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KBA Elections
Introducing the Candidates in Contested Races

Secretary/Treasurer

**Nancy Morales Gonzalez** is a lifelong Kansan and has been a Kansas lawyer for 16 years. She has served on the Kansas Bar Association Board of Governors for the past 9 years. She received her undergraduate degree from the University of Kansas, and her Juris Doctorate from the University of Missouri-Kansas City, where she was the managing editor of a national law journal, among other awards and endeavors. Nancy began her legal career as a judicial law clerk at the U.S. District Court for the Western District of Missouri, before joining a national law firm. In a year’s sabbatical from the firm, she served as a judicial law clerk at U.S. Court of Appeals for the Eighth Circuit. Nancy transitioned from the firm in 2008 to enter into government service. She presently is a senior attorney representing the federal government in national litigation. In addition to her legal practice, Nancy holds leadership positions in many civic and professional organizations. She aspires to serve the lawyers of Kansas as the Secretary-Treasurer of the Kansas Bar Association.

**Cheryl Whelan:** Since 2012, I have had the pleasure of serving as the District Three Governor on the Kansas Bar Association (KBA) Board of Governors (BOG). For the last year, I also served on the BOG Executive Committee. With this experience, I am very aware of the challenges facing the KBA on a variety of issues including membership and finances. The KBA must address these challenges in order to remain a relevant and vibrant organization. With my second term on the BOG soon ending, I am running for the KBA Secretary-Treasurer so that I may utilize my experience and knowledge of the KBA to continue working on these issues.

For over 25 years I have been very involved with the KBA at the committee and section level. I am a long-term member of the Government Law Section, and a past president as well as a past secretary-treasurer of the section. I currently serve on the Board of Publishers, the Golf Tournament Planning Committee, the Law Related Education Committee, the Media-Bar Committee and the Nominating Committee. In the past, I served on the Commission on Professionalism, the Annual Meeting Analysis Task Force and the Annual Meeting Planning Committee for the 2014 Annual Meeting.

I also am involved in other professional and civic organizations including the Topeka Bar Association, the Women Attorneys Association of Topeka, the Kansas Women Attorneys Association and Sertoma. I am a past board member of the American Red Cross of the Capital Area.

Currently, I am an Assistant Attorney General and the Director of Open Government Training and Compliance in the Office of Kansas Attorney General Derek Schmidt. Additionally, I am a Judge Advocate in the Army Reserve, and was awarded the Bronze Star for a combat deployment in Iraq. After 21 years of service, I am retiring from the Army Reserve this spring. I previously served as the General Counsel for the Kansas State Department of Education and have many years of experience as an attorney with various governmental agencies including the United States Army, the State Fire Marshal’s Office, the Shawnee County District Attorney’s Office, and the Kansas Court of Appeals.

I earned both my Juris Doctor and Masters of Public Administration from the University of Kansas. My undergraduate degrees in political science and communication studies are from Washburn University.
Natalie Haag: Kansas is the best place in the country to practice law. The lawyers in our state are great advocates for their clients, for fair and impartial courts and for integrity in the legal community. I hope to represent this great group of lawyers as the KBA Delegate to the ABA House.

My 32 years of legal experience includes civil and criminal litigation, administrative law and corporate law, and I’ve practiced in law firms, at the State of Kansas and in both public and private corporations. Over the last 21 years, I’ve worked as General Counsel and Chief of Staff to Governor Graves, Director of Governmental Affairs for Security Benefit Corporation and General Counsel for Capitol Federal® Savings Bank. In these positions, I’ve worked extensively with legislative bodies, which has allowed me to develop and hone my lobbying skills. As your delegate, I would enjoy putting these skills to work by advocating for your positions at the ABA.

Practicing law in Arkansas City, Wichita and Topeka, I’ve met attorneys from across the state in a wide variety of practices. While serving on the KBA Board of Governors, as the President of the KBA, and on various KBA committees, including the Legislative Committee (former chair), 2020 Diversity Committee, and CLE Committee, I’ve had the opportunity to travel all over Kansas and learn about the issues that matter to our entire legal community. During my terms as KBA President-Elect and President, I also represented our state at ABA meetings, where I gained a deeper understanding of the value this organization brings to our profession. My prior experience with the ABA, combined with my knowledge of what’s important to Kansas lawyers, will help me to give valuable input to the ABA House on the policies that govern the practice of law.

As your ABA delegate, I would be happy to have the opportunity to continue and expand my service to the bar. I have demonstrated my long-term commitment to our legal community through committee and board service as a member of the KBA, Topeka Bar Association, Women Attorneys Association of Topeka and Kansas Women Attorneys Association. This commitment is also reflected in my service as the Second Congressional District Representative on the Supreme Court Nominating Commission, which has allowed me to work with dedicated lawyers from across the state to select qualified candidates for our judiciary. In addition, I have the pleasure of serving my alma mater as a member of the Washburn University School of Law Business and Transactional Law Center Board of Advisors. It has been a great honor to be recognized for my professional service with the 2008 Kansas Bar Association Outstanding Service Award, 2013 Topeka Bar Association Newton Vickers Professionalism Award and the 2016 Washburn University School of Law Alumni Fellow.

My position as General Counsel of Capitol Federal® Savings Bank, while busy, allows me the flexibility to commit to studying the issues and attending the ABA and KBA meetings required to fulfill the obligations of this position. It would be my pleasure to represent the great lawyers of Kansas and advocate for your positions at the ABA. I request your vote for the position of KBA Delegate to the ABA House.
Christi Bright: I am a graduate of the University of Kansas School of Law and have been representing clients in various areas of the law throughout the states of Kansas and Missouri for over 20 years. I am grateful to have built, alongside my husband, a very successful and prominent family law practice in Overland Park Kansas. Throughout my practice, I have dedicated a great amount of my time and efforts in serving on numerous boards, commissions, committees and task forces within the state and local bar associations. In addition to serving as one of the District 1 Board of Governors, I am also the President Elect for KBA’s Family Law Section and am past co-chair of the Diversity committee. I also serve as the Board liaison to the KBF Board of Trustee’s. Locally, I serve on the family law bench bar committee for the Johnson County Bar Association where we recently modified and updated local guidelines that are used and referenced all over the state by Judges and practitioners alike. We also prepare and present continuing legal education to other practitioners on relevant and current issues that are facing our profession. In addition to my service to my local and state bar associations, I also serve the ABA as a presidential appointment on the Commission for Youth at Risk. I serve in so many professional capacities because I believe that our bar is only as strong as the service that we individually provide back to it.

Throughout my career, I have clerked for the Honorable W. Stephen Nixon, a Circuit Court Judge in Jackson County Missouri and given several lectures throughout Kansas and Missouri, including for continuing legal education credits, on the topics of probate, employment and housing discrimination and diversity. When I am not working, I am a passionate tennis player with a growing ambition for golf. I most enjoy spending time outdoors with my family. Most people have heard me say that I am tropical and love most things outdoors, including gardening, but this Kansas weather sends me into a light depression every winter. On weekends, I can be found serving in my church as a children’s church teacher or working at one of the local outreach centers helping meet the needs of the homeless or disadvantaged. I dreamed of being at attorney when I was 8 but I never could have imagined that God would take that dream and fulfill so many others through the life that I am so richly blessed to live! I can’t help but wake up each day and be thankful and ask how can I help someone else be better today!

Eric Rosenblad: I have been a practicing member of the Kansas Bar since 1982 and have directed the Southeast Kansas Legal Services program since 1984. Let me share my thoughts about this election.

The work of the Kansas Bar Association and the American Bar Association has never been more important. We strive to preserve the rule of law, to maintain fair and impartial Courts, to provide vital public education on legal issues, to improve the law and resist improvident reactionary proposals, and to constantly improve our member’s ability to provide high quality, effective service to our clients. As a member of the KBA Board of Governors I have appreciated the opportunity to work on these issues.

As a Fellow and Trustee of the Kansas Bar Foundation I have been impressed by the important work our members support. The Foundation provides crucial financial support to law related charities to meet critical needs. The educational projects supported by the Foundation improve understanding and respect for the law. I am pleased to be a part of supporting this work.

Kansas lawyers understand that the privilege of practicing law comes with some duties. Our training and experience has given us valuable leadership skills that are needed in our local communities. Like many of you, I have regularly volunteered my time to many civic, charitable and religious organizations, serving on boards, giving advice and counsel, and sometimes rolled up my sleeves for a good cause.

This is my vision for our profession and the values I would hold as your representative to the ABA House of Delegates. If you share this vision, I will welcome your support.
During the spring of 2017, The Kansas Bar Association surveyed the legal community on the economics of law practice considering similar studies undertaken in 2012, 2005 and 1997. The objectives of all studies were to derive and report the following:

- Demographics of practicing attorneys, including views on economic sentiment
- Attorney 2016 taxable income arrayed by practice class, gender, field of law, office location, full- vs. part-time status, years in practice and firm size
- Associate, legal assistant, and secretary 2017 annual compensation by years of experience (tenure) and office location
- Prevailing average 2017 hourly billing rates for attorneys arrayed by a variety of indicators, and for legal assistants by years of experience, firm size and office location
- Attorney time allocated to billable and non-billable professional activities in 2017
- Fixed expense and gross revenues per attorney and overhead rates associated with maintaining a private law practice by office location and firm size in 2016, and
- Contemporary law office client and matter management, technology embracing and marketing practices

This information has been organized here to help attorneys plan and manage their professional lives. They can compare themselves and their firms against benchmarks/norms established from aggregating survey data. These benchmarks consider these variables: office location, firm size, practice class, area of legal concentration/primary field of law and years in practice. Attention is also given to analysis of gender-specific factors influencing income gaps. Time series information is also provided to denote trend, given available data.
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Fifty years ago, in April of 1968, I was born into what many consider to be one of the most turbulent years of the 20th century. Because this year presents a bit of a milestone, it provides an opportunity to look back and reflect on the events that took place that year and how they continue to shape our society a half century later. Following a year that had witnessed both the Summer of Love and numerous race riots throughout our nation, 1968 began on an optimistic note with the January 5 selection of Alexander Dubček as the leader of the Communist Party in Czechoslovakia which ushered in a political liberalization movement now known as the Prague Spring. This note, like so many others, would later fall silent in August of 1968 when, in the largest military operation in Europe since the end of World War II, 750,000 Warsaw Pact troops including 6,500 tanks and 800 planes invaded Czechoslovakia.

On January 19, 1968, Dr. Martin Luther King Jr. gave his last speech to a university which happened to be at Kansas State University. His speech, titled “The Future of Integration,” was delivered as part of the all-University Convocation and was attended by over 7,000 people at Ahearn Field House. Less than three months later, on April 4, Dr. King was shot and killed at the Lorraine Motel in Memphis, Tenn. His legacy continues to inspire some 50 years later.

Somewhat eerily, U.S. presidential candidate Robert F. Kennedy would later give a speech titled “Conflict in Vietnam and at Home” at Kansas State University on the morning of March 18 as part of the then relatively new Landon Lecture Series on Public Issues. (Senator Kennedy gave a second speech at the University of Kansas that afternoon.) Like Dr. King, Senator Kennedy would lose his life to an assassin’s bullet less than three months later on June 5 at the Ambassador Hotel in Los Angeles, Calif.

The subject of Sen. Kennedy’s speech, the Vietnam War, was at the forefront of the minds of most Americans during 1968. On Jan. 30, Viet Cong forces launched a series of surprise attacks across South Vietnam in a campaign known as the Tet Offensive; it began on the Tet holiday (the Vietnamese New Year) and caused a significant change in how the American people viewed the war in Vietnam and how they viewed themselves as a nation.

As with life today, not every event in 1968 was necessarily historic or tragic. In 1968, the Federal Hourly Minimum Wage was $1.60 an hour. Today it is $7.25 an hour. A movie ticket in 1968 cost $1.50 while my ticket to “Avengers: Infinity War” cost $14.22. The average cost of a new car in 1968 was $2,822.00 and a gallon of gasoline cost only 34 cents. Average annual income was around $7,850.00 with the cost of a new house averaging around $14,950.00. The 1968 year-end Dow Jones Industrial Average was 943 while today it hovers over 24,000. The Standard & Poor’s 500 index closed above 100 for the first time on June 4, 1968, at 100.38. Today it sits at over 2,700. The current rate of inflation for the United States is around 2.2% whereas it was 4.57% in 1968.

Television shows Batman and the Andy Griffith Show came to an end in 1968. Rowan & Martin’s Laugh-In, Hawaii Five-0 and 60 Minutes debuted. Sixty Minutes remains on the air today while Hawaii Five-0 has returned to television. On the big screen, the 40th Academy Awards, originally scheduled to be held on April 8, 1968, were postponed to April 10, 1968, because of the assassination of Dr. King. “In the Heat of the Night” won best picture, beating out “Guess Who’s Coming to Dinner,” “The Graduate,” “Bonnie and Clyde” and “Doctor Dolittle.”

It was a year without baseball in Kansas City as the A’s had left for Oakland following the 1967 season, and although
the Royals were created as an expansion team on January 11, 1968, they would not begin play until the 1969 season. In college basketball, Kansas State University won the Big 8 and represented the conference in the NCAA Tournament which was won that year by UCLA over North Carolina. Kansas University, runner-up in the Big 8, went to the NIT where it lost in the championship game to Dayton. Washburn University’s basketball team posted an 8-0 conference record. On the gridiron, the University of Kansas football team lead by running back John Riggins was co-Champion with the University of Oklahoma of the Big 8 in the Fall of 1968 though it lost in the 1969 Orange Bowl to Penn State University. At Washburn, the 1968 team is credited as the team that helped save Ichabod football. Internationally, 1968 saw both a Winter Olympics in Grenoble, France, and a Summer Olympics in Mexico City, Mexico, as well as the first International Special Olympics Summer Games which was held at Soldier Field in Chicago, Illinois, with about 1,000 athletes participating. Foreshadowing today’s athletic protests, during the summer Olympics, U.S. Olympians Tommie Smith and John Carlos who won gold and bronze respectively in the 200-meter sprint, raised black-gloved fists during the medal ceremony.

The music charts in 1968 were topped by hits such as “Hey Jude” by the Beatles, “The Weight” by the Band, “Wichita Lineman” by Glen Campbell, “I Heard It Through the Grapevine” by Marvin Gaye and “Mama Cried” by Merle Haggard. Elvis with his televised special, and Johnny Cash with his live album at Folsom Prison, both revived their careers. Of note, the 1968 prison population was 188,000 and the incarceration rate the lowest since the late 1920’s. Incarceration rates and prison populations have increased dramatically since that time but recent years have witness a reversal of that long term trend.

Nineteen sixty-eight was an active year for the legal profession. On April 3, 1968, the United States Supreme Court heard arguments in Green v. County School Board, 391 U.S. 430 (1968), a school desegregation case wherein the Court held that the Fourteenth Amendment required action to remedy past racial discrimination—or what has come to be called affirmative action – based on an "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." The United States Supreme Court would also render another seminal educational decision in Epperson v. Arkansas, 393 U.S. 97 (1968), where it invalidated an Arkansas statute that prohibited the teaching of human evolution in the public schools by holding that the Establishment Clause of First Amendment to the United States Constitution prohibits a state from requiring, in the words of the majority opinion, "that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma."

On April 11—my birthday—United States President Lyndon B. Johnson signed into law the Civil Rights Act of 1968, which addressed discrimination in housing and is commonly referred to as the Fair Housing Act. This Act is generally regarded as the final great legislative achievement of the civil rights era.

In 1968, the Kansas legislature established a citizen’s committee to study and propose amendments to the constitution which would later result in a 124-page report to the legislature in February of 1969. Among the significant recommended changes in Article 3 was the creation of "a unified court with overall administrative and procedural rule-making powers in the supreme court branch thereof." Report of the Citizens’ Committee on Constitutional Revision, p. 43 (Feb. 1969). The committee’s commentary on the proposed changes revealed that the purposes behind amending Article 3, section 1, included the "[p]roper supervision, administration and discipline of judicial personnel" and "steadfast recognition of and insistence upon vigilant maintenance of the doctrine of separation of powers—with the three branches of government free from encroachments of each other." The report added that a proposed constitutional amendment unifying the court system “would create a unified court with overall administrative authority in the supreme court branch thereof and would vest the supreme court with rule making power regarding process, practice, and procedure at all levels of the unified court, as well as regarding appeals. Such rule making power is, in reality, an inherent power of the judiciary.” Report of the Citizens’ Committee, p. 43. These recommendations would eventually result in amendment to Article 3, § 1, of the Kansas Constitution, ratified in 1972 by the voters of the state of Kansas.

In the 1968 presidential election, Richard Nixon won, beating both Hubert Humphrey and George Wallace. Pres. Nixon carried every Kansas county except Wyandotte. In that same November election, Bob Dole was elected to his first term as United States Senator.

The year 1968 ended as it began—on an optimistic note—with the astronauts on Apollo 8 entering orbit around the moon on December 24. This year, 2018, is far from over and, like 1968, has seen its share of tragedies and triumphs. Towards the end of the year, the first commercial manned space flights are scheduled to take place, allowing us to again marvel at our potential to overcome adversity and accomplish incredible achievements in our next 50 years.

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.
Managing Cumulative Stress in Your Profession
by Hon. Evelyn Z. Wilson

It’s good to have a friend who also happens to be a clinical therapist. During the course of conversations about such things as family and good places to eat in New Orleans, she asked me a question about how I deal with cumulative stress.

Huh?
I’m fine. What do you mean - cumulative stress?
Apparently the stresses we experience during the course of our lifetimes have a cumulative effect, much like certain spices can heat up your food during the course of a meal. So, her question focused on me and how I deal - personally - with the cumulative stress I must be experiencing.

Our brains are remarkable. They can stretch, and adapt, and learn. But you can’t make them forget. You can compartmentalize, such as when you don’t think about your birthday for months, but when someone asks you when your birthday is, you can remember. That ability to compartmentalize keeps you from dealing with a tsunami of data all the time.

Because of her question, I focused on some of the stresses I have had.

As a judge, my number one hard thing was listening to evidence of child pornography. Looking at it was the second-hardest thing, but listening to the screams of a toddler was worse. I think about that sometimes, because you sure can’t forget it.

More on the hit parade (as a judge and/or an attorney): litigant parents who hate each other so much they don’t see what’s happening to their children - things I see and listen to, but cannot fix; so many phone calls and emails to answer that sometimes they get dropped; billable hours; unreasonable demands; unfair accusations. And then there are the personal stressors, such as the death of a nephew who was a pediatrician, when cancer got him at age 29; the dementia and death of my dad two years ago...or was it three; my husband’s surgery; my stupid ankle sprain; and certainly other things lurking around in compartments I’ll just leave alone for now.

Anyway, I guess when I think about it....

I’m not special. My stresses are not special. I know you’ve all had them, too.

If you’ve stayed with me until now, please do yourself a favor and think about the effect cumulative stress is having on you. Don’t ignore it. Cut yourself some slack and recognize that we live and work in the middle of a pressure cooker. Cut your colleagues some slack, too.

Then do some things to help yourself. Take a break. Set parameters with your clients and co-workers. Take your vacations. Don’t work all the time. Stop. Say no. Let people help you. Go outside. Laugh.

By the way, I know a good therapist.
Be well. Be happy.

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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The Importance of Sleep
by Clayton Kerbs

“I’ll sleep when I’m dead.” According to Matthew Walker, PhD, in his new book Why We Sleep (Scribner, 2017) if we do not get sufficient sleep now, we will bring that familiar refrain to reality sooner rather than later. The consensus is that adults need to get at least seven hours of sleep per night.1 Why do we sleep? What happens to our bodies when we do not get sufficient sleep? What can we do to improve our quantity of sleep?

Scientists have discovered a revolutionary new treatment that makes you live longer. It enhances your memory and makes you more creative. It makes you look more attractive. It keeps you slim and lowers food cravings. It protects you from cancer and dementia. It wards off colds and the flu. It lowers your risk of heart attacks and stroke, not to mention diabetes. You’ll even feel happier, less depressed, and less anxious. Are you interested?2

You have probably guessed the above is talking about sleep, and you would be correct. No caveman diet required, just sufficient sleep. Sleep is not the absence of wakefulness, it is “exquisitely complex, metabolically active, and deliberately ordered series of unique stages.”3 The potential health benefits4 are plentiful and should be enough for those of us that are sleep-deprived to make meaningful changes.

Sufficient sleep improves our memory and enhances our ability to learn and store information. Almost 2,000 years ago, Roman rhetorician Quintillian noted the positive effect sufficient sleep has on memory. And here we are, 2,000 years later, sacrificing sufficient sleep in order to watch “The Walking Dead” or Instagram stories! We know this to be true for our children, and we make it a priority for them to get enough sleep so that they may be more successful in the classroom. Why do we not make it a priority for ourselves as adults? Wouldn’t it help you remember those great one-liners you had planned for cross-examination the next day?
Studies have also shown the positive impact sufficient sleep has on physical health, such as quicker recovery for stroke victims.\(^5\)

If we do not get sufficient sleep, the impacts can be devastating. It can lead to fatigue that rivals being legally intoxicated.\(^6\) In the United States, there is one motor vehicle accident per hour that is from fatigue-related error.\(^7\) Those of us who represent municipal clients should pay particular attention to this, because we often drive home late at night after a full day’s work. One study showed that getting six hours of sleep for ten days straight is the equivalent level of sleep deprivation to that of a person that has stayed awake for twenty-four straight hours.\(^8\)

Continued sleep deprivation can also be linked to numerous neurological disorders, such as Alzheimer’s, anxiety, depression, bipolar disorder, suicide, and stroke.\(^9\) Physiological diseases and disorders are also associated with sleep deprivation. Those include cancer, diabetes, heart attacks, infertility, weight gain, and immune deficiency.\(^10\) I think we all can relate to the fact that sleep deprivation can lead to increased mood swings and a lack of control over our emotions.\(^11\)

Knowing all the benefits of sleep, why do we not get sufficient sleep? I think this is a personal and subjective question because everyone may have different reasons, and sleep deprivation may be just during a season of life. For me, I have a child younger than a year old, and I have a child that has Type 1 diabetes. The baby phase is a seasonal stage of sleep deprivation for me while the older child with Type 1 is not. Type 1 requires attention twenty-four hours per day, so it is a little more concerning than my own personal health.

Career demands, excessive caffeine and using electronics prior to sleeping can all lead to sleep deprivation. Caffeine has a half-life of five to seven hours, so it still may be present in brain tissue five to seven hours after it is consumed.\(^12\) We feel sleepy when our adenosine levels increase, usually about twelve to sixteen hours after we wake up. Caffeine works by blocking adenosine receptors, masking our need for sleep. However, adenosine continues to be produced and builds up until the caffeine is gone from our system. This can lead to a crash and overwhelming sleepy feeling. Limiting our caffeine intake can lead to more sufficient sleep.

It is not realistic to remove electronics from our daily routine; that genie is out of the bottle. Dr. Walker’s hope is that we can incorporate technology in the bedroom that leads to individualized sleep tracking and the ability to change room conditions to produce a good sleeping environment. He also notes harmful blue light from LED bulbs can be replaced by warmer yellow light.\(^13\)

In the end, we each can take steps to get more sufficient sleep. The CEO of Aetna went as far as providing bonuses to employees that could present verified sleep-tracker data that showed they were getting sufficient sleep. Maybe present that one at the next office meeting!

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.

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3. *Id.* at 108.
5. *Id.* at 131.
6. *Id.* at 130.
7. *Id.* at 140.
8. *Id.* at 132.
9. *Id.* at 132.
10. *Id.* at 132.
11. *Id.* at 146.
13. *Id.* at 325.
I do not have a math gene. Despite this, I was able to survive geometry, trigonometry and algebra classes through high school and college with the help of teachers and classmates. I even made it through most of my pre-veterinary classes in college, including dreaded university chemistry labs. Then came plane trigonometry. If the purpose of that class was to weed people out, it worked. I had to find another profession that might support my horse habit, so law school it was. So, in a way, I really did go to law school so I did not have to do math. I never would have guessed I would use math on a daily basis in my profession—and even enjoy it.

I enjoy using math daily because it gives a clear answer. While there may be some grey areas interpreting and arguing over the law itself, once the law is applied to the numbers, there is only one answer. I also enjoy using math because it provides much of what I believe we all love—facts.

Our firm helps people find ways to pay for long term care. On the surface, this is relatively simple – you determine how much the individual’s income is and how much the long term care expenses are. Sometimes, there is enough income to pay for care. However, with nursing home costs reaching $6,000 in our area (which is on the low end), it is common for the people we meet to not have near enough income to cover their nursing home care. Paying out-of-pocket drains modest resources very quickly and can leave a spouse at home impoverished. This is where we get to apply the law to the numbers and provide a solution.
There are several ways for an individual to pay for long term care, including their own resources, long term care insurance, veteran’s pension benefits, and Medicaid. I am going to focus on the math we use to assist someone in need of Medicaid benefits. Many of our clients are surprised to hear that there is much more involved than just spending all of their money down to $2,000.

The requirements to qualify for Medicaid in Kansas are contained in the Kansas Economic and Employment Services Manual (KEESM). The KEESM is full of opportunities to use math to help our clients, be they single, married, young, or old. Really, our clients’ situations read like word problems, and the KEESM provides the keys to solving those problems. Let me go through some examples. Each step can lead down rabbit holes in the law, but I will stick to a broad overview. I will go through the calculations for a single person and a married couple. In addition, I will explain the issues that gifting presents and situations where annuities are a useful tool.

**Single Person**

To be eligible for Medicaid to help cover long term care costs, a person must meet an asset requirement, an income requirement, and a care needs requirement. The care needs requirement is determined by an assessment at the nursing home.\(^1\)

The general asset requirement is that an applicant must have countable resources below $2,000 in order to qualify for Medicaid.\(^2\) To meet the income requirement, the income needs to be below the cost of care.

The first step to determine if someone meets the asset requirement is to gather information for all of the resources and determine what is exempt and what is countable. An exempt resource is one that is not counted as an asset and does not have to be spent down, for example the homestead and one vehicle.\(^3\)

Only the countable resources must be spent down to $2,000 (or less). These countable resources include assets like bank accounts, investments, cash value of life insurance, and retirement accounts. Completing the spend-down may be as simple as purchasing things the individual needs, like home improvements, a new vehicle, and a funeral plan. It can also involve complex calculations where assets are gifted for preservation.

To meet the income requirements, the individual’s income, or more specifically, the patient obligation, must be below the Medicaid rate at the nursing home. The patient obligation is the amount the individual is required to pay to the nursing home while on Medicaid.\(^4\) The patient obligation is calculated by taking the individual’s income and subtracting allowed deductions, such as supplemental insurance premiums, excess Medicare Part D premiums, and a $62 personal needs allowance.\(^5\)\(^6\) If the resulting number is less than the monthly Medicaid rate at the facility, then the income requirement is met. The Medicaid rates can vary between nursing homes across the state, with examples from $153 to $242 per day.

**Married Couple**

As I mentioned, a spouse entering long term care could easily impoverish the spouse living at home. In this example, the husband needs long term care and the wife is at home.

The couple is allowed to have a resource assessment done to establish the amount of countable resources that the wife can have in her name at the time the husband applies for Medicaid, with the resource assessment based on the value of their resources as of the date the husband entered the hospital or long term care and had a stay of 30 consecutive days or longer.\(^7\) We call this the “snapshot date.” The effect is that if the couple had been spending resources on care since that time, the resource assessment will go back to when their resources were higher.

Much like the single person, to determine if the asset requirement is met, we gather documentation and values for all of those resources and determine what resources are countable and what resources are exempt. The exempt resources, such as the home, vehicle, and funeral plans are taken out of the equation. The remaining countable resources are added together and divided in half. If the wife’s one-half is less than $24,180, then the wife is limited to that amount, which is the maximum.\(^8\) If the wife’s one-half is over $120,900, then the wife is limited to a $62 personal needs allowance.\(^9\) The husband is limited to countable resources of $2,000 or less. Any
additional resources over the limits have to be spent down before the husband will qualify for Medicaid. The spend-down can be completed by paying the nursing home, purchasing an exempt item like a vehicle, making home improvements, and paying debt. It may also involve purchasing an annuity, which I will explain below.

Even if the assets are divided and spend-down requirements are met, there are still the income requirements. In order for the husband to qualify for Medicaid, his income must be below the Medicaid rate at the facility. The patient obligation is calculated similarly to the single person, except an allocation to the wife, if any, also needs to be subtracted out.

In another effort to prevent the spouse at home from becoming impoverished, there is a minimum monthly maintenance needs allowance (MMMNA) the wife may be entitled to. If the wife’s income, minus some allowed deductions, is less than $2,030, then she is entitled to as much of the husband’s income that is needed to bring her income up to $2,030.10 This could present a situation where the husband’s income appears to be above the Medicaid rate; however, when the wife’s MMMNA is deducted, it brings the husband’s income back below the Medicaid rate.

Gifting

Gifting presents a special set of circumstances. If a person applying for Medicaid or their spouse has gifted property away in the five years before applying for Medicaid, a penalty will be imposed.11 More specifically, any gifts over $50 a month in any one month over those five years can cause all gifts from the last five years to be added up to determine the amount of the penalty.12 A penalty essentially means a period of time that Medicaid will not pay benefits. This can be detrimental to a client, and we must carefully calculate how much gifting there has been and how long the penalty will last.

The penalty is calculated by taking the total value of property gifted in that five years and dividing it by $197.88.13 The result is the number of days the penalty will last. The penalty does not start until that person is “otherwise eligible” for Medicaid, meaning but for the gifting, the person would be eligible.14 That means we have to go through all the above calculations to determine if the other eligibility requirements are met.

Ultimately, we have to determine whether we should attempt to “cure” the gift and have the gift returned (if that is even possible), go ahead and apply for Medicaid to get the penalty period started, or wait until the 5-year window has closed on the gift.

Annuities

Annuities are one of the more valuable tools we have in Medicaid planning. More specifically, a Medicaid-qualified annuity is only counted as income and is not a countable resource.15

In the married couple scenario, an annuity could be used to convert the money that needs to be spent down into an income stream for the wife. For a healthy spouse with limited resources, an annuity can ensure they have the income to live at home as long as possible.

Annuities can also be used to lessen the impact of gifting. As I mentioned, a penalty does not start until someone is otherwise eligible. If we know there are gifts that cannot be cured, an annuity might be used to create income to pay for care during that penalty period.

When using annuities in either situation, we crunch the numbers relating to how much will go into the annuity, how much the monthly income will be, and how that additional income will factor into the calculations described above.

Due to my math gene limitations, I must always have a calculator handy; however, it is both challenging and satisfying to help a client navigate the options and find a solution to pay for long term care. Sometimes that involves paying privately, and sometimes that involves going through all the calculations required to reach Medicaid qualification. However, if plane trigonometry is ever involved, I will be looking for referrals.

About the Author

Jenny Walters is a partner at Clinkscales Elder Law Practice, P.A. in Hays. She has practiced there since graduating from Washburn University School of Law in 2009. Jenny received her bachelor’s degree in 2006 from Fort Hays State University. She is a member of the National Academy of Elder Law Attorneys. Jenny is married to Steven and they have a son, Theron.

1. KEESM §8114
2. Id. §5130
3. Id. §5340 and §5520
4. Id. §8170
5. Id. §8172.1
6. Id. §8160(3)
7. Id. §8144
8. Id. §8144.1
9. Id. §8144.3
10. Id. §8144.2
11. Id. §5724
12. Id. §6410 (27)
13. Id. §5724.4
14. Id. §5724.5
15. Id. §5722
Cheap and Easily Manipulated Video

by Larry Zimmerman

Expensive and Specialized

The 1994 movie Forrest Gump won an Oscar for best visual effects recognizing the film’s computer graphics trickery that stitched Tom Hanks into archival video of John F. Kennedy, Lyndon Johnson, and Richard Nixon. George Lucas’s powerhouse visual effects company, Industrial Light & Magic, mastered several different technological processes and harnessed considerable computing power to render the scenes. Some worried at the time about potential dangers of the power to manipulate shared history; but most were cautiously dismissive, understanding the skill, money, and time required to achieve comparable results.

Cheap and Easy

An anonymous user on Reddit, a hugely popular internet forum, reignited the conversation with a post in late 2016. Motherboard, an online magazine, bumped into a Reddit user, deepfakes, sharing his video face-swapping hobby. He replaced one actor’s face in a video with another actor’s face. Within weeks, another Reddit user released FakeApp software to make face-swapping simple for anyone regardless of skill or equipment. An entire Reddit forum with over 15,000 members popped up to swap tips and manipulated videos. One particularly impressive face-swap recreated the CGI appearance of Princess Leia in the 2016 Star Wars film, Rogue One.

What happens when anyone can make it appear as if anything has happened, regardless of whether or not it did?

– Technologist, Aviv Ovadya