7 months. He is currently a judicial law clerk at the Shawnee County District Court and plans on maintaining his family's roots in northeast Kansas by practicing in the area when he completes law school.

“I am sincerely grateful for the generosity shown by the Kansas Bar Foundation in selecting me for the Case, Moses, & Zimmerman P.A. Law Student Scholarship. It provides added financial flexibility and motivation as I enter the final stage of my legal education and I am truly humbled at being the recipient of this award.”

The Justice Alex M. Fromme Memorial Scholarship Award – $900

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

Mackenzie Maki/Washburn University School of Law

A Wichita native, Maki received her Bachelors of Science in biology in 2014 from Wichita State prior to attending Washburn University School of Law. She is currently an intern for the Shawnee County District Attorney’s Office helping prosecute traffic and other misdemeanors. Before this position, she worked for the Kansas Bureau of Investigation as a legal extern. Maki recently married fellow law student Brock Baxter and they will graduate in May 2018. She intends to return to Wichita this fall to work as an associate for Hite, Fanning & Honeyman L.L.P. As the mother of a four-year-old, she values public safety and the legal process.

“I sincerely thank the Kansas Bar Foundation for choosing me as the recipient of The Justice Alex M. Fromme Memorial Scholarship Award. This financial aid helps me and my family prioritize our legal studies and gain experience and understanding in a variety of law-related positions. The Kansas Bar Foundation’s generosity and commitment to the education of legal scholars in the state empowers us to excel and serve the community proudly.”
**Hinkle Law Firm Student Scholarship – $2,300**

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

**Teresa Offerman/Washburn University School of Law**

Offerman, a 3L, is a Wichita native and earned a B.A. in Public Relations prior to attending law school. She has worked as a legal extern for the Honorable C. William Ossmann in Topeka, clerked for Hinkle Law Firm LLC, competed on Washburn’s TYLA Trial Advocacy Team, and mentored 1L students as a study group leader. This summer, Offerman will work as a summer associate for McAnany, Van Cleave, & Phillips, PA. in Kansas City.

"I am incredibly honored to be chosen as the 2018 recipient of the Hinkle Law Firm Student Scholarship. My sincere thanks and appreciation go out to the Kansas Bar Foundation for the generous award and for investing in Kansas' future lawyers. May we always proudly serve our communities and represent the Kansas Bar with utmost integrity."

**Lathrop Gage Student Scholarship – $1,900**

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

**Jennifer Salva/Washburn University School of Law**

Originally from Sugar Creek, Mo., Salva and her family moved to Olathe in 1999 so her sister—who has profound disabilities and deafness—could have better educational resources and attend Kansas School for the Deaf. Salva became an advocate for her sister’s social, educational and employment needs, and plans to share those skills in her career as an attorney. Salva is a graduate of the University of Kansas, a 2L at Washburn University School of Law and former editor of the Kansas Bar Association Journal. She has enjoyed her federal judicial externships and recently secured a position as a term clerk for Judge Julie Robinson (U.S. District Court for the District of Kansas) for 2018-19. She will spend this summer with Lathrop Gage in Kansas City.

"Kansas Bar Foundation scholarships are incredible opportunities that truly make a difference in Kansas students’ lives. These scholarships ease the financial strain of law school while getting students excited about being active members of the Kansas Bar Foundation during our careers. I am so proud to be among the Kansas students selected for this honor."

**Frank C. and Jeanne M. Norton Scholarship Award – $1,700**

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

**Ryan Crowell/Washburn University School of Law**

A native of Conway Springs, Crowell attended Southwestern College in Winfield and received his Bachelor of Arts in English Literature as well as minors in History, Leadership, and Criminal Justice. Crowell is currently a 1L at Washburn University School of Law. Growing up in rural Kansas, he developed a strong bond with the state and plans on practicing in Kansas following law school.
“I am extremely grateful to be this year’s recipient of the Frank C. and Jeanne M. Norton Scholarship Award. Thank you to the Kansas Bar Foundation and all others who have supported these scholarships. With the help of this scholarship, I hope to graduate law school and serve those in my community as a member of the Kansas Bar.”

**Capitol Federal Foundation Diversity Scholarship – $1,000**

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

**DEBORAH BARNES JONES/Washburn University School of Law**

Barnes Jones, a 3L, came to Washburn via a first career as a British diplomat and marriage to an American husband with roots in Topeka. A non-traditional JD candidate, she appreciates the opportunities she has had to experience different work places, including an externship with the Customer Protection Division of the office of the Kansas Attorney General and with the Honorable Steven L. Hornbaker in Junction City. She also worked for the KBA Lawyer Referral Service and interned with the Office of the State Bank Commissioner. She will be working with Federico Consulting for the 2018 State Legislative Session.

“I was intrigued by the premise of the Capitol Federal Foundation Diversity Scholarship, which gives the recipient the chance to participate in the KBA Diversity Committee and to contribute an article to the KBA Journal. Before I came to Washburn, diversity for me was something to be “managed” in the international teams I worked with. Since starting my studies, I have seen how my own diversity has led to both benefits and challenges for me and my new legal community. I am delighted to be a recipient of this scholarship. This is a wonderful affirmation of my aspiration to work in and contribute to the Kansas legal community and gives me an immediate and practical way to do that.”

**Maxine S. Thompson Memorial Scholarship – $900**

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

**JOSEPH UHLMAN, University of Kansas School of Law**

A native of Sedgwick, Uhlman was a firefighter for fifteen years before enrolling in law school at KU. He is currently the Chief Justice of the Court of Parking Appeals, and a member of the Kansas Law Review. After graduation, he plans to return to the Harvey County Attorney’s Office, where he interned the last two summers.

“I am humbled to have been selected for the Maxine S. Thompson Memorial Scholarship. This scholarship reflects the support the Kansas Bar Foundation gives to Kansas law students. I hope to carry on that spirit of generosity as a part of our legal community.”

**The Frank M. Rice Scholarship – $4,000**

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

**JEFF PIKE/Washburn University School of Law**

Pike was born and raised in Great Bend and earned a B.S. in Business Administration from Kansas State University. A 2L, Pike spent last summer clerking at Martin, Pringle, Oliver, Wallace & Bauer, L.L.P. in Wichita and will be returning this summer.

“Growing up in the heart of Kansas, I would not be where I am today without countless Kansans investing in me along the way. The Frank M. Rice Scholarship goes beyond financial assistance and helps demonstrate I am committed to staying in Kansas and serving those who have helped make my success possible. I would like to thank the Kansas Bar Foundation and its donors for this tremendous honor.”

**The John E. Shamberg Memorial Law Student Scholarship – $900**

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

**AUDREY KOEHLER/Washburn University School of Law**

Koehler is a 2L at Washburn University School of Law. After growing up in Wichita, Koehler attended Wichita State University where she earned a B.A. in Sociology with minors in Psychology and Criminal Justice. Prior to starting at Washburn, Koehler worked at COMCARE of Sedgwick County as a Crisis Case Manager. Koehler is a member of the Washburn Law Journal and works as a research assistant for a professor. After graduation, Koehler would like to return to Wichita to use her advocacy skills to improve her community.

“I am honored to be selected as this year’s recipient of the John E. Shamberg Memorial Law Student Scholarship. This scholarship allows me to focus on my studies and to better prepare to be an effective advocate for others. I am so thankful for this opportunity and for donors that make law school possible for students like me.”

**Your investment continues to give.**

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

“Since I have been on the scholarship committee, we have always had more worthy applicants than we do scholarships. Every recipient has expressed gratitude over the help the KBF has provided to his or her education,” stated Katherine L. Kirk, Chair, KBF Scholarship Committee. “A scholarship is a living memorial or honor which not only keeps on giving, it provides encouragement and recognition to deserving law students.”

**To donate to an established KBF scholarship fund,**
create a new scholarship endowment or discuss other options for giving:
Please contact Jordan Yochim, executive director, at (785) 234-5696 or at jeyochim@ksbar.org

**Donations may also be made online at:**
http://www.ksbar.org/donations/
The 2018 Kansas Legislative session began on January 8th, and for the first time in several years the state of Kansas isn’t facing a serious budget problem. In years past the state was plagued with falling revenues and missed projections. Some blamed a stagnant economy, others poor agriculture outputs, but many focused on the 2012 tax cuts as the cause of the budget pains. So, in the closing days of the 2017 session the legislature passed a sweeping tax plan that did away with many of the 2012 tax policies.

The Legislature’s 2017 Tax Plan:
- Established three tiers of income tax: 3.1%, 5.25% & 5.7%.
- Eliminated statutory trigger to reduce income tax if revenues are above CPI.
- Eliminated business pass-through exemption (LLC Exemption).
- Extended STAR Bond authority for 3 years; 1-year moratorium on new projects.
- Reinstated medical, mortgage interest and property tax deductibility with a 3-year phase in.
- Reinstated child care tax credit.
- Reinstated loss carry-forward.

The bill is projected to raise $591 million in FY 2018 and $633 million in FY 2019. The state operates on a 2-year budget cycle.

The bill is retroactive to January 1, 2017, with modified rates for this year: 2.9%, 4.9% & 5.2%.

The new income brackets are as follows:
- $0-$30,000 3.10%
- $30,000 - $60,000 5.25%
- $60,000+ 5.70%

With this new-found revenue stream, things have started to look up. For instance, in December 2017 the state received more than $355 million in state paid income tax, that is $80 million more than projected in November. However, caution is needed since we are not yet exactly sure how the recently passed federal income tax cuts will hit Kansas. This may not be known till April tax filing date.

Nevertheless, the state is in a better spot financially than it has been in some years. This will be helpful to the primary concern of the 2018 Kansas Legislature which is how to pay for the school finance lawsuit before the court-imposed deadline in May. The estimate for school funding is around $600 million, way more than any revenue surplus currently on-hand.

Legislators will have three main options, 1) pay the $600 million; 2) Change the constitution; 3) Ignore the court. Thus far we have seen all three options discussed in the media.

There has already been one constitutional resolution aimed at limiting the court’s power to close schools. See; SCR 1609, introduced by Senator Pyle. Even Governor Brownback encouraged a constitutional amendment aimed at school finance, but he did not provide any specific language. I am sure a redefinition of the school funding provision in the Kansas Constitution will be on tap.
We have heard from conservative legislators who believe the court overstepped its bounds by interfering with the “power of the purse”. These legislators believe the court has no authority to demand more money for schools and that the court’s decision can be ignored.

Finally, some may find it simpler to comply with the court order. Here, again Governor Brownback suggested adding $600 million over 5 years to the school funding formula. However, he did state this could be done with no new taxes. Raising taxes is highly unpopular, especially after hiking them up in 2017. Some mentioned a statewide mill levy increase to pay for schools. This might have equity implications, but it would raise the needed funds. There will be ample posturing which might lead to negotiations, but how that plays out and in what time frame is yet to be determined.

It is also important to remember that 2018 is an election year and these votes will be used in many primary races to paint incumbents as tax & spend legislators. Couple this with a highly contested race for governor and you have a wild beginning to the election cycle.

The cast of candidates for governor grows by the week but the front runners are:

Lt. Governor Jeff Colyer
Will become Governor if/when Brownback leaves.

Dr. Jim Barnett, R-Topeka
Physician, past state senator, congress & gov. candidate

Wink Hartman, R-Wichita
Wichita businessman

Mark Hutton, R-Wichita
Wichita businessman and former state rep.

Kris Kobach, R-DeSoto
Secretary of State

Ed O’Malley, R-Wichita
Fmr. state rep./President/KS Leadership Center.

Ken Selzer, R-Overland Park
Commissioner of Insurance

Kevin Yoder, R-Overland Park
3rd District U.S. Congressman

Laura Kelly, D-Topeka
Kansas State Senator

Carl Brewer, D-Wichita
Former Wichita Mayor

Josh Svaty, D-Ellsworth
Fmr. State rep. and fmr. Secretary of Agriculture

Rep. Jim Ward, D-Wichita
House Minority Leader

Greg Orman, I-Overland Park
Unsuccessful candidate for U.S. Senate in 2014

Other races of interest include:

Secretary of State
Rep. Keith Esau, R-Olathe
Rep. Scott Schwab, R-Olathe
Sen. Marci Francisco, D-Lawrence

2nd District Congressional Seat
Sen. Steve Fitzgerald, R-Leavenworth
Sen. Caryn Tyson, R-Parker
Rep. Kevin Jones, R-Wellsville
Paul Davis, D-Lawrence

Note: State senators are in the middle of 4-year terms and are not required to resign from office to run for another office. State representatives effectively give up their positions when they seek another office.

In the 2016 election Kansas saw a move back to a more moderate legislative body. This proves the pendulum of politics can swing rather quickly. There are also signs of a strong national democratic showing in 2018 which could play a part in Kansas Congressional races, but many believe that the seats won by moderates in 2016 will be highly contested due to the number of tax issues these legislators were forced to make. This will be an interesting summer/fall.

The Kansas Bar Association will be engaged on several technical issues with a direct impact on the practice of law. For instance, the KBA supports changes to the Kansas Supreme Court’s budget proposals, the Uniform Arbitration Act, and a variety of probate issues. These proposals, along with other information pertaining to the Kansas Legislature, can be found on the KBA Legislative Homepage, www.ksbar.org.

Additional Information:

The official state website for the Kansas Legislature is: www.kslegislature.org

From that site, you can find information on the House and Senate members and contact information, calendars, bill introductions, committee activity, minutes of committees, committee memberships and virtually anything related to the Kansas Legislature.

Lawyers and Law-Trained Legislators
2018 Kansas Legislature

KANSAS SENATOR

Senator David Haley
Senate District No. 4
D-Kansas City

Haley is the managing partner of Village East, a redevelopment company in Kansas City, Kan. He served in the Kansas House from 1994-2000 and was elected to the Senate in 2000. He was re-elected in 2004, 2008, 2012 and 2016. Sen. Haley
Representative John Barker
House District 70 • R-Abilene

Barker is a farmer, retired District Court Judge, and U.S. Army veteran. Rep. Barker served 25 years as a judge for the Eighth Judicial District covering Dickinson, Geary, Marion, and Morris counties. Rep. Barker has been recognized for his work with Kansas youth, championing initiatives to prevent drug and alcohol abuse, working with local school districts to reduce truancy rates, and working with juvenile offender programs. Rep. Barker and his wife of 30 years live in Dickinson County where they raised their two children.

Representative Steve Becker
House District 104 • R-Buhler


Representative John Carmichael
House District 92 • R-Wichita

Carmichael represents the 92nd District in Wichita. He earned his Political Science degree from the University of Kansas in 1979, his Administration of Justice degree from Wichita State University in 1980 and his law degree from KU School of Law in 1982. Rep. Carmichael is Of Counsel with the law firm of Conlee, Schmidt and Emerson, LLP in Wichita. Rep. Carmichael has been a member of the Wichita Bar Association and the Kansas Bar Association for more than 30 years. Rep. Carmichael will serve as ranking minority member on the House Judiciary, as a member on Elections and Energy/Environment and Local Gov. committees this session.

Representative Erin Davis
House District 15 • R-Olathe

Davis represents the 15th House District in Olathe, Kansas. She was reelected in 2016. A recent graduate of the University of Kansas Law School, she is a member of the Rokusek Law Office, LLP in Lenexa, Kan., specializing in family law, including divorce, custody, Child in Need of Care parent's attorney and Guardian ad Litem, juvenile offender and adult criminal work.

Representative Blaine Finch
House District 59 • R-Ottawa

Finch is majority owner and president of Green, Finch & Covington, Chtd. His practice covers a broad spectrum of legal issues including municipal law, real estate, contracts, corporate law and estate planning. He also teaches at Ottawa University as an adjunct faculty member in the fields of history, political science and pre-law. Finch is a former city commissioner and mayor of the City of Ottawa. Rep-Elect Finch graduated Summa Cum Laude from Ottawa University with degrees in history, political science and psychology. Finch is a member of the Kansas Bar Association and a member and past president of the Franklin County Bar Association. He attended Washburn University School of Law.

Representative Dennis “Boog” Highberger
House District 46 • D-Lawrence

Highberger graduated from the University of Kansas Law School in 1992. His areas of private practice have included wills, estates, contracts, family law, federal communications law, and general civil practice. Highberger served on the Lawrence City Commission from 2003 to 2009 and was Mayor in 2005/2006. He has been an active member of the Lawrence community and currently serves on the Douglas County Food Policy Council, the City of Lawrence’s Public Incentives Review Committee (PIRC) and Sustainability Advisory Board (SAB), and the boards of directors of Independence, Inc., the Community Mercantile Education Foundation (CMEF), and the East Lawrence Neighborhood Association (ELNA).

Representative Tim Hodge
House District 72 • R-North Newton

Hodge is member of the Adrian & Pankratz law firm in Newton Kan. Hodge has developed his practice in diverse areas such as tax law, real estate, business law, secured transactions, and Medicaid planning. He has served as an adjunct professor of business law at Tabor College. During law school, he clerked for the Kansas Board of Tax Appeals and the Kansas National Education Association. Before law school, Mr. Hodge served as a teacher and a coach at Peabody High School. He and his wife reside in North Newton with their three children. His wife is a teacher in the Newton School District. Hodge graduate magna cum laude from Tabor College in 1999 and received his JD from Washburn Law School in 2003. Hodge also attended the Oxford Honours Program in 1998. He is a KBA member since 2004.
Representative Susan Humphries  
House District 99 • R-Wichita  

Humphries joined the Kansas Bar in 2014, after graduating from the University of Denver Sturm College of Law. During law school Humphries had clinical experience in mediation at the Rocky Mountain Children’s Law Center. Humphries practices at Shultz Law Office, P.A., in Wichita, with a focus on adoption and general law. Humphries is the coordinator for Wichita Christian Legal Aid, which offers free legal aid at three non-profits. Humphries married husband Cary after graduating from Texas Christian University, and they proceeded to live in (and enjoy!) five states and two foreign countries. They moved to Kansas for the first time in 1981, and have considered it their married home ever since. They have four adult children (two are married), and one grandson. Humphries’ district includes Andover and east Wichita.

Representative Leonard Mastroni  
House District 117 • R-La Crosse  

Mastroni is currently a Rush County Commissioner, serving in that capacity since 2011. Previously, he was a district magistrate judge where he served on the KDMJA Legislative committee for 12 years. Mastroni also served a chairman of the KDMJA Legislative committee and its educational committee. Mastroni attended Fort Hays University where he received his BA in political science. Mastroni also attended University of Nevada at Reno where he graduated from the national judicial college.

Representative Vic Miller  
House District 58 • D-Topeka  

Miller is returning to the Kansas House. He previously served for three terms. Miller also served as Shawnee County Commissioner (15 yrs.), and Topeka City Councilman (8 yrs.), once acting as Topeka Deputy Mayor. Miller also served as Topeka Municipal Judge and Kansas Property Valuation Director. He has spent his legal career as a sole practitioner. Miller graduated from Emporia State and Washburn University School of Law.

Representative Fred Patton  
House District 50 • R-Topeka  

Patton graduated from the University of Kansas Law School before joining the legal research staff at the Shawnee County District Court. Currently, Patton owns and operates Patton Law Offices, LLC in North Topeka with a varied practice including banking, business/corporate, construction, estate planning, general civil, probate, and real estate. Patton is very active in the community having leadership roles in more than 15 local organizations. http://kslegislature.org/li/b2015_16/members/rep_patton_fred_1/

Representative Bradley Ralph  
House District 119 • R-Dodge City  

Ralph is currently the city attorney for Dodge City, Kan. Prior to this position he was in private practice with the firm of Williams, Malone & Ralph for 25 years. His private practice focused on representation of insurance companies, healthcare providers, schools, and municipalities. Ralph has been active in his community in leadership positions with his church and the Community Foundation of Southwest Kansas. He has also served the legal profession on several committees, including the Professional Ethics Committee. He is a graduate of St. Mary of the Plains College and Washburn University School of Law. Ralph and his wife Shannon have three adult children.

Representative Jim Ward  
House District 86 • D-Wichita  

Ward is the owner of the Law offices of James Ward of Wichita. He was appointed to the Kansas Senate to fill a vacancy in 1992. He was later elected to the Kansas House in 2002 and reelected every two years through 2016. Rep. Ward serves as the Assistant House Minority Leader and is a member of the House Committees on Calendar and Printing, Health and Human Services, Interstate Cooperation, Judiciary and Legislative Budget, as well as several joint committees. He received his J.D. from Washburn University School of Law. http://kslegislature.org/li/b2015_16/members/rep_ward_jim_1/

Representative John Wheeler  
House District 123 • R-Garden City  

Wheeler is the former Finney County Attorney, first elected in 1993. He was first elected to the House in 2016. He is a graduate of Fort Hays State College (1969) with a degree in political science and pre-law. He graduated from Washburn School of Law in 1976. Prior to being elected as Finney County Attorney, Rep. Wheeler was in private practice with Calihan, Green, Calihan and Loyd, Associates, 1976-1979, then Soldner & Wheeler, Partner, 1979-1987, and finally with John P. Wheeler, Attorney at Law, Solo Practitioner, 1988-1992. Rep. Wheeler is a proud member of Harry H. Renick American Legion Post #9, Past Commander; Garden City Salvation Army Advisory Board; Garden City Noon Lions Club; and the Finney County Historical Society.

2018 Kansas Legislature:  
Senate: 31 Republicans/09 Democrats  
House of Representatives: 85 Republicans/40 Democrats

About the Author

Joseph N. Molina III serves as the director of legislative services for the Kansas Bar Association. Prior to joining the KBA, he was chief legal counsel for the Topeka Metropolitan Transit Authority and served as assistant attorney general, acting as chief of the Kansas No-Call Act. Molina earned a B.A. in political science, philosophy, and economics from Eastern Oregon University and a J.D. from Washburn University School of Law.

jmolina@ksbar.org
Pending approval for 2.0 CLE credit hours, including 2 E&P credit hours in Kansas & Missouri

Where Does the Money Go?
Our designated charities for 2018 are:
- CASA (Johnson/Wyandotte Counties)
- Safehome and Hope House (domestic violence programs)
- Metropolitan Organization to Counter Sexual Assault (MOCSA)
- Kansas Bar Foundation
- Midwest Foster Care and Adoption Association
- In addition, we will fund Ethics for Good Scholarships to each of the KU, Washburn and UMKC Law Schools and the Johnson County Community College paralegal program.

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- www.ksbar.org/event/EthicsforGoodXIX-KC
- www.ksbar.org/event/EthicsforGoodXIX-OP

Who Are these Intrepid Presenters?
Stan Davis, Ethics for Good Elder Statesman
Jim Griffin, Scharnhorst Ast Kennard Griffin, P.C.
Mark Hinders, Stinson Leonard Street L.L.P.
Todd La Sala, Stinson Leonard Street L.L.P.
Hon. Steve Leben, Kansas Court of Appeals
Jacy Hurst Moneymaker, Kutak Rock LLP
Todd Ruskamp, Shook, Hardy & Bacon L.L.P.
Hon. Melissa Standridge, Kansas Court of Appeals

Questions?
Contact Deana Mead, KBA Associate Executive Director, at dmead@ksbar.org or at (785) 861-8839.

Wednesday, June 27, 2018, 2:30 – 4:10 p.m.
The Nelson-Atkins Museum of Art, Atkins Auditorium
4525 Oak St.
Kansas City, Mo.
Parking: $8 museum non-member parking fee; carpooling encouraged

Friday, June 29, 2018, 2:30 – 4:10 p.m.*
Polsky Theatre, JCCC Carlsen Center
12345 College Blvd. (College & Quivira)
Overland Park, Kan.
*Reception afterward sponsored by the JCCC Foundation

Please mark the date you will be attending: ☐ June 27 ☐ June 29
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Members in the News

New Positions

Remington S. Dalke was selected by the Rice County Republican Central Committee to fill out the term of county attorney, a move made necessary by the resignation of Republican Scott E. McPherson. (see McPherson’s listing below….) Dalke was a staff attorney for St. Francis Community Services and before that was a staff attorney for the Kansas Department of Children and Families.

Preston A. Drobeck has become a partner in the law firm of Berkowitz, Cook, Gondring & Driskell, LLC. Effective Jan. 1 of this year, the firm name became Berkowitz, Cook, Gondring, Driskell and Drobeck, LLC. Drobeck has been with the firm since his graduation from the University of Missouri–Kansas City School of Law.

Concordia attorney Justin Ferrell was named to fill the Republic County Attorney vacancy resulting from the resignation of previous county attorney Marlea James. His term will be for one year; the position will be on the ballot in the 2018 midterm election. Ferrell will continue his current position as a prosecutor for the City of Concordia.

Stephen McAllister, previously Kansas’ solicitor general, was confirmed unanimously by the U.S. Senate for the position of U.S. Attorney in Kansas. McAllister succeeded acting-U.S. Attorney Tom Beall.

Scott E. McPherson of Sterling was appointed by the Governor to serve as a district judge in the 20th District which covers Barton, Ellsworth, Rice, Russell and Stafford counties. He succeeds Ron Svaty who retired Oct. 1, 2017. McPherson, a product of the University of Kansas School of Law, has been Rice County Attorney since 2007; he was previously assistant county attorney in Barton Co., and an assistant district attorney in Douglas Co.

Correction from Nov/Dec, 2017 Issue of the Journal:
Judge John Bukaty, Jr. is still in Kansas City, KS, NOT in Wichita as indicated. The Journal regrets the error.

Eli O’Brien, previously with the Sedgwick County Public Defender’s Office, has joined Monnat & Spurrier, Chartered as an associate. A graduate of the Washburn University School of Law, O’Brien’s practice will focus on defending those facing serious felony accusations.

Bethany Roberts, a Lawrence attorney who specializes in domestic cases, has been appointed by the Douglas County Commission as a judge pro tem with the Douglas County District Court. Pro tem judges are hired locally rather than appointed by the state, and are restricted in the types of cases they hear. Following her graduation from The University of Kansas School of Law, Roberts was the managing attorney with Kansas Legal Services.

Cynthia J. Sheppeard joined Goodell Stratton Edmonds & Palmer as a partner effective Jan. 1 of this year. She’s been Special Counsel since she and her previous practice, Weathers, Riley & Sheppeard, LLP joined the firm. A Washburn University School of Law graduate, Sheppeard has an active litigation practice that includes employment law, product liability, premises liability and other areas.

Jacqueline Spradling, a veteran prosecutor, was elected Bourbon County attorney by the members of the Bourbon County Republican Central Committee. Spradling’s career has included eight years as chief deputy district attorney in Shawnee Co., in charge of all homicide prosecutions and chief of the Cold Case Homicide Unit. Most recently, she has been an assistant county attorney in Allen County. Spradling succeeds Justin Meeks in the Bourbon Co. position.

Katy Tompkins has become a partner in the McDonald Tinker Law Firm of Wichita. A native of Atwood, Kan., Tompkins earned her law degree from the Washburn University School of Law. Her practice focuses on civil litigation. She joined the law firm in 2012 as an associate.
New Locations

The new office of Adams Jones Law Firm, P.A. opened late last year at 112 N. Star in El Dorado. When the office opened, it was planned for Jason Reed, shareholder attorney, to staff the office part-time until business increases. Adams Jones, based in Wichita, handles probate, estate planning, real estate transactions and general business transactions.

Notables

Stephen Ariagno and Kurt Kerns of the Warrior Lawyers were recognized by the Missouri & Kansas 2017 edition of Super Lawyers. It is the 11th year they have earned this recognition.

McPherson County Attorney Greg Benefiel was covered by the McPherson News for discussing the significant backlog of cases that had accumulated in the office before he came aboard three months ago. He specified that while he had not yet begun working through them, he is hopeful that with a third prosecutor being hired and with hoped-for case management software, they will be successful in working through the backlog over time.

Gary Austerman, Michael Morris and David Steed of Kenda Austerman have been recognized in the Missouri & Kansas 2017 edition of Super Lawyers. Aaron Good, Chasity Helm and Eric Lomas were also recognized as Rising Stars.

Stephen Blaylock, Charles Harris, Jeffrey Lowe, Lynn Ward and Michael Wilson, fellows of the American Academy of Matrimonial Lawyers, have been recognized by the Missouri & Kansas edition of Super Lawyers. Matthew Olson and Laura Poschen were also recognized as Rising Stars.

Joe Dickinson, Harvey County Chief District Judge, was appointed to the Chief Judges Council which provides the Supreme Court with “ground-level perspective on issues facing Kansas courts,” announced Chief Justice Lawton Nuss. Nuss also appointed 17th Judicial District Chief Judge Preston Pratt and reappointed Chief Judges Kim W. Cudney, R. Wayne Lampson and Nicholas M. St. Peter to the seven-member council. Also on the council are Reno County Chief Judge Patricia Macke Dick and Chief Judge David A. Ricke of the 13th Judicial District.

Robert L. Farmer, a partner in the firm of Nuss & Farmer PA in Fort Scott, has joined The Expert Network, an invitation-only service for distinguished professionals. He was selected for this honor based on peer reviews and ratings in addition to dozens of recognitions and achievements throughout his career. Farmer received his Juris Doctorate from The University of Kansas School of Law and has spent 45 years in service to the law.

Cameron & Herrman P.A. of Wichita has been named a 2017 10-Best Family Law Firm for Client Satisfaction by The American Institute of Family Law Attorneys.

Van Hampton was reappointed by the Kansas Supreme Court to serve as chief judge of the 16th Judicial District—a 2-year term ending on Dec. 31, 2019. He has been a district court judge since 1995, presiding over cases in Ford, Gray, Mead, Clark, Comanche and Kiowa counties. He is a graduate of Oral Roberts University School of Law; he also earned a degree in agricultural law from the University of Arkansas.

Tom Harris, an attorney in private practice in Valley Center, has been appointed to serve on the board of the Newton Medical Center.

Allison Maxwell Hibler has been accepted as a member of the law firm of Sloan, Eisenbarth, Glassman, McEntire & JARBOE, LLC. Hibler joined the firm as a law clerk while still a law student at Washburn University School of Law and accepted a permanent position upon graduation. Her practice focuses exclusively on family and divorce law.

2018 officers of the Kansas Association of Defense Counsel (KADC) are William Townsley, Fleeson, Gooring, Coulson & Kitch, LLC, President; Zach Chaffee-McClure, Shook, Hardy & Bacon, LLP, President-Elect; Shannon Wead, Foulston Siefkin, LLP, Secretary; Lora Jennings, Martin, Pringle, Oliver, Wallace & Bauer, LLP, Treasurer; Sarah Warner, Thompson, Ramsdell, Qualseth & Warner, PA, Past-President; Mark Katz, Coronado Katz, LLC, DRI Representative.

Judge Steve Leben of the Kansas Court of Appeals received the 2017 Chief Justice Richard W. Holmes Award of Merit, the American Judges Association’s highest award for contributions to the judiciary. Leben was recognized for his national work promoting procedural fairness in court, as co-author of AJA white papers on procedural fairness and the mental aspects of judging, and as longtime editor of Court Review, the AJA’s quarterly journal. The award was named for Kansas Supreme Court Chief Justice Richard Holmes who received the AJA’s Award of Merit in 1992. It was renamed in his honor in 2000, a year after Holmes passed away.

Martin Pringle Attorneys at Law, a Wichita firm, is a 7-time Finalist in the Wichita Business Journal’s Best Places to Work competition. The WBJ then uses the information for its Book of Lists which provides readers with more than 1,000 of the top area companies in their fields, by ranking.

Ryan K. Meyer has been named a member at Fleeson, Gooring, Coulson & Kitch, L.L.C. He has been an associate at the firm since 2012 and previously served as law clerk to the Hon. J. Thomas Marten of the United States District Court for the District of Kansas.

William R. Mott was reappointed by the Kansas Supreme Court to serve as chief judge of the 30th Judicial District through Dec. 31, 2019. Mott, a Wellington native, earned his law degree at the Washburn University School of Law. He has been a district judge in the 30th since 2007, presiding over cases primarily in Sumner County.
Chad Neswick and Chapman Williams, as law students at The University of Kansas School of Law, worked with the Project for Innocence to help vacate the robbery conviction of Richard Jones who was subsequently released from prison. They worked under the supervision of Alice Craig, supervising attorney for the University’s Project for Innocence.

Kansas Supreme Court Chief Justice Lawton Nuss had the opportunity in late 2017 to address some 35 U.S. Army personnel in Kuwait by way of video link from the Supreme Court’s conference room at the Kansas Judicial Center. Nuss agreed to lead the ethics discussion at the request of Maj. Gen. Victor Braden of the 35th Infantry Division. Nuss spoke on the need for military law practitioners to observe and remain committed to the oaths they have taken. Nuss, a Marine Corps veteran, offered his comments as part of a continuing legal education conference for military law practitioners.

Kansas Supreme Court Justice Eric Rosen was honored late last year with the Smiling Bull Award, presented by the Leavenworth County Bar Association as part of its 70th Leavenworth County Bar Institute. The award is given annually to an individual who has made a noteworthy contribution to the legal community. Rosen was recognized for his career of giving back to those in need. He was lauded by Chief Justice Nuss as a justice who is both intelligent and compassionate; Nuss added that Rosen is always “my sounding board when I need one.”

John Sherman (partner at Sherman, Hoffman & Hipp) and Roger Peterson (partner at Peterson & Kasper, LLC), were recognized by their local paper for the fact that they have each served the Ellsworth community for 40 years.

Tai J. Vokins and Krystal L. Vokins have joined the law firm of Sloan, Eisenbarth, Glassman, McEntire & Jarboe, LLC. Both will practice primarily in the firm’s Lawrence office. Mr. Vokins focuses his practice on consumer protection, primarily in litigation. Ms. Vokins has worked as a research attorney but also has experience in civil litigation, consumer protection and child-in-need-of-care matters.

Donald L. Burnett (July 1, 1934 - December 18, 2017)

Surrounded by his loving family, Donald Lowrey Burnett I, 83, went onto greener pastures, December 18, 2017. As a native son to one of Larned’s founding families, Don was born in the Dust Bowl days to Don E. Burnett and Helen Burnett. With his solid roots and keen mind, he was a life-long learner, quietly lending his expertise to numerous professional and civic projects. As a community leader, husband, father and grandfather, Don’s faith and value system permeated all aspects of his life. He was a man of character, respected for his fine-mind, fairness and integrity.

It was noted that Don was a formidable competitor on the golf course. As a decades-long City Golf Champion, he hit a three-iron higher and farther than any home-spun tall tale. To this date, his children only beat him a total of four times on the golf course, an accomplishment he denied until his last breath. Known affectionately in his inner circle as Whiplash Willie, Don could be found circling the table, dishing out patriotic and political commentary, history, or KU Jayhawk basketball stats with his signature dry wit. Don is survived by his devoted wife of 50 years, Deanne Burnett, Larned, Kansas. Other survivors include: daughter: Georgia (Monte) Martin, Dallas, Texas; son: Lowrey (Nikki) Burnett, Denver, Colorado; son: Brooks (Teresa) Burnett, Manhattan, Kansas; son: Jim Burnett, Gunnison, Colorado; four grandchildren: Luke, Holt and Elle Martin, Dallas, Texas; Kennedy Burnett, Manhattan, Kansas. Following his passing, Don was privately placed in the beloved Pawnee County soil with his immediate family surrounding him.

A Memorial Service celebrating Don’s life was held January 13th, at First Presbyterian Church, Larned, Kansas.

With Don’s love of education and history, memorials in lieu
of flowers may be given to The Jordaan Foundation, Inc. or to the Santa Fe Trail Center Museum. To send, mail c/o Beckwith Mortuary. P.O. Box 477, Larned, KS 67550. Personal condolences may be left with www.beckwithmortuary.com

*Don L. Burnett’s Education and Professional Background:
Don attended The University of Kansas and was a member of the Phi Gamma Delta fraternity. After earning his Bachelor Degree, followed by the Juris Doctor degree at KU Law, Don returned to Larned to practice law with Maurice Wildgen and Glee Smith at Wildgen & Smith.

Though partners in the law firm changed over his 59 years of practice (i.e. Smith, Burnett & Larson; Smith, Burnett, Larson & Butler; Smith & Burnett, LLC), Don continued to serve his clients through the firm of Smith, Burnett and Hagerman, LLC until his retirement in December 2017.

*A Partial list of Don L. Burnett’s Past Civic and Community Leadership Involvement:
President: The Jordaan Foundation, Inc.; Of Council: The Fort Larned Historical Society; Trustee: Pawnee County Law Library; President: Pawnee County Bar Association; Member: American Bar Association; Member: Kansas Bar Association; Member: Southwest Kansas Bar Association; Journal Council Sub-Committee on Mental Hospital Admission Laws; Board of Editors; Kansas Bar Journal; President: Larned Chamber of Commerce; President and Honorary Member: Larned Rotary Club; Chairman: Larned Rotary; Student Loan Fund Trustee and Elder and Sunday School Teacher: First Presbyterian Church of Larned, Kansas; Board Member: St. Joseph Memorial Hospital; Board Member: Larned Community Hospital; Committee Member: Larned Masonic Lodge; Board Member: Larned Country Club; Volunteer: Larned Junior Golf

*Don L. Burnett’s Education and Professional Background:

Don attended The University of Kansas and was a member of the Phi Gamma Delta fraternity. After earning his Bachelor Degree, followed by the Juris Doctor degree at KU Law, Don returned to Larned to practice law with Maurice Wildgen and Glee Smith at Wildgen & Smith.

Though partners in the law firm changed over his 59 years of practice (i.e. Smith, Burnett & Larson; Smith, Burnett, Larson & Butler; Smith & Burnett, LLC), Don continued to serve his clients through the firm of Smith, Burnett and Hagerman, LLC until his retirement in December 2017.

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President: The Jordaan Foundation, Inc.; Of Council: The Fort Larned Historical Society; Trustee: Pawnee County Law Library; President: Pawnee County Bar Association; Member: American Bar Association; Member: Kansas Bar Association; Member: Southwest Kansas Bar Association; Journal Council Sub-Committee on Mental Hospital Admission Laws; Board of Editors; Kansas Bar Journal; President: Larned Chamber of Commerce; President and Honorary Member: Larned Rotary Club; Chairman: Larned Rotary; Student Loan Fund Trustee and Elder and Sunday School Teacher: First Presbyterian Church of Larned, Kansas; Board Member: St. Joseph Memorial Hospital; Board Member: Larned Community Hospital; Committee Member: Larned Masonic Lodge; Board Member: Larned Country Club; Volunteer: Larned Junior Golf

**Jay Don Reynolds (October 3, 1940 - November 27, 2017)**

Jay Don Reynolds, was born in Avard, Oklahoma, on October 3, 1940, and died in Meade County, Kansas, on November 27, 2017, with his wife, Sheila by his side.

He is preceded in death by his parents, Cordilla (Olive) Reynolds and H.H. Reynolds; his brother Richard Reynolds, sister Patsy; and his son Christopher Reynolds. He is survived by his sons, Kansas Mark Reynolds of Dodge City, Kansas, and Chad Reynolds of Salem, Oregon; his stepchildren, Rona Kramer of Cimarron, Darin Riedlinger, and Micalah Preedy of Meade; sister, Joan Owens of Oregon; nephews Eric Owens of Oregon, and Dirk Reynolds of Oklahoma; nieces Reta Lindsley of Washington, Deeana Printz of Oregon.

He graduated from Coldwater High School and attended Northwestern Oklahoma State University. He then completed his legal education at Washburn. He then entered as a commissioned officer as a U.S. Marine and completed two tours in Vietnam as a JAG officer. He continued to support the Marine activities as once a Marine always a Marine.

After Vietnam, he began his civilian legal career in Cimarron, Kansas, in 1969 and was elected county attorney for Gray County in 1971. He became 16th judicial circuit judge in 1977 and retired in 2001.

He married his sunshine Sheila Preedy on February 19, 2011 and relocated to Meade, Kansas, and attended the Emmanuel Mennonite Church.

He was a member of the American Quarter Horse Association, National Cutting Horse Association, VFW, and the Southwest Kansas Bar Association. He was an active member of the Dodge City community in various civic organizations including New Chance and the Dodge City Round Up Arena.

Throughout his life he had enjoyed the outdoors. His love of horses continued with success in showing and breeding Quarter horses. Hunting was a passion from elk in Colorado, wild pigs in Texas, alligators in Florida, to the big game in South Africa. He always was on the lookout to help someone better themselves. A great friend, father, son, uncle, brother, and husband.

**Semper Fidelis**

Funeral services were held Friday, December 8, 2017, at the Emmanuel Mennonite Church, Meade. Visitation was held at Fidler-Orme-Bachman Mortuary. Interment followed the service in the Kansas Veterans Cemetery at Ft. Dodge.

In lieu of flowers the family welcomed memorials to the Micalah Preedy Education Fund in care of the funeral home.

Personal condolences may be given to the family at www.fidlerormebachmanmortuary.com.
All KBA Handbooks are now available as eBooks through Casemaker!

Visit https://go.ksbar.org/CasemakerLibraJA2017 for more information.
ATTORNEY DISCIPLINE

ORDER OF DISBARMENT
IN THE MATTER OF THEODORE R. HOEFLE
NO. 22,228—JANUARY 16, 2018

FACTS: In a letter signed December 29, 2017, Theodore R. Hoefle voluntarily surrendered his license to practice law. At the time of surrender, a disciplinary complaint was pending against Hoefle. The complaint alleged that Hoefle violated Kansas Rule of Professional Conduct 8.4 (misconduct) by failing to correct a false insurance claim and failing to correct false information in a police report.

HELD: The court found that the surrender should be accepted. Hoefle is disbarred.

ONE YEAR SUSPENSION
IN THE MATTER OF DANIEL HART PHILLIPS
NO. 118,210—JANUARY 12, 2018

FACTS: A hearing panel determined that Phillips violated KRPC 8.4(g) (engaging in conduct adversely reflecting on a lawyer’s fitness to practice law). The issue arose after Phillips made inappropriate sexual remarks to a prospective client. During the investigation, Phillips admitted to making the comments, apologized, and blamed his prior history of substance abuse as a precipitating factor.

HEARING PANEL: At the hearing, the panel concluded that Phillips was not fully honest when answering questions from the disciplinary administrator’s office. After considering the other aggravating and mitigating factors, and the Disciplinary Administrator’s conditional recommendation of probation, the hearing panel recommended that Phillips be suspended for one year with a two-year term of probation starting after 30 days.

HELD: The hearing panel’s findings were deemed admitted. At oral argument, the Deputy Disciplinary Administrator introduced evidence to show that Phillips was not in compliance with his proposed probation plan. Because of this evidence, the court ruled that probation was not an appropriate disposition. The court suspended Phillips for one year and refused probation.

CIVIL

APPEALS—APPELLEE PROCEDURE—ATTORNEY AND CLIENT—HABEAS CORPUS—JURISDICTION—POST-CONVICTION REMEDIES
MUNDY V. STATE
LYON DISTRICT COURT—AFFIRMED
COURT OF APPEALS—AFFIRMED
NO. 112,131—JANUARY 19, 2018

FACTS: Mundy was found guilty of making a false claim to the Medicaid program and obstructing a Medicaid fraud investigation. Sentence imposed included a suspended prison term, probation, and payment of restitution and costs. While on probation Mundy filed a pro se 60-1507 motion, alleging, in part, ineffective assistance of trial attorney. District court appointed counsel. After reviewing the record, the district court summarily denied the 60-1507 motion, finding Mundy failed to show that trial counsel’s representation was not objectively reasonable, and that Mundy failed to plead sufficient facts for an evidentiary hearing. 60-1507 counsel filed notice of appeal. Appellate counsel appointed. Mundy argued, in part, that her release from probation did not deprive courts of jurisdiction, that 60-1507 counsel was ineffective by filing only a bare notice of appeal, and that district court’s summary denial of the 60-1507 motion denied her due process by not following procedural options in Lujan v. State, 270 Kan. 163 (2000). In an unpublished opinion, the Court of Appeals agreed that Mundy’s release from probation did not deprive courts of jurisdiction, found no jurisdiction to consider claim raised for first time on appeal that 60-1507 counsel was ineffective by filing only a bare notice of appeal, and affirmed the district court’s summary denial of the 60-1507 motion. Mundy’s petition for review was granted.

ISSUES: (1) Jurisdiction, (2) notice of appeal, (3) ineffective assistance of 60-1507 counsel, (4) adjudication of a 60-1507 motion

HELD: Issue of first impression for Kansas Supreme Court. A Kansas court obtains jurisdiction over a 60-1507 motion if it is filed while a movant is in custody, and jurisdiction is not lost if the movant’s custody ends before judgment on the motion becomes final. Adopting the standard applied in habeas context, Mundy’s release from probation did not render her appeal moot because she still faced obligation to pay restitution and costs.
Court of Appeals erred in concluding it lacked jurisdiction to determine Mundy's ineffective assistance of 60-1507 counsel claim. Panel's approach effectively took away the availability of a proceeding under State v. Van Cleave, 239 Kan. 117 (1986). A notice of appeal stating the appeal is being taken from trial court's decisions is sufficiently broad to give an appellate court jurisdiction to hear a claim that counsel appointed to handle 60-1507 proceeding was ineffective, even when the claim is raised for first time on appeal.

The claim of ineffective assistance of 60-1507 counsel is not reached or decided. Mundy was entitled to effective assistance of 60-1507 appointed counsel, but the record is insufficient to resolve that issue. Mundy never requested a Van Cleave remand and Supreme Court declines to sua sponte order a remand in this case.

K.S.A 2016 Supp. 60-1507 and Kansas Supreme Court Rule 183 are interpreted. Nothing in Lujan prevents a district court from concluding without a hearing—even after counsel has been appointed - that the motions, files, and records of a case conclusively show that the movant is entitled to no relief. In this case, Mundy's 60-1507 motion did not merit an evidentiary hearing and the district court did not err in summarily dismissing the motion.

STATUTES: K.S.A. 2016 Supp. 60-1507, -1507(a), -1507(b), -2103, -2103(b); K.S.A. 21-3846(a)(1), -3849, 22-4506(b), 60-2101(b)

Criminal Law
Constitutional Law—Crimes and Punishment—Sentencing—Statutes
State v. Kinder
Wyandotte District Court—Reversed
Court of Appeals—Reversed
No. 112,844—January 5, 2018

FACTS: Kinder entered no contest plea to one count of mistreatment of a dependent adult. District court imposed a presumptive 9-month sentence with 18-months' probation, and awarded credit for 360 days of pretrial confinement. Kinder appealed, arguing probation was improper and violated Double Jeopardy Clause because he had already served his sentence of confinement. In unpublished opinion, Court of Appeals dismissed the appeal without addressing whether sentencing probation was error under Kansas Sentencing Guidelines Act (KSGA). Instead, the panel held there was no jurisdiction to review a presumptive sentence. Kinder's petition for review granted.

ISSUE: KSGA Sentence of Probation

HELD: Panel's dismissal of the appeal is reversed. Review is appropriate because Kinder is not actually challenging a presumptive sentence. District court erred in imposing probation. "Probation," as defined by KSGA, cannot be imposed after the underlying full sentence of confinement has been served.

STATUTES: K.S.A. 2016 Supp. 21-6603(e), -6603(g), -6615, -6803(q), -6804, -6804(a)(3), -6820(c)(1), 22-3716, -3716(c)(1)(B)-(E), -3716(c)(7), -3716(c)(11) -3717(d)(1)(C); K.S.A. 20-3018(b)

Criminal Law—Fraud and Deceit—Statutes
State v. Ward
Johnson District Court—Reversed
Court of Appeals—Affirmed
No. 111,640—January 12, 2018

FACTS: As a loan to All Construction Guaranteed Roofing and Restoration (ACG), a company formed and operated by Ward and Rhodes, Sweeney wrote a Bank of America check to ACG. Ward added his name as a payee on the check, and deposited it in his personal account at First National Bank. State charged Ward with theft by deception from ACG or Bank of America, and with making false information. On appeal, Wade claimed insufficient evidence supported the theft by deception conviction, and the State proved the crime of forgery rather than making false information. Court of Appeals agreed and reversed both convictions. State v. Ward, 52 Kan.App.2d 663 (2016). State’s petition for review granted.

ISSUES: (1) Theft by deception, (2) making false information

HELD: On facts in this case, insufficient evidence supported Ward's conviction of theft by deception. No proof that either of the two possible victims named in the charging document and jury instruction was deceived by Ward. Departing from panel's analysis, Supreme Court finds the theft by deception from Bank of America fails because First National Bank, rather than Bank of America, was deceived by Ward's actions.

Making false information and forgery statutes are interpreted, with extensive discussion of their statutory history. A defendant's conviction for making false information can be affirmed regardless of whether the criminal conduct pertains to his or her own business or affairs. Any earlier statement in or impression from State v. Rios, 246 Kan. 517 (1990), and State v. Gotti, 273 Kan. 459 (2002), to the contrary is explicitly rejected. Under facts in this case, evidence that Ward altered the payee line of a check was insufficient to prove he made false information.

MOOTNESS—PROTECTION FROM STALKING  
KERRY G. V. STACY C.  
HARVEY DISTRICT COURT—REVERSED AND VACATED  
NO. 117,070—JANUARY 5, 2018

FACTS: Kerry and Stacy were involved in a romantic relationship. After issues arose, Kerry reported Stacy to the police and filed a petition for a protection from abuse order against him. The district court entered a final PFA order against Stacy that was to be in place until October 13, 2016. Prior to the expiration of that PFA, Kerry filed a motion to extend the PFA for an additional year. The matter was never set for hearing, although both parties and their attorneys made appearances before the district court. But Stacy did not learn about the extended PFA until an order was served on him. He moved to dismiss the extension, claiming that the lack of notice and hearing violated his due process rights. The district court denied that motion, claiming that the district court could extend the PFA without notice or hearing. Stacy appealed.

ISSUES: (1) Mootness; (2) due process considerations in extending the PFA; (3) constitutionality of K.S.A. 2016 Supp. 60-3107(e)(1)

HELD: The PFA has already expired, meaning that Stacy cannot receive relief from the appellate court. But this issue is capable of repetition, and the issue is one of public importance. Because of that, the appeal is not moot. It is undisputed that the motion to extend the PFA was not served on Stacy or his attorney. The content of the motion did not provide any clue as to why Kerry believed extension of the PFA was necessary. Because the PFA was entered without any notice to Stacy it violated his due process rights. That order was vacated. K.S.A. 2016 Supp. 60-3107(e)(1) is not void for vagueness. The district court’s grant of the PFA extension without exercising any discretion at all was an abuse.

STATUTES: K.S.A. 2016 Supp. 59-3073(a)(7), 60-205(a)(1)(D), 60-205(b)(1), 60-205(b)(2)(C), 60-206(b), 60-206(c), 60-207(b), 63104(a), 63104(d), 63105(a), 631a05(b), 63106(a), 63106(b), 63107(e); and K.S.A. 53-601
FACTS: Acting on verified information, officers located Bannon in student apartment lobby and found a concealed handgun during a pat-down search. Bannon filed motion to suppress this evidence, arguing it was taken during a warrantless search of his person within the curtilage of his apartment, or alternatively, the officers lacked reasonable suspicion or probable cause to seize and search him. District court denied the motion, and jury convicted Bannon of criminal carrying of a weapon. On appeal Bannon claimed he was in lawful possession of the firearm because the front lobby to his apartment building qualified as part of his abode or curtilage. He also claimed the district court erred in not granting his motion to suppress, arguing the evidence was discovered as a result of an improper pat-down search. In unpublished opinion, Court of Appeals found the motion to suppress should have been granted because a warrantless pat-down search occurred without evidence a law enforcement officer had an actual, subjective belief Bannon was armed and presently dangerous, or that officers were reasonably concerned for their safety or safety of others. State's petition for review granted. Supreme Court reversed and remanded, adopting and applying a hybrid approach to the second step of a Terry stop: testimony as to officer's subjective belief or fear is a factor for consideration in the objective analysis of the totality of the circumstances, but absence of such testimony does not invalidate the reasonableness of a frisk. State v. Bannon, 306 Kan. 886 (2017).

ISSUES: (1) Curtilage or abode, (2) motion to suppress

HELD: Issue of first impression in Kansas as to whether the lobby of an apartment building is considered the tenant's land or abode under K.S.A. 2012 Supp. 21-6302(a)(4). Under analysis in recent unpublished Kansas Court of Appeals case and cases in other jurisdictions, the student apartment lobby in this case was not an extension of Bannon's apartment or abode. More than nonexclusive permissive use with others is needed. Also, at time of the stop and frisk, Bannon was sitting in a chair reading. He was not using the lobby as an extension of his land through an ingress-egress easement, and had no right under an easement to possess a firearm in the front lobby.

District court's denial of Bannon's motion to suppress did not violate the Fourth Amendment. The stop of Bannon in the lobby was sufficiently public for officers to initiate the stop. Considering the totality of the circumstances, and applying the hybrid test adopted by the Supreme Court, it was objectively reasonable for the officers to believe Bannon had a gun and to perform a pat-down search for their safety and the safety of others.

STATUTE: K.S.A. 2012 Supp. 21-6302, -6302(a)(4)

CRIMINAL LAW—EVIDENCE—STATUTES
STATE V. BRAZZLE
RILEY DISTRICT COURT—AFFIRMED
NO. 116,649—JANUARY 12, 2017

FACTS: Brazzle was convicted of drug charges involving methamphetamine, and possession of oxycodone based on gray pills identified by an officer using www.drugs.com. District court allowed state to present evidence that Brazzle was involved in undercover methamphetamine transactions a week before his arrest in this case. On appeal, Brazzle claimed the admission of this K.S.A. 60-455 evidence was error because he never claimed his possession of methamphetamine was innocent, and the potential prejudice outweighed its probative value. He next challenged the jury instruction on the elements for possession of oxycodone. Third, he claimed insufficient evidence supported the oxycodone conviction because the state failed to present evidence the pill was tested, and failed to present any evidence that Brazzle did not have a prescription for that drug.

ISSUES: (1) Admission of evidence, (2) jury instruction, (3) sufficiency of the evidence – possession of a controlled substance, (4) proof of prescription

HELD: District court did not abuse its discretion by admitting the evidence under K.S.A. 60-455. By claiming the State could not prove the items discovered in the stopped vehicle belonged to him, Brazzle essentially raised a defense of innocence, and the evidence was highly probative of his intent to distribute the methamphetamine he possessed rather than to possess it for personal use.

Brazzle invited error by advocating the version of the instruction given to the jury.

Issue of first impression in Kansas. When sufficiency of the evidence for possession of a controlled substance is challenged, uncontested testimony by a witness identifying the substance through consultation with www.drugs.com is sufficient to support jury's conclusion beyond a reasonable doubt that the substance was that identified by the witness. Here, this evidence was admitted without objection and without any evidence to the contrary. The officer's testimony was sufficient for jury to reasonably conclude the gray pills were oxycodone hydrochloride.

Relevant statutes are interpreted. Lawful possession of a controlled substance by prescription is an affirmative defense to the charge of possession of a controlled substance under K.S.A. 2016 Supp. 21-5706 A person charged with unlawful possession of a controlled substance must bring forward a claim of legal authorization to possess the controlled substance at issue.

CONCURRENCE and DISSENT (Atcheson, J.): Dissents from majority's finding that sufficient evidence supported the possession of oxycodone conviction. Here the jurors had to speculate on the facts and basic details about the officer's internet-based identification of the seized pills as oxycodone,
and cases cited by the majority are inapposite to the majority’s conclusion.

STATUTES: K.S.A. 2016 Supp. 21-5706, 60-455, -455(b), 65-4107(b)(1)(N), -4107(b)(2), -4116(a), -4116(b), -4116(c), -4116(c)(3), -4123, -4123(a), -4123(b); and K.S.A. 60-455, 65-4101 et seq.

CONSTITUTIONAL LAW—DUE PROCESS—CRIMINAL LAW—CRIMINAL PROCEDURE—STATUTES

STATE V. OWENSWYANDOTTE DISTRICT COURT—REVERSED AND VACATED

NO. 116,979—JANUARY 12, 2018

FACTS: Owens convicted in 2003 of aggravated indecent liberties with a child, and was required to register with sheriff four times a year. He did so in 2014, but was unable to pay the $20 fee for each registration. Each failure to pay was itself a crime absent compliance with K.S.A. 2014 Supp. 22-4905(k)(3) which provides waiver of the fee payment only if the offender obtained a judicial finding of indigency prior to the required reporting. Owen challenged the constitutionality of that statute, as applied to him, as not providing procedural due process.

ISSUE: Due process

HELD: Finding a defendant criminally liable for failure to pay the $20 registration fee under the Kansas Offender Registration Act violates the defendant’s procedural-due-process rights as applied in this case because Owens had no reasonably available path to get a court finding of indigency. Owens received no notice of a procedure he could use to get a court to determine he was unable to pay the fee before his registration dates, and Legislature provided no clear guidance about how one might do so.


Appellate Practice Reminders
From the Appellate Court Clerk's Office

Get a Cause

Every now and then, it is necessary to clear up any number of misconceptions in the APW (that’s appellate practice world.) If one of the appellate courts sends out a show cause order, your briefing clock is still running. Nothing whatsoever about that show cause order stops the briefing schedule. Sometimes attorneys assume that everything under the heavens shuts down on briefing until the show cause is resolved. Not so (remember what your mother told you if you assume something…). You should continue listening to the ticking of your internal briefing clock because if the alarm is about to go off, and you’re coming up on a deadline, you better make sure to file a motion for time if you need it. #I’mgonnacomplywithRule5.02. That said, the courts are not callous enough, yes, the courts are not callous enough to understand that responding to the show cause order takes time, and the need to respond could justify an extension of time. If you truly believe that resolving the show cause process will be so burdensome as to make briefing impossible, then the proper action is to file a motion to stay.

For questions about these or other appellate procedures and practices, call the Office of the Clerk of the Appellate Courts. (785) 296-3229, Douglas T. Shima, Clerk.
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Help obtain justice for victims of crime with disabilities. Advocate sought by Disability Rights Center of Kansas to advocate for crime victims with disabilities. 40 hour a week position, yearly pay is approx $32K, but depends on experience. Paralegals encouraged to apply. Great benefits. Employer-paid BCBS health insurance, KPERS retirement, etc. Questions? Need an alternative format? Contact DRC: 1-877-776-1541 for info@drckansas.org. Get the full job description & application at www.drckansas.org/about-us/jobapp

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

Attorney/Administrator – Disability Crime Victims Unit
Help obtain justice for victims of crime with disabilities. Licensed attorney sought by Disability Rights Center of Kansas to provide legal services to crime victims with disabilities & to administer the federal grant. Experience administering grant programs a plus. Salary approx. $62,500, but depends on experience. Great benefits. Employer-paid BCBS health insurance, KPERS retirement, etc. Questions? Need an alternative format? Contact DRC: 1-877-776-1541 or info@drckansas.org. Get the full job description & application atwww.drckansas.org/about-us/jobapp

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