Employer and Contractor Immunity from Tort Liability under the Kansas Workers Compensation Act
Kyle Sollars
P 30

Rising Again: Collateral Consequences and Kansas Expungement Law
Meredith A. Schnug
P 44
LAWPAY IS FIVE STAR!

In our firm, it's actually fun to do our billings and get paid. I send our bills out first thing in the morning and more than half are paid by lunchtime.

LawPay makes my day!

– Cheryl Ischy, Legal Administrator
Austin, Texas

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

THE #1 PAYMENT SOLUTION FOR LAW FIRMS

Getting paid should be the easiest part of your job, and with LawPay, it is! However you run your firm, LawPay’s flexible, easy-to-use system can work for you. Designed specifically for the legal industry, your earned/uneared fees are properly separated and your IOLTA is always protected against third-party debiting. Give your firm, and your clients, the benefit of easy online payments with LawPay.

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

LawPay is proud to be a vetted and approved Member Benefit of the Kansas Bar Association.

KANSAS BAR ASSOCIATION

Special offer for bar members.
Call for details
Employer and Contractor Immunity from Tort Liability under the Kansas Workers Compensation Act
Kyle Sollars

Rising Again: Collateral Consequences and Kansas Expungement Law
Meredith A. Schnug

Special Features

Math and the Law Series:
How Much Math Does Tax Advocacy Require?
William Schmidt

Washburn Law Clinic: Integrating Service and Learning
Michelle Y. Ewert

Public Citizen Lawyering and Pro Bono at KU
Meredith Schnug

KBF: Helping Clean Slates
Christy Campbell

KALAP Moves Ahead Under New Leadership
Lou Clothier

Regular Features

KBA President
The Power of Storytelling
Sarah E. Warner

A Nostalgic Touch
If E.T. Ever Landed in Kansas
Matt Keenan

KBF President
Putting Your IOLTA Funds to Good Use—The NITA Public Service Advocacy Skills Program
Amy Fellows Cline

YLS President
YLS to Offer Coordinated Plan Connecting Attorneys with Statewide Legal Disaster Recovery Pro Bono Service
Sarah Morse

Law Practice Management Tips & Tricks
Lawyer Content on YouTube
Larry N. Zimmerman

Diversity Corner
Implicit Bias & Police Encounters
Katherine Lee Goyette

Fall in for Our Autumn 2018 CLEs

Substance and Style
Reading for Better Writing
Emily Grant

Members in the News

Obituaries

Appellate Decisions

Appellate Practice Reminders
Show Cause: A Stop Sign or a Yield Sign?
Douglas T. Shima

2018 USPS Statement

Classified Advertisements
BECAUSE...

YOUR FIRM DESERVES THE BEST PROTECTION FOR THE GREATEST VALUE.
MORE STATE BARS, INCLUDING YOURS, ENDORSE ALPS THAN ANY OTHER CARRIER.
IF YOU GET A CLAIM, YOUR CLAIM WILL BE HANDLED BY LICENSED ATTORNEYS.

BECAUSE BAD THINGS CAN HAPPEN TO GOOD LAWYERS

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

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

(800) 367-2577 ● www.alpsnet.com ● learnmore@alpsnet.com
October is one of my favorite months of the year. It’s a month characterized in Kansas by warm days and cool nights, by leaves discarding their burnt greens in favor of vibrant reds, oranges, and golds, by apple cider, pumpkin-spice lattes, and mulled wine. After the lingering heat of summer, fall revitalizes the senses.

And, of course, October brings us Halloween. I used to love Halloween growing up—my best friend and I would spend weeks planning our costumes (my favorite was when we went as “road kill,” with black-painted tire marks down the fronts and backs of white sheets). Graced with a small frame and youthful face, I went trick-or-treating well into high school. Much to my husband’s (and dog’s) chagrin, my childlike enthusiasm for the holiday continues to this day. After all, for one day out of the year, you don’t have to dream about being a superhero—you are a superhero, complete with cape. You’re an astronaut, a princess, or your imaginary creature of choice. You see the world through that character’s eyes. You figuratively, and sometimes literally, tell that character’s story.

That’s the other part of the Halloween I enjoy—the storytelling. I recall sitting around a campfire by one of the reclaimed strip pits surrounding Pittsburg this time of year, listening to friends tell ghost stories. Logically, we should have known that we were not in danger. The stories we told (of dubious reliability, to say the least) involved different people in remote times and far-off locations. We knew that. But that doesn’t mean we didn’t jump when we were startled, or that we were any less terrified as a scary story approached its climax.

I’m not alone in these reflections. There is something about our human psyche that is riveted by a good narrative. Storytelling draws us in. And the impact of good storytelling extends far beyond its entertainment value.

From a scientific perspective, storytelling shapes the brain in at least two notable ways. First, storytelling has a unique ability to capture our attention in an otherwise distracted world. I was in a board meeting recently where a colleague shared a study that concluded current college students receive an average of 5,000 messages and images—through text, Twitter, Instagram, Snapchat, Facebook, and more—per day. My own experience leads me to believe the number of daily communications professionals receive and process cannot be too far from that estimate. (By my estimation, you have received roughly 300 e-mails in the time it took you to read the first five paragraphs of this column.)

Faced with this seemingly endless barrage of information, how do humans figure out what should be retained? And from
our perspective as lawyers, how can we hold the attention of our audience (be that a jury, an administrative tribunal, a judge, or an opposing party) in order to make a compelling case for our clients? The answer, according to Jonathan Gottschall, the author of *The Storytelling Animal: How Stories Make Us Human*, is by viewing ourselves as storytellers:

"[T]his is the most fundamental challenge we face in the attention economy: how do we pin down the wandering mind? How do we override the natural tendency for a mind to skip away from whatever we are showing it? By telling stories. In normal life, we spin about one-hundred daydreams per waking hour. But when absorbed in a good story—when we watch a show like *Breaking Bad* or read a novel like *The Hunger Games*—we experience approximately zero daydreams per hour. Our hyper minds go still and they pay close attention, often for hours on end. This is really very impressive. What it means is that story acts like a drug that reliably lulls us into an altered state of consciousness."

Scientific research is explaining what we have experienced anecdotally. When neurologists observe a person’s reactions to storytelling by way of an FMRI machine, they find the brain reacts to compelling stories not as a spectator or passive observer, but as an active participant. This explains why, when a particularly scary moment occurs in a movie, the brain tells the body to curl up into a ball to protect its vital organs. It explains why, when a person reads *Where the Red Fern Grows*, the reader is reduced to a puddle of tears next to an empty Kleenex box. Compelling storytelling leads the audience to tune out the barrage of other distractions—to focus on and engage with the story it’s experiencing.

The second way storytelling alters our consciousness is even more profound. Although our society tends to think of stories as an escape from the trials and tribulations of "real life," stories do so much more. In fact, because stories cause us to experience the narrative from within, naturally leading us to empathize with the events going on in the story, they have an uncanny ability to alter behavior. Gottschall cited the example of our culture’s near-seismic shift in acceptance of homosexuals over the last two decades:

"If psychologists get a bunch of people in the lab and just tell them all the reasons it is wrong to discriminate against homosexuals, they don’t make much progress. People who feel differently dig in their heels. They get critical and skeptical. They don’t walk out of the lab with more tolerant views. But if they watch a TV show like *Will and Grace*, which treats homosexuality in non-judgmental ways, their own views are likely to move in the same non-judgmental direction. And if a lot of us start empathizing with gay characters on shows like *Ellen*, *Modern Family*, *Six Feet Under*, and *Glee*, you can get a driver of massive social change."

To use a more practical example, I recently was reviewing the work product of a colleague who had drafted a response letter to a complaint. The legal analysis was on point, but there was something missing. After discussing the draft, we decided the problem was that the response dove into the technical legal arguments without providing any context—that is, no story—to first capture the decision maker’s attention. After all, even we believe the judge should grant the requested relief based on the law, our client’s case would be much stronger if the judge could view the case from our client’s perspective and thus wanted to rule in our favor.

The most successful litigators and negotiators know this. Think of the fictional lawyers we idealize, from Atticus Finch to Alan Shore. And think of your mentors, the men and women we respect in our practices. I’d bet they are master storytellers who recognize that there is a reason people act the way they do, and that decision makers have the same curiosities as the rest of us when faced with a set of facts: How did we get here? Why did this happen? Even in the appellate context, where I often find myself—or perhaps especially in that context—these considerations should shape our presentation. If an appellate judge and his or her clerks are faced with literally hundreds of briefs, most of which mechanically articulate the facts and legal standard, I want my brief to be the one that catches and keeps the court’s attention. That is, I want to tell a story that engages the reader and helps him or her to understand my client’s position.

As lawyers, we wear many hats. We are counselors, strategists, marketers, business planners, life coaches … the list goes on. But at the most fundamental level, our clients rely on us to tell their stories. I invite us all to reflect on this role as we approach the season of storytelling this fall and winter. How can we best let those stories heard?"

**About the Author**

Sarah E. Warner is an attorney at Thompson Warner, P.A., in Lawrence. Before becoming president of the KBA, Warner served as president of various professional associations, including the Kansas Association of Defense Counsel, Douglas County Bar Association, and Douglas County Law Library Board of Trustees, as well as the KBA Appellate Practice and Young Lawyer Sections. She also serves as a member of the Kansas Board for Discipline of Attorneys. Warner and her husband Brandon (an administrative patent judge with the U.S. Patent and Trademark Office) call Lenexa home with their dog Kolbe, who wishes there were not so many Star Wars costumes available for dogs around Halloween.

sarah.warner@333legal.com
If E.T. Ever Landed in Kansas...

by Matt Keenan

From time to time, I consider what would happen if aliens landed on earth and took stock at some of our more peculiar habits. Say, for example, if they happen to stop at the Charlotte airport and encounter the man who stands in the corner of the men’s room and offers you breath mints after, well, you know. Or if they would order chicken fingers and expect to see on their plate a chicken’s fingers.

There are other things that might give them pause. Things that would suggest our world is more peculiar than flying around in an oval ship and staring down with egg-shaped eyes, a green head and tentacles for fingers.

Like watching old men chase a tiny white ball and then, when it’s found, take a long stick from a bag and swing at it. Watching them do this over and over again until the ball lands in a hole that is so hard to find it needs a ten-foot flag to mark it. And, if those aliens happened to wander to the Minor Park Golf course in KCMO on a day when I’m playing the back nine, they would likely see more insanity.

However, if E.T. had arrived at Sycamore Ridge Golf Club on this past June 14th during the KBA golf tournament, he might actually have seen some things that would bring some sensibility to an otherwise nutty game. The KBA tourna-

From L to R: Cal Williams, Rodney Iverson, Matt Keenan and N.M. Iverson at the 2018 KBA Golf Tournament.

Photo by Ryan John Purcell
ment is, after all, the kind of event where golf is fun again—a scramble format, with generous mulligans, a two-foot string players may use to move the ball out of the poison ivy, multiple drink tickets and the companionship that comes with the bar meeting.

For me, the added bonus was to be paired up with the Iverson brothers from Ark City.

I’m talking N.M. and Rodney, Washburn class of 1972 and 1978 respectively. They practiced in Ark City with their dad, Norman Iverson, Sr. Rounding out the foursome was Cal Williams—Rodney’s classmate from Washburn ’78.

At 9:00 a.m. on that morning, I was among strangers. But by 3:00 p.m., we were lifelong friends.

“Cal and I became very close in law school” Rodney shared with me recently. “We became friends along with five or six other classmates, and we all continued our contact with each other long after law school and even through today. Guys like Steve Smith, John Wachter, Tom Green, Roger Falk and Justice Dan Biles.”

“All of us would meet every summer for three or four days, which began back in law school, and we would go to a lake in Oklahoma. Then, after we all graduated from law school, we would go to Lake Kahola, west of Emporia, Kansas, where Steven Davis had a cabin. We called this the BB&O Seminar, which included not only boating, skiing and tubing, but also an annual golf tournament with trophies. We enjoyed exchanging war stories of our own individual law practices while consuming liquid refreshments. This seminar also included our wives, who all became very good friends.

“We watched our children grow up and have children of their own. Many years back, our families went snow skiing over spring break.”

For those five hours on June 14, we laughed, drank, laughed, drank and took some swings at a little white ball. At no time did anyone attempt to take a selfie, make status updates on Facebook or adjust their Instagram settings. Politics did come up, but only when Rodney shared stories about having drinks with Bob Docking at the Ark City country club.

The KBA golf tournament has a large trophy, and on various years, the names have included some attorneys from Ark City. “The Iversons are as close to KBA Golf royalty as you can get. Their names appear on the championship trophy ten times with the first inscribed in 1980. The KBA tournament would feel out of place without them,” said tournament organizer Joe Molina.

The trophy this year went to Brian Doerr, John Duggan, Michael McGee and Andrew Spitsnogle from the law firm of Duggan, Shadwick, Doerr & Kurlbaum LLC. Their winning score? Fourteen under par.

Experts say friends and fellowship increase your life expectancy. Those same experts say your life can be extended by drinking in moderation. On that June day, I figure I added another couple days to my life.

And if you actually do see an aliens exploring Kansas, I suggest you send them to the Garden of Eden in Lucas. That will keep them busy for a while.

About the Author

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

mkeenan@shb.com
Putting Your IOLTA Funds to Good Use—the NITA Public Service Advocacy Skills Program

by Amy Fellows Cline

One of the ways the Kansas Bar Foundation puts your hard-earned money to work (without even costing you a dime) is through its IOLTA (Interest on Lawyers Trust Account) Program. The IOLTA Program uses the interest collected from lawyers’ commingled client trust accounts to fund programs which improve the provision of civil legal services to Kansans, provide law-related education, and improve the administration of justice throughout Kansas.

Each fall, the KBF collects grant applications from a variety of organizations which are reviewed by the KBF IOLTA Committee. This committee is currently chaired by Scott Hill of Hite Fanning & Honeyman, LLP, and consists of appointees from the KBF, KBA, the Kansas Supreme Court, the Kansas Trial Lawyers Association, the Kansas Association of Defense Counsel, the governor’s office, and the Kansas Bankers Association. Both the size and number of grants awarded each year are dictated by the amount of IOLTA funds collected from Kansas financial institutions, which amount is impacted by interest rates and lawyer participation. Kansas is one of only two states where participation in IOLTA is voluntary.

You can find information about the IOLTA Program, including a listing of past grant recipients, on the KBF website (under “Our Work”). In this month’s column, I want to highlight one of the well-deserved IOLTA Program grant recipients, the NITA (National Institution for Trial Advocacy) Public Service Advocacy Skills Program. This recurring grant project is a three-day courtroom advocacy program that focuses on developing the trial skills of public service lawyers in Kansas. It is offered annually, alternating between Hays (at the Sternberg Museum of Natural History) and Topeka (at the Shawnee County Courthouse). The eighth annual session is scheduled for November 1-3, 2018, in Topeka.

Thanks to the funding from your IOLTA accounts, each of the twenty-four attendees (comprised of Kansas prosecutors,
public defenders, legal services lawyers, state agency lawyers, guardians ad litem, and other lawyers practicing in the non-profit/public sector) receive—free of charge—instruction and materials to develop and enhance their trial advocacy skills. This funding allows the program to offer an average student-to-faculty ratio of 4:1, which helps ensure quality guidance, instruction, and individualized critique. Each year, Program Director (and Shawnee County District Court Judge) Bill Ossmann brings faculty in from all over the country (and, this year, even from as far away as Australia) to help train Kansas public service lawyers whose employers simply cannot afford to send them to costly trial advocacy training programs.

This courtroom skills program improves the administration of justice in our state by helping provide capable and professional advocates to those who need legal services in both civil and criminal matters. The program consists of lectures, group sessions, and demonstrations, as well as opportunities for attendees themselves to perform the skills that have been presented in session. Each attendee's performance is video-recorded, so faculty members may provide instant, one-on-one critiques. The NITA “learning by doing” model has been praised all over the county, and, thanks to your IOLTA funds, public service lawyers on both sides of Kansas courtrooms are able to take advantage of its benefits.

Each year, this NITA program receives high praise from its attendees who report marked improvement in their competence and confidence. These days, trial experience can be difficult to come by, so providing an opportunity to hone those skills is invaluable. I thank you for your support of the KBF and its IOLTA Program, which is the reason we are able to offer this opportunity in Kansas.

If you are interested in attending this year’s NITA advocacy program, please contact Anna Gallegos to obtain an application. She can be reached at 303.953.6800. E-Mail: agallegos@nita.org The cutoff date for registration is October 22, 2018.

About the Author

Amy Fellows Cline is a partner of the Wichita law firm of Triplett Woolf Garretson, LLC. She handles a wide variety of commercial litigation matters, including employment, oil and gas, construction and consumer protection disputes. Ms. Cline has significant experience appearing before courts across Kansas, as well as the Kansas Corporation Comm., Kansas Human Rights Comm., Kansas Department of Labor and U.S. Equal Employment Opportunity Comm.

amycline@twgfirm.com

NITA Fall Program

The Kansas Public Service Advocacy Skills Program is a unique, three-day program designed to help you improve your skills in the courtroom, with an emphasis on “learning by doing.” For most of the program, you will be performing exercises designed to make you a more capable advocate. Each time you perform, a faculty member will share ideas on how you can be more effective. These suggestions will be constructive and offer specific ways for you to improve and be more successful in representing your client’s needs.

Each day will be filled with demonstrations and exercises on many of the skills you need to be an effective courtroom advocate for your clients, including objections, case analysis, direct examination, witnesses and exhibits, cross-examination, and closing argument. This program employs a number of different teaching techniques, each designed to provide important information. You will view online presentations about trial skills; our faculty members will demonstrate each skill and tell you why they took a specific approach; and you will perform in a mock trial setting and receive suggestions for improvement. The performances of others in the program will also help you learn as you watch them perform and hear suggestions on how they can improve.

Many thanks to our awesome supporters at

KAPLAN

BAR REVIEW | For lawyers, by lawyers

for Serving as a
GOLD SPONSOR

for our

Washburn Law vs. KU Law Trivia Challenge

Thursday • October 18th • 7:00 p.m.
Jayhawk Club
1809 Birdie Way • Lawrence, KS

To register and to check out other Sponsorship Opportunities, please go to:
https://www.ksbar.org/event/LawSchoolTrivia2018
YLS to Offer Coordinated Plan Connecting Attorneys with Statewide Legal Disaster Recovery Pro Bono Service

by Sarah Morse

As you likely know from Michelle Ewert and Meredith Schnug’s articles in this month’s Journal, October is the American Bar Association’s annual pro bono month. We attorneys have unique skills that can assist those in need in specific ways that other professions and organizations cannot. Much has been said and written about the vital importance of pro bono services in the pursuit of equal justice.

While we acknowledge the great importance of pro bono work, we also recognize that, as busy professionals with busy personal lives, finding time to give back in a legal capacity or otherwise can be difficult. Nearly two decades ago, Justice Sandra Day O’Connor acknowledged the difficulty of balancing a lawyer’s responsibility to the community with the realities of practice when she said, “Certainly, life as a lawyer is a bit more complex today that it was a century ago. The ever-increasing pressures of the legal marketplace, the need to bill hours, to market to clients, and to attend the bottom line, have made fulfilling the responsibilities of community service quite difficult.” In addition, the need to incorporate time for family, personal obligations, personal interests, and mental and physical health can make taking on one additional task, no matter how important, seem insurmountable.

Justice O’Connor’s words continue to be relevant today as demonstrated by a 2017 study conducted by the American Bar Association on the pro bono work of America’s attorneys. In the study, 81 percent of attorneys surveyed believed that pro bono services are either somewhat or very important, but only 45 percent of those surveyed indicated they were either likely or very likely to undertake pro bono work.

Of those surveyed, most attorneys were discouraged by

- a lack of time;
- commitments to family or other personal obligations; and
- lack of skills or experience.

Despite the recognized difficulties of performing pro bono work, over the past several years, the Young Lawyer Section (YLS) has consistently heard from its members about their desire to give back to the community; we think this speaks to the quality of attorneys entering the profession and the positive professional culture created by the bar. Hearing this feedback from our members, the YLS set a mission this year to find a way to connect to opportunities to meaningfully give back to the community in a way that does not require a large time commitment, makes use of our skills as attorneys, and makes it more likely that young attorneys will be able to engage. Simultaneously, we noted that Kansas appeared to have a need for an updated, centralized, legal disaster recovery service. The YLS set a goal to find a solution.
Fortunately for all KBA members, Christine Campbell, with Kansas Legal Services, joined the YLS Board this year as our Pro Bono Committee Chair. Christine has single-handedly helped YLS reach its goal. She has talked with neighboring state bar associations about their disaster relief services, attended numerous CLE courses and FEMA trainings on disaster relief, and talked with Kansas disaster planning to determine if coordinated efforts can be beneficial. After all her research, Christine has revitalized Kansas’ Disaster Services Legal Guide and developed a plan for connecting attorneys to those in need of legal services.

Now, all we need is you. As part of the plan to provide legal services in the event of a disaster, Christine developed a statewide response plan to provide legal services to those in need as quickly as possible. Our goal is to register as many lawyers as possible (YLS members and otherwise!) so that when a disaster strikes, an email can be sent to those who have indicated a willingness to provide pro bono disaster relief. If you receive an email requesting help and are willing and available to provide pro bono services at that time, you can respond and be connected with the team coordinating relief efforts.

We hope this format will help ameliorate the difficulties with pro bono work expressed in the ABA study in two ways:

1. The time commitment is low. Certainly, we all hope that disasters are few and far between, but even knowing the reality that a disaster will occur, the program does not require you to commit to a certain amount of time up front. When you receive the email requesting assistance, you can evaluate your work load, personal schedule, and other factors to determine your availability to help. Additionally, most of the work will likely be able to be completed remotely, which will help you use your time efficiently.

2. Because the pool of volunteers will be identified and the areas of pro bono assistance generally understood, we will be able to provide training opportunities in the form of CLE and information distribution to help you feel prepared to competently provide the needed assistance. Our goal is to make it as easy as possible for you to donate your time and skills to serve Kansans in need.

If you are not yet sure whether you are interested in volunteering with this program or if you just want to learn more about the program, please attend the Law School Trivia Night on Thursday, October 18th. (Check out https://www.ksbar.org/event/LawSchoolTrivia2018 ) YLS plans to have a booth and information on its disaster plan revitalization project at this event, and we’ll be glad to talk more about the services we hope to provide for Kansans.

We hope you will join us in volunteering to provide legal disaster relief services to fellow Kansans by signing up for the Pro Bono Disaster Relief Services listserv and taking that first step to recognize that pro bono services are a vital part of our profession, despite the challenges presented in finding the time to engage. After noting the pressures of the legal marketplace and the time constraints every attorney faces, Justice O’Connor observed:

But public service marks the difference between a business and a profession. While a business can afford to focus solely on profits, a profession cannot. It must devote itself first to the community it is responsible to serve. I can imagine no greater duty than fulfilling this obligation. And I can imagine no greater pleasure. “Happiness,” Justice Holmes said, “cannot be won simply by being counsel for great corporations and having an income of fifty thousand dollars. An intellect great enough to win the prize needs other food besides success.” Ensuring that there is, indeed, “equal justice under law”—not just for the wealthy, but for the poor, the disadvantaged, and the disenfranchised—is the sustenance that brings meaning and joy to a lawyer’s professional life.4

We encourage you to help us enrich the legal profession in Kansas and find the sustenance to fulfill your professional life.

If you have questions about the disaster relief pro bono program, please contact Christine Campbell at campbellc@klinc.org or Sarah Morse at sarah.morse@fhlbtopeka.com.

About the Author

Sarah Morse serves as the Kansas Bar Association’s Young Lawyer Section President. She is Corporate Counsel at FHL Bank Topeka. Sarah received her bachelor’s degree in American History and Literature from Emory University and her law degree from Emory University School of Law in Atlanta, Georgia. Shortly after joining private practice in Topeka, Sarah became involved with the KBA YLS, and she looks forward to working with the engaged and enthusiastic YLS board members this year. In her free time, Sarah enjoys spending time with her family and pursuing more hobbies than is probably advisable.

Sarah.Morse@fhlbtopeka.com

3. Id.
Spotlight the BEST & BRIGHTEST attorneys you know with a 2019 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 www.ksbar.org/awards
Workplace Wellness
healthy • happy • productive

• Better employee health improves any business.
• Benefits consultants create customized programs.
• Wellness education and support – onsite and online.
• Encourage active living, smart eating and healthy habits.
• A benefit that attracts and retains excellent employees.

L to R: Donna Pashman, Manager, Topeka Region • 785.291.7000
Stephanie Buckman, Manager, Hutchinson Region • 620.663.3926
Mike Eichten, Director, External Sales, Topeka • 785.291.7817
Janet McMurray, Manager, Wichita Region • 316.269.1666
Lisa Oathout-Marshall, Manager, Small Group Sales & Retention,
Topeka • 785.291.8838

Better employee health improves any business.
Benefits consultants create customized programs.
Wellness education and support – onsite and online.
Encourage active living, smart eating and healthy habits.
A benefit that attracts and retains excellent employees.

KBA/KIOGA
43rd Annual
OIL & GAS CONFERENCE
FRIDAY, OCTOBER 12, 2018

Wichita Boathouse
Home of the Kansas Sports Hall of Fame
515 S. Wichita St.
Wichita, KS 67202

For more information or to register online, visit
https://www.ksbar.org/event/43rdAnnualKBA-KIOGACLE
Lawyer Content on YouTube

by Larry Zimmerman

YouTube is a big deal. It has become the second largest search engine on the internet serving up over 300 hours of videos per minute more than all of Netflix and Facebook combined. The site reaches into at least 88 countries and translates into 76 languages representing some 95% of the world’s population. User demographics indicate 80% of adults between age 18 and 49 watch and 60% prefer it to television. I was at a national legal conference recently where the average age of attendee was notably higher than 50 and YouTube has made its mark with that audience as well. Most of the presentations, comments, and discussions featured YouTube content.

Because there are over 1.3 trillion videos hosted by YouTube, finding content of interest can be challenging. The algorithms YouTube uses to figure out what users might be interested in viewing are not terrifically reliable and the trending playlist is mostly viral pop culture hits or paying advertisers. Leveraging the value of YouTube involves finding good channels (content creators), subscribing, and setting notices to catch new episodes. Some suggestions for lawyers:

Real Crime Networks

LadyJustice2188—This trial channel includes a library of 4,400 video feeds from criminal trials and proceedings throughout the U.S. Every stage in criminal procedure is shown from arraignment to sentencing and the proceedings shown are often from newsworthy cases. The video feeds are not heavily edited and include no commentary or explanation. The channel adds new content several times a week.
though multiple uploads may be from the same case broken into more manageable segments.

The Law & Crime Network—This channel is a more polished news program focused on “the day’s biggest trials and legal controversies.” Regular episodes drop at 9:00 a.m. EST, Monday through Friday with supplemental trial feeds as well. Like LadyJustice2188, the Network includes actual criminal proceedings but provides in-depth commentary as well. Recent high-profile cases covered include Travis Reinking, the Waffle House gunman, and Cristhian Rivera, the accused murderer of Iowa college student, Molly Tibbetts.

Content Creators

Shouse Law Group—Not every lawyer is content as a content viewer, some want to get in on the action as content creators. The lawyers at Shouse have modeled a particularly effective and professional way to create a YouTube channel. The firm uploads 1-2 videos a week that are usually just 2-5 minutes long. The videos address very specific topics in a broadly informative way (staying within ethical guidelines). Examples include explanations of recovery options when hit by an uninsured driver, whether a California medical marijuana card can be used in other states and what are likely outcomes of a minor caught in possession of alcohol case.

YouTuber Law—Wading into content creation can present some interesting legal issues. Tech lawyer, Lior Lessor, has expertise in representing technology companies and brands including YouTube content creators. His small (340 videos) channel covers subjects such as challenges to negative reviews or the rights of site hosts like YouTube’s rights to censor controversial speech. Lessor releases a video per week; most are quick takes of 10-15 minutes, but he does not hesitate from going long when a complex topic is presented.

Law School and Life

Learn Law Better—Every lawyer knows a law student. Every law student could use a bit of help sometimes navigating their way. Beau Baez is an accomplished educator with Best Teacher of the Year awards from two different law schools. His channel presents polished, pedagogically thoughtful videos of 5-10 minutes each on issues for which law students (and lawyers) might need a refresher. Legal topics can include res ipsa loquitur or Erie v. Tompkins. Survival strategies for school and life are covered in videos about overcoming procrastination or how to effectively cram for a deadline. Information that is no longer relevant to lawyers is still useful for the law students we mentor.

Live Laugh Law—This is another law student channel by a young black woman in her second year of law school at Howard. She is infectious with her joy at working toward her ticket. She shares her setbacks and worries as well. The law school experience may be a distant memory for most of us but Live Laugh Law brings back some of the good memories of challenges met and defeated while underscoring the importance of mentoring and supporting those coming up behind us.

Tips and Tricks

ABA Law Practice Division—The ABA has a tiny channel of just 89 videos that is infrequently updated – about once per month. Broadly speaking, there are two categories of video on the site. Brief clips of 1-2 minutes provide quick explanations of topics like spear-phishing or ransomware. Longer videos of 30-60 minutes give detailed information about document assembly, legal services pricing, or artificial intelligence, for example.

Chicago Bar Association’s How To…Video Library—This is not a YouTube channel but worth a look. The Chicago Bar recently opened up its members-only tutorial videos to the general public. There are a host of gems by lawyers with technology expertise. Videos teach removing metadata, protecting documents from editing, and permanently redacting documents. One of the latest videos gives sound advice on how to start as a YouTube content provider. The full list of videos is at lpmt.chicagobar.org/how-to-video-library – not YouTube.

About the Author

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

kslpm@larryzimmerman.com
Warmest Thanks to Our Friends at

Fagan Emert & Davis LLC

for Serving as a GOLD SPONSOR for our

Washburn Law vs. KU Law Trivia Challenge

Thursday • October 18th • 7:00 p.m.
Jayhawk Club
1809 Birdie Way • Lawrence, KS

To register and to check out other Sponsorship Opportunities, please go to:
https://www.ksbar.org/event/LawSchoolTrivia2018

- Federal/State Income Tax Compliance
- Tax Planning Systems
- 1099/W-2 Compliance
- Client Portals
- Document Management & Document Storage
- Website Builders & Services for Accounting Firms
- ASP/Hosted Solution Providers

Drake Software

Toll-Free 800.890.9500
Free Demo DrakeSoftwareSales.com
Implicit Bias & Police Encounters
by Katherine Lee Goyette

Elijah Jackson had just come home from work as an Army officer and was invited to have a soda with his neighbor outside in the back of his pickup truck. Two patrol cars pulled up, and four law enforcement officers exited the vehicle. Three officers began asking Elijah questions about a car accident a few miles away, and the remaining officer was at the front door questioning Elijah’s wife. Elijah’s concerns were two-fold: First, the fact that he was surrounded by three white law enforcement officers outside the view of his doorbell camera; and second, for his wife’s safety. Elijah attempted to physically shift the conversation a few steps over in view of the doorbell camera, which records intervals of movement, and made sure never to raise his voice or physically touch any of the uniformed officers.

Frustrated that Elijah could provide no useful information, the police sergeant at the scene told Elijah that he was “going to regret this,” that “once we are done with you, you will be a fuzzy” (indicating his U.S. Army rank insignia would be completely stripped), and directed another officer to arrest Elijah “for resisting arrest” (which is actually called “obstruction of law enforcement” in Tennessee and requires the defendant to use force against the officer or another person, despite the doorbell camera demonstrating that Elijah never touched any of the officers). Elijah is black, all four uniformed officers were white, and the neighbor—who was not questioned at all—was white. Elijah—a man who fought to protect Americans overseas—felt afraid of becoming a victim of those tasked with protecting him at home.

It gave me pause that Elijah’s initial reaction upon the police encounter was concern for his and his wife’s physical safety, and that his immediate priority was to ensure that his actions were documented on his doorbell camera—despite having done nothing wrong. In the wake of Trayvon Martin, Michael Brown, Jr., Philando Castile, Eric Garner, and other police shootings involving black male fatalities, it should not have been surprising to me that Elijah didn’t operate under the assumption that general police encounters do not involve physical harm. Professor Michael Eric Dyson of Georgetown University calls this the “dance of compliance,” where black parents, grandparents, and community leaders teach black youth to comply with the police and play the “rules of the game for police encounters: Don’t move; don’t give a rookie
an excuse to shoot you; never get into a verbal confrontation; comply with the officer; comply with whatever the officer is asking you to do; use the respectful terms ‘Sir’ and ‘Officer;’ and expect that you will need to negotiate your dignity.”

Essentially, black youth are taught how best to respond to negative circumstances created by racial profiling and implicit bias in an effort to remain safe.

Racial profiling generally refers to the conscious practice of targeting individuals for criminal investigation purposes based upon race, whereas implicit racial bias is the automatic, unconscious decision to focus attention on blacks during the investigation of a crime. The study of implicit bias, then, is important as it demonstrates how race inadvertently influences the attention of police officers, and subsequently how their ambiguous behaviors and conduct are analyzed. For example, racial profiling would be the stopping of every black man driving a white, late-model Ford Explorer. Implicit bias would be stopping all white, late-model Ford Explorers (as stopping all Explorers would have demonstrated that no decisions were made based on race), and subsequently deciding only the black drivers deserved tickets, arrest, or should be searched. In the police encounter with Elijah Jackson, racial profiling was demonstrated when Elijah was questioned, and not his neighbor; and implicit bias was exercised with the decision to arrest: Elijah’s white neighbor was automatically and unconsciously associated with positive, law-abiding behavior, and Elijah’s behavior (though identical to his neighbor’s behavior—sitting on the back of the pickup truck with Coke in hand) was immediately viewed as more suspicious. Upon inquiry with the arresting officers, it is unlikely that they would have perceived their conduct to reflect implicit bias, since the majority of people do not realize that their unconscious decisions are impacted by race.

Implicit bias is thus incredibly relevant in the context of police encounters, and, further, the implications that it has for Fourth Amendment attempts to regulate criminal behavior. Of course, Terry v. Ohio held individuals in certain circumstances could be approached for investigating possible criminal behavior and conduct a limited search for weapons, despite no probable cause to make an arrest. The Court emphasized application of the reasonable suspicion test, in order to protect officers from acting upon “inchoate and un-particularized suspicion[s] or hunch[es];” Terry stops had to be justified by “specific and articulable facts”, as “anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches…” (emphasis added). The irony of the Supreme Court’s concern to protect against police’s racially-motivated hunches can be appreciated, as it is likely that unintentional, unconscious, and automatic influence of implicit bias on police-public encounters exists.

About the Author

Katherine Lee Goyette (McBride) is a 2010 graduate of Washburn Law (JD) and a 2012 graduate of the University of Kansas School of Law (LLM). She is an associate attorney for Fendley & Etson in Clarksville, TN and practices in the areas of criminal defense, family law and personal injury. Linda L. Long, a 2017 graduate of Northern Kentucky University (JD) contributed to the writing of this article.

1. Name changed for purposes of confidentiality. Permission was received from the client to discuss circumstances of case.
4. Devon W. Carbado, (E)Racing the Fourth Amendment, 100 Mich. L. Rev., 946, 953 (2002). The “dance of compliance” has even been recognized by Justice Sotomayor, “For generations, black and brown parents have given their children the talk”—instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them.” Utah v. Strieff, 136 S. Ct. 2056, 2070 (2016) (Sotomayor, J., dissenting).
Ethics CLE* meets humor, for good!

*obtain your 2.0 ethics credit hours in Kansas & Missouri

2019
SAVE THE DATES

WEDNESDAY
JUNE 26

&

FRIDAY
JUNE 28

SPONSORED BY

KANSAS BAR FOUNDATION
WWW.KSBAR.ORG/KBF

Contact Deana Mead, KBA Associate Executive Director at dmead@ksbar.org, 785-861-8839
Kirk C. Stange proud to present at multiple CLEs accredited for Kansas CLE Credit:
- CLE by the Sea on the Ethics of Social Media and Electronic Discovery (March 7-9 in Jupiter, FL)
- 2018 Missouri Bar Annual Law Update, CLE on Family Law (May 24th in St. Louis & June 15th in St. Charles)
- Solo and Small Firm Conference on Social Media as Investigative Research (June 9th at Lake of the Ozarks)

DIVORCE | PATERNITY | CHILD SUPPORT | MODIFICATION
CHILD CUSTODY | COLLABORATIVE LAW | FAMILY LAW

Student and Employee Dismissal and Disciplinary Cases

Clifford A. Cohen
Attorney at Law

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

Colantuono Bjerg Guinn LLC
(Of Counsel)
7015 College Blvd. #375
Overland Park, Kansas 66211
(913) 345-8555 Fax (913) 345-8557
e-mail: cac@ksmolaw.com
Licensed in Kansas, Missouri and Colorado

Colantuono Bjerg Guinn LLC
(Of Counsel)
7015 College Blvd. #375
Overland Park, Kansas 66211
(913) 345-8555 Fax (913) 345-8557
e-mail: cac@ksmolaw.com
Licensed in Kansas, Missouri and Colorado

For more information or to register online, visit:
https://www.ksbar.org/event/2018ElderREPTConference

THE BAR PLAN

Elder & REPT Law Conference
October 18 & 19, 2018

Four Points by Sheraton
530 Richards Dr.
Manhattan, Kansas

Sponsored by:

The Journal of the Kansas Bar Association
Fall In for Our
Autumn 2018 CLEs

To Register: www.ksbar.org/CLE

Live:
43rd Annual KBA/KIOGA CLE
October 12, 2018
Wichita Boat House • 515 S. Wichita St.
Wichita, KS 67202

Elder Law & REPT Annual Conference
October 18 & 19, 2018
Four Points by Sheraton
530 Richard Dr.
Manhattan, KS 66502

South East Kansas Legal Conference
October 25 & 26, 2018
Pittsburg State University, Overman Student Center
1701 S. Broadway St.
Pittsburg, KS 66762

What Do You Get When You Cross the Employment Law Section with the Alternative Dispute Resolution Section? A Pretty Darn Good Seminar!
October 26, 2018
Robert L. Gernon Law Center • 1200 SW Harrison
Topeka, KS 66612

Lunch and Learn:
Magna Carta and Kansas Law
October 29, 2018
Presented by Norbert C. Marek Jr., Marek Law, Holton
Robert L. Gernon Law Center • 1200 SW Harrison
Topeka, KS 66612

A New Page for the Kansas Title Standards Handbook
November 7, 2018
Presented by Kyle J. Mead, Lawyers Title of Topeka
Robert L. Gernon Law Center • 1200 SW Harrison
Topeka, KS 66612

Formation & Governance of a 501(c)(3) Tax Exempt Organization
November 8, 2018
Presented by the Washburn University School of Law
Robert L. Gernon Law Center • 1200 SW Harrison
Topeka, KS 66612

Taking Dispute Resolution to the Next Level: A Litigator’s/Mediator’s Guide to Expanding Settlement Opportunities
November 9, 2018
Robert L. Gernon Law Center • 1200 SW Harrison
Topeka, KS 66612

Webinars:
Mesa CLE:
2018 Fantasy Supreme Court League
October 1, 2018 (Noon—2:00 PM)

Mesa CLE:
Yakety Yak! Do Call Back.
October 4, 2018 (Noon—1:00 PM)

Mesa CLE:
Technical Foul—Even Minor Ethics Violations Can Have Major Consequences
October 11, 2018 (Noon—1:00 PM)

Internet for Lawyers:
Using Free Public Records and Publicly Available Information
October 17, 2018 (Noon—1:00 PM)

Mesa CLE:
Yelp, I’ve Fallen for Social Media & I Can’t Get Linked Out!
October 24, 2018 (Noon—1:00 PM)

Internet for Lawyers:
Social Media as Investigative Research & Evidence
October 30, 2018 (Noon—1:00 PM)

Mesa CLE:
A Nightmare on Ethics Street
October 31, 2018 (Noon—1:00 PM)
How Much Math Does Tax Advocacy Require?

by William Schmidt

I tend to think of tax as a dividing line for attorneys. When I mention to other attorneys that I am a tax attorney, I am reminded of how vampires flinch and hiss when confronted by a cross or garlic. Why is that? Granted, tax law is complicated, but I think the main reason is that tax is based on numbers.

I regularly reach out to potential volunteers who might be willing to do pro bono work on tax cases. If math appears to be a concern, I try to comfort them by explaining that I can help out or do complicated math for them since I am familiar with the applicable tax law.

Generally, I do not prepare tax returns, but deal with tax controversies. Preparing tax returns can be complicated, especially if you are preparing returns by hand. Those returns involve looking up tax rates or credit charts. To avoid that, most everyone uses tax software.

What are the levels of math involved in tax cases? I am going to go through the low, medium and high levels of math that an attorney may have to deal with when it comes to tax work.

**Low Math – Advocacy and Litigation**

In the strictest sense, tax advocacy and litigation is similar to other areas of the law. There is a need for an understanding of the law affecting your client. Tax law is a type of administrative law since there are specific stages and deadlines that
will apply to a client’s case that require dealing with a specific government agency.

The first example is when a client receives a notice from the Internal Revenue Service (IRS). The IRS might send a letter requesting documents from a client as proof regarding tax credits or other items listed on a tax return. This letter may require a client to show proof regarding a child claimed from documents such as birth certificates, school records, medical records, affidavits, receipts or other evidence the child lived with the client during the calendar year.

Another kind of IRS letter states that the client did not report all income on the tax return. It will be necessary to have a conversation with the client about the income the IRS listed. It may also be necessary to contact the IRS for a type of transcript listing wage and income information for the client. Did the client live in that particular city during the tax year? Does the employer listed sound familiar? Depending on the client’s response, the client may have earned the income and need to set up a payment plan or does not recognize the employer and believes an identity theft affidavit is necessary to submit to the IRS.

Next, there is innocent spouse relief. A joint tax return means there is joint and several liability for the tax return. If there is a debt on the joint tax return, both spouses may be dealing with debt collections from the IRS. Following death or divorce, a client may no longer want to be liable for the entire debt if all or part of the debt was due to the other spouse. Form 8857 asks questions about a client’s marital history, level of education, financial involvement with the tax return(s) in question, and whether domestic violence was a part of the marriage. IRS Publication 971 details the kinds of relief available and the circumstances that may apply to prove relief in an innocent spouse situation.

The final example is filing a petition with the United States Tax Court. The petition itself must be filed in a timely manner based on deadlines from specific IRS letters. Tax Court cases involve negotiations with the IRS toward potential settlement. Should a Tax Court case go to trial, it is necessary to prepare just like any other litigation. The attorney will work with the client to prepare documents or provide testimony and determine what statements will be necessary to persuade the judge toward the client’s viewpoint and away from the IRS’s treatment of the tax return.

Most attorneys are comfortable with these levels of advocacy or litigation. Many times, tax cases involve working with the client to gather documents or other evidence to prove their case over the IRS’s assessment. The math level is low but it is necessary to learn about the applicable areas of tax and relevant deadlines.

**Medium Math – Calculating Client Numbers**

For medium levels of math, an attorney will be contacting the client regarding financial information. When a client owes money to the IRS, there are some alternatives to dealing with the IRS Collections department. In order to qualify for some of these collection alternatives, it is necessary to find out about a client’s assets, income and expenses.

If a client has more expenses than income, they potentially qualify for the Currently Not Collectible status with the IRS. Using specific forms from the IRS website, the attorney can ask the client specific questions to learn about the client’s monthly financial status. Using that information, the attorney might submit a signed form or call to provide the financial information over the phone to the IRS.

Another alternative is the Offer in Compromise, a settlement offer to the IRS. This requires similar information gathering as Currently Not Collectible status, but the IRS wants supporting documents as proof regarding the client’s financial statements.

The main math involved in these collection alternatives is adding up the client’s financial information. For Currently Not Collectible, the total of the client’s expenses should exceed the client’s income or the client should look at setting up a payment plan with the IRS. For an Offer in Compromise, that is one of the calculations. The attorney would use that calculation along with the assets listed to determine a client’s collection potential. The collection potential is what the IRS will use to determine what they will be able to collect from a taxpayer over different time periods. Based on that information, the IRS also looks to see if the settlement offer is reasonable to them. They will not want to accept a significantly lower offer than the collection potential unless the client has special circumstances that would compel the IRS to sympathize with the client’s situation.

These collection alternatives generally require basic math where a calculator may come in handy. It is best to check with an experienced tax attorney about the pros and cons of these collection alternatives before moving forward. For example, the Offer in Compromise will extend the expiration date for a tax year in question. It can be a bad move to submit an Offer for a client when that tax year’s expiration date for the IRS to collect is about to come due and delay that expiration date.

**High Math – Tax Calculations**

The high math regarding tax calculations can be the trickiest form of tax assistance. One instance of doing a tax calculation is checking to see if an IRS assessment is correct. When the IRS assesses liability to a client, it is worthwhile to see if you or the client agree with everything listed by the IRS. If the IRS listed something incorrectly, it may be helpful to calculate the liability on the portion your client agrees with.
Another instance of tax calculations is filing an amended tax return. In filling out the form, column A lists the original amount, column B lists the net change (increase or decrease), and column C lists the correct amount (how you want the amount to be amended). Filling out this form requires making sure the columns flow correctly from left to right.

Finally, injured spouse relief (not to be confused with innocent spouse relief, above) is the last example of tax calculations. Injured spouse relief also comes from a joint tax return. In this situation, one spouse’s tax refund goes to pay the other spouse’s government debt (such as tax debt, student loans, or child support). A client can file an injured spouse form to get the refund back rather than paying on the other spouse’s debt (the couple can still be married – divorce and death are not required). On this form, column A lists the original amounts from the tax return, column B lists income and other amounts allocated to the injured spouse, and column C lists the financial information for the other spouse (basically splitting column A into columns B and C).

Each of these tax calculations requires a heavy combination of math skills and tax knowledge. If an attorney is leery about doing math, these are definite situations to send on to the tax attorney or review together.

Overall, a good amount of tax work involves contacting clients for information and advocating for the clients over the phone or in writing to the IRS. Only certain kinds of tax work truly involve math. Should you be interested in assisting the Low Income Taxpayer Clinic at Kansas Legal Services, please feel free to contact me.

2. IRS Form 14039.
3. IRS Form 8857.
4. IRS Publication 971.
5. United States Tax Court Rule 13.
7. IRS Form 433-A, 433-B, or 433-F are examples.
8. IRS Form 656-B (Offer in Compromise Booklet).
9. Form 1040X.
10. Instructions for Form 1040X.
11. Instructions for Form 8379.
12. Form 8379.

About the Author

William Schmidt is Clinic Director for the Low Income Taxpayer Clinic at Kansas Legal Services. He completed his J.D. from Washburn University School of Law and LL.M. in Taxation from the University of Missouri-Kansas City School of Law. He was the 2012 recipient of the Kansas Bar Association Pro Bono Award. He co-authored Chapter 5 for the ABA publication “Effectively Representing Your Client Before the IRS” (2018), writes monthly blog posts on Tax Court designated orders for the Procedurally Taxing blawg site and hosts a tax podcast called Tax Justice Warriors.
Reading for Better Writing
by Emily Grant

“Read, read, read. Read everything—trash, classics, good and bad, and see how they do it. Just like a carpenter who works as an apprentice and studies the master. Read! You'll absorb it. Then write. If it's good, you'll find out. If it's not, throw it out of the window.”

—William Faulkner

At the start of the semester in my estates and trusts course, I have my upper-level students fill out a notecard of information, including the title of a book they've recently read. I get a wide array of responses, everything from “I haven't read a book since I started law school,” to “only the book for your class,” to Descartes, Green Eggs and Ham (for the law student’s two-year-old niece), beloved Harry Potter books being reread for the third time, classics like A Tale of Two Cities, mindless fiction, and inspirational books clearly chosen to help develop the student’s professional identity as an attorney.

Not only do their responses help me restock my own reading list and allow me to make a personal connection with my students, they give me the opportunity to emphasize that one of the keys to being a good writer is being an avid, deliberate, and observant reader. “Reading exposes us to other styles, other voices, other forms and genres of writing. Importantly, it exposes us to writing that’s better than our own and helps us to improve.”

Why?

In the legal profession, we are regularly exposed to a wide range of writing quality. Conscientious lawyers often can find their writing ability has eroded after years of exposure to inexact case opinions and poorly-constructed statutes. Even the first examples of opinions law students see in their casebooks are frequently over 100 years old and far from models of precise, concise legal writing.

But reading can help lawyers of all levels reinvigorate their own writing. Reading exposes us to new information, wider vocabulary, solid grammar usage, and examples (both good
and bad) of effective writing techniques. Additionally, unrelated to any advantage in our own writing, reading can help alleviate stress, increase empathy, broaden imagination, and understand our own feelings.

What?

If you’re looking for something to read, I suggest that, frankly, anything will do, even Harry Potter or Dr. Seuss. Ask your friends and colleagues for recommendations. Judge Frank H. Easterbrook of the Seventh Circuit Court of Appeals recommends “the likes of Hemingway, Faulkner and Saul Bellow for their different styles, and magazines such as The Atlantic and The New Yorker, ‘where people write intelligently about important issues in short compass, using real English sentences.’”

You can also find lists of books that help improve writing generally. “Some explain how to write better, some help you understand how to structure your schedule to improve your productivity, and some talk about writing philosophy.” Some specific examples include: The Elements of Style by William Strunk and E.B. White; Bird by Bird: Some Instructions on Writing and Life by Anne Lamott; The Storytelling Edge by Joe Lazauskas; and Everybody Writes by Ann Handley.

How?

I submit that any kind of reading can always help to improve writing, either by example of what to emulate or by cautionary tale of what to avoid. That said, we can increase the likelihood of learning from our reading by engaging with the text deliberately:

• Make a note of what strikes you as well-written, beautiful, or stunningly cogent—and why.
• Make a note of what jars you out of the narrative—and why.
• Examine the language, the diction, the style and ask yourself why it does or does not work.
• Examine the sentences. Are they long? Flowery? Brief and to the point? Does the writer use simple language to convey the narrative—or complex and circuitous language?
• Step outside your comfort zone and read works that you wouldn’t ordinarily read. If you tend to focus on escape reading, pick up a classic and plow through it. If you like “high literary” novels, try an adventure or a thriller. If you like contemporary works, try something historical, or if you tend to read action and war stories, try a cozy mystery or a memoir.
• Read two different types of books and compare and contrast how effective they are and why.

By employing some of these active reading techniques, we can extract more value out of the time and energy we invest in reading outside of work. My hope, however, is that in reading more and being more aware of what we read, we will find opportunities to bring creativity and fun into even the most rote of our professional tasks. Our word choices and our construction and use of language can be among the most powerful and important tools of our trade. Accordingly, reading anything with an eye on the craftsmanship with which it was written meaningfully enhances our ability to write professionally.

About the Author

Emily Grant teaches at Washburn University School of Law, and she also serves as the Co-Director for the Institute for Law Teaching and Learning. She is currently the Chair of the Board of Editors for The Journal of the Kansas Bar Association.

emily.grant@washburn.edu

1. I also ask them to tell me a joke. Here’s my favorite from this semester: What do you call a fish with no eyes? The answer is in my bio at the end of the column.
5. Id.
6. This approach has the added advantage of giving you something to talk about other than work.
9. Id.
Garden City High School teacher David Duran, left, talks Wednesday with students in.

Wendel Wurst, chief district judge for the 25th Judicial District, was one of three Kansas Supreme Court Justices who will hear an appeal of the case Wednesday night.

Kansas Supreme Court Justice Caleb Stegall, Chief Justice Lawton Nuss and Carol Beier.

“…this,” Acosta said in an evening remarks.

During the Ark City Chamber of Commerce meeting Thursday morning, in the back.

Before heading back to Topeka, Kansas.

The second level, the intersection.

The group of chamber members, the pub.

A number of citizens chose to do so.

The KLS Low Income Tax Clinic in KCK.

In remarks later in the day, Wilt reminded resi.

A Mitt Romney candidacy

A Ron Paul candidacy.

A Donald Trump candidacy.

A Hillary Clinton candidacy.

A Bernie Sanders candidacy.

A Jeb Bush candidacy.

A Ted Cruz candidacy.

A Marco Rubio candidacy.

A Ben Carson candidacy.

A Jim DeGus addiction.

A Rick Perry candidacy.

A John Kasich candidacy.

A Scott Walker candidacy.

A Marco Rubio candidacy.

A Ben Carson candidacy.

A Jimmy Carter candidacy.

A Donald Trump candidacy.

A Hillary Clinton candidacy.

A Marco Rubio candidacy.

A Ben Carson candidacy.

A Jimmy Carter candidacy.

A Donald Trump candidacy.

A Hillary Clinton candidacy.

A John Kasich candidacy.

A Scott Walker candidacy.

A Donald Trump candidacy.

A Hillary Clinton candidacy.

A John Kasich candidacy.

A Mitt Romney candidacy.

A Jeb Bush candidacy.

A Ted Cruz candidacy.

A Marco Rubio candidacy.

A Scott Walker candidacy.

A Donald Trump candidacy.

A John Kasich candidacy.

A Mitt Romney candidacy.

A Ted Cruz candidacy.

A Marco Rubio candidacy.

A Ben Carson candidacy.

A Jimmy Carter candidacy.

A Donald Trump candidacy.

A Hillary Clinton candidacy.

A John Kasich candidacy.

A Scott Walker candidacy.

What a remarkable year.

For one, the presidential election.

A John Kasich candidacy.

A Scott Walker candidacy.

A Ted Cruz candidacy.

A Marco Rubio candidacy.

A Donald Trump candidacy.

A Hillary Clinton candidacy.

A Bernie Sanders candidacy.

A Ben Carson candidacy.

A Jim DeGus addiction.

A Scott Walker candidacy.

A Donald Trump candidacy.

A Hillary Clinton candidacy.

A John Kasich candidacy.

A Mitt Romney candidacy.
Employer and Contractor Immunity from Tort Liability under the Kansas Workers Compensation Act

by Kyle Sollars
I. Introduction

Injuries that employees suffer in the scope of their employment have been the subject of unique treatment under the law. In virtually any other context, injured persons have recourse through appropriate common law theories of tort liability for their injuries. This is generally not the case for employees who are injured in the scope of their employment. Federal law provides statutory schemes for the compensation of employees injured in the scope of several employment contexts, including the Federal Employers' Liability Act ("FELA"), providing a cause of action for injured railroad workers against their employers;3 the Jones Act, extending FELA to injured seamen;2 and the Longshore and Harbor Workers' Compensation Act, providing a compensation scheme that is similar to state workers compensation statutes for certain maritime employees 3

The most well-known of such statutory schemes are likely state workers compensation statutes. Contained within the workers compensation framework is "a classic social trade-off or, to use a Latin term, a quid pro quo”—injured employees receive prompt compensation for injuries suffered in the scope of their employment, without having to prove fault of any party—and in exchange, employers receive immunity from civil lawsuits for tort damages.4 This article focuses on such employer immunity under the Kansas Workers Compensation Act, including the extension of this immunity to certain principal contractors, so-called "statutory employers."

This article will also examine some of the limited exceptions to this immunity. One such exception is independent contractual obligations. The Workers Compensation Act does not displace freedom of contract—therefore parties are free to voluntarily incur obligations through contract that they otherwise would not have under that act. This article examines some of the contract issues that may arise in light of this exception, particularly as they impact general contractors and subcontractors.

Another such exception is the so-called "dual capacity doctrine." Under that doctrine, an employer loses immunity from civil tort actions if the liability arises from the employer acting in some capacity other than that as an employer. This article analyzes that doctrine
and some of the considerations and pitfalls that may arise because of it.

II. Statutory Basis for Employer Immunity

Workers compensation immunity in Kansas is provided by statute. K.S.A. 44-504b(d) provides:

Except as provided in the workers compensation act, no employer, or other employee of such employer, shall be liable for any injury, whether by accident, repetitive trauma, or occupational disease, for which compensation is recoverable under the workers compensation act nor shall an employer be liable to any third party for any injury or death of an employee which was caused under circumstances creating a legal liability against a third party and for which workers compensation is payable by such employer.

Stated simply, where an injured employee can collect workers compensation, the employer is immune from any civil tort claims the employee may bring against the employer. The employer is also immune from any similar claims that a third party may bring against the employer if the injury occurred "under circumstances creating a legal liability against a third party and for which workers compensation is payable by such employer.

III. Statutory Employers

Generally, the ability to collect workers compensation requires an employer-employee relationship. However, Kansas law has extended liability for workers compensation benefits to certain subcontracting relationships. Under Kansas law, whenever a "principal"—i.e. a general contractor—undertakes or contracts to perform work and thereafter contracts with a "contractor"—i.e. a subcontractor—to perform all or any part of such work, the principal will be liable to such contractor’s employees for workers compensation benefits as if the principal were the direct employer of such employees.

In such a situation, the principal is called a "statutory employer" of the injured subcontractor employee. However, if the subcontractor secures workers compensation benefits for its injured employee, the general contractor is not liable for such benefits. If the subcontractor does not secure workers compensation benefits for its employees—or such compensation is otherwise unavailable—the general contractor shall be liable for such benefits.

IV. Extension of Immunity to Statutory Employers

The question eventually arose whether workers compensation immunity extends to such statutory employers. In Robi-nett v. Haskell Company, the Kansas Supreme Court held that it does.

In that case, Haskell Company was the general contractor in the construction of a building in Geary County, Kansas. Haskell Company executed a subcontract with Stanley Jones to perform some of the work, including the installation of the heating and air conditioning systems. Michael Robinett was one of Stanley Jones’ employees. The terms of Haskell’s subcontract with Stanley Jones required Stanley Jones to supply workers compensation insurance for its employees. Robinett was injured on the job when he stepped onto an uncovered floor drain, causing him serious injuries for which Stanley Jones paid workers compensation benefits. Robinett filed suit against Haskell, claiming that the negligence of one of Haskell’s employees caused Robinett’s injuries. Haskell moved for summary judgment, arguing that it qualified as a statutory employer under the Workers Compensation Act and was immune from suit under the "exclusive remedy rule" contained in K.S.A. 44-504b(d). The trial court granted summary judgment to Haskell. On appeal, Robinett argued that K.S.A. 44-503(g) rendered Haskell liable because that statute expressly exempts principal contractors from providing workers compensation benefits when the subcontractor—i.e. direct employer—provides such benefits. Essentially, Robinett argued that a general contractor does not enjoy workers compensation immunity merely by being potentially liable for workers compensation benefits—they must actually provide those benefits.

The Kansas Supreme Court affirmed the trial court, holding that "the legislature did not intend to subject principal contractors to tort liability for injuries to the employees of subcontractors, even where the principal contractor is not liable for workers compensation benefits because such coverage is secured by the subcontractor." In so holding, the Court stated:

[K.S.A. 44-503] recognizes the primary responsibility of the principal contractor in providing worker compensation coverage not only for its immediate employees but also for its statutory employees. . . . This responsibility arises because the work being done is either an integral
part of the principal’s trade or business or is work that would ordinarily have been done by an employee of the principal.

The cost of such coverage becomes a factor in the negotiations of the parties and is factored into the contract, with the result that between the parties the cost of coverage is shared, if not paid for, by the principal contractor. Thus, the principal is still providing quid pro quo for its immunity. If the principal does not obtain immunity, there is really no incentive for the employer to hire a contractor with workers compensation coverage, especially where the principal will likely have to pay a higher price for such a contractor as opposed to a contractor who is uninsured. In fact, the principal who does so will be worse off in that not only will it be subject to potential tort liability, it will also be potentially liable for workers compensation benefits if the contractor’s insurance should become unavailable. Immunity advances the entire purpose of K.S.A. 1999 Supp. 44-503 by encouraging principal contractors to fulfill their ultimate responsibility for coverage by providing for such coverage in their negotiations with subcontractors. Immunity also insures that the principal will not be worse off for its decision to hire insured contractors.21

The Robinett case demonstrates the breadth of employer immunity under the Kansas Workers Compensation Act, especially in the context of general contractors and subcontractors. If a general contractor ensures that its subcontractors supply workers compensation coverage for the subcontractors’ employees, the general contractor will not only be immune from paying workers compensation benefits to such employees if they are injured, the general contractor will also be immune from any civil lawsuit for tort damages arising from an injury to such employees. These immunities have profound implications in the construction industry, for general contractors routinely subcontract their projects to other contractors.

As strong as workers compensation immunity is, it is not absolute. Kansas law recognizes some narrow exceptions. Two such exceptions include independent contractual duties and the so-called "dual capacity doctrine."

V. Independent Contractual Obligation Exception to Employer Immunity

It should come as no surprise that many of the rights and duties between contractors are contained within detailed written contracts. Virtually all of these contracts contain indemnification clauses requiring that one contractor indemnify another, or requiring that they indemnify a third party related to the project. A question arises as to whether an employer can maintain its workers compensation immunity if, rather than suing in tort, a third party brings a claim against the employer for breach of such an express indemnification clause. The Kansas Court of Appeals addressed this question in Estate of Bryant v. All Temperature Insulation, Inc.22

In Estate of Bryant, Bryant was injured in a construction accident.23 The general contractor, Foley, leased a crane from APAC for use in the project.24 APAC also supplied one of its employees to operate the crane.25 The lease agreement between APAC and Foley contained an indemnification clause, stating that the crane operator would, during his use of the crane, become the employee of Foley and that Foley must indemnify APAC from any claims arising from Foley’s use of the crane.26 Bryant brought suit against a number of parties arising from his injuries, including APAC, alleging, in part, that the crane was operated in a negligent manner.27 APAC impleaded Foley into the suit, seeking indemnification under the lease agreement.28 Foley defended the action by alleging, in part, that it was Bryant’s statutory employer under K.S.A. 44-503, and was therefore immune from suit under the exclusive remedy statute.29 The trial court granted summary judgment to Foley.30

The court of appeals reversed. Citing previous case law, the court of appeals held that "the majority rule would deny indemnity unless [it] is based on an independent contractual duty or a special legal relationship."31 Referencing the indemnification clause at issue, the court held, "[w]e do not believe that [the exclusive remedy statute] was intended to abrogate contractual rights and duties between consenting parties under a contract entered into with full knowledge of its provisions. This seems to be particularly true when the issue arises in a context which has nothing whatsoever to do with the Workers Compensation Act."32 Foley attempted to argue that the exclusive-remedy statute’s “third party” language immunizes employers from “all third-party liability of any kind or nature whatsoever.”33 The court of appeals rejected that argument, stating “[i]f the legislature had intended to prevent all third-party liability under any circumstances whatsoever, it could have said so; it did not.”34 The court of appeals held that the indemnification clause at issue was an "independent contractual obligation" and was not barred by the exclusive remedy statute.35

Estate of Bryant cautions general contractors and subcontractors in the drafting of their contracts. This is of particular concern in the construction industry, where many contracts are based on standard forms, particularly those provided by the American Institute of Architects—the AIA. The standard language provided in some AIA forms contains broad language requiring subcontractors to indemnify the general contractor, the general contractor’s employees, and several other parties for claims arising from the subcontractor’s work, without limitation by workers compensation statutes.36 Some
AIA forms contain language requiring the general contractor to indemnify the subcontractor and its employees in some circumstances. Innumerable circumstances could arise where an employee would be injured on the job and they bring an action against a third party related to the project. That third party could theoretically bring an action against the employee’s direct employer or the general contractor for indemnification under the applicable contracts. Depending on the breadth of the indemnification clause at issue, such contractor may no longer be able to claim immunity under the Kansas Workers Compensation Act because such an indemnification clause could be an “independent contractual obligation” under Estate of Bryant. The Workers Compensation Act does not displace freedom of contract—parties are free to agree to terms that waive rights acquired under that Act.

VI. The Dual Capacity Doctrine

Another exception to workers compensation immunity that Kansas law has recognized is the dual capacity doctrine. Under that doctrine, the employer loses its workers compensation immunity “if he occupies, in addition to his capacity as an employer, a second capacity that confers upon him obligations independent of those imposed upon him as an employer.” The Kansas Court of Appeals first recognized this doctrine in Kimzey v. Interpace Corp.

In Kimzey, a machine injured the plaintiff in the scope of his employment with Interpace. The company that manufactured the machine was eventually merged into Interpace. In the merger, Interpace agreed to assume “all debts, liabilities, restrictions, duties and obligations” of the manufacturer. After receiving workers compensation benefits, Kimzey filed suit against Interpace, claiming that his injuries were the result of the design and manufacture of the machine, and that Interpace was liable for such claims because it had assumed the manufacturer’s liabilities in its merger with the manufacturer. Interpace obtained summary judgment, arguing that the exclusive remedy provisions of the Workers Compensation Act immunized it from the suit.

The court of appeals reversed. The court noted that had Interpace manufactured the machine, the plaintiff’s only recourse would have been through workers compensation. It also noted that had the manufacturer remained a separate entity, plaintiff would not have been precluded from filing suit against the manufacturer and the employer would have been subrogated to any recovery. The problem, as the court saw it, was that Interpace fit neither description. In rejecting Interpace’s exclusivity argument, the court stated, “[t]he problem with a rule such as advocated by defendant is that it would cloak the employer with absolute immunity from liability under any theory to an injured employee who is eligible for or has received workers compensation even though the liability asserted arises outside the employment relationship.” Ultimately, the court of appeals saw Interpace as standing in the shoes of the manufacturer. Because the manufacturer would have no grounds for claiming immunity under the Workers Compensation Act, neither would Interpace. The court of appeals was careful to limit application of this doctrine:

The doctrine should not be used for the purpose of simply evading the exclusivity provision of the Workmen’s Compensation Act. When properly applied, it will be limited to those exceptional situations where the employer-employee relationship is not involved because the employer is acting as a second persona unrelated to his status as an employer, that confers upon him obligations independent of those imposed upon him as an employer. As such, it will not defeat the purposes or policies of the act. Nor, in our view, will it erode the employer’s immunity under the exclusivity provision of the act where the claim of liability is properly within the purview of the act.

Injured employees have tried to utilize the dual capacity doctrine in subsequent cases in Kansas. To date, Kimzey is the only reported Kansas case where the dual capacity doctrine was effectively utilized to avoid the exclusive remedy rule. As such, it has limited applicability. Kimzey was the result of the unique facts of that case. As such, this doctrine is not likely to arise unless facts are present that indicate that the employer is operating in a second capacity beyond that as an employer. In the vast majority of contexts, that is not likely to occur. In the construction context—with the interrelation of parties and transactions—it is conceivable that an employer may involve itself in the project in some capacity beyond that as an employer/contractor. But considering the lack of successful use of the doctrine in Kansas, it would take truly unique facts to justify invocation of the doctrine. An employer should be cautious in involving itself in any ancillary transactions that are unique compared to the project at is-
sue, especially if the transaction involves assuming obligations beyond the employment relationship.

VII. Conclusion

Employer tort immunity under the Kansas Workers Compensation Act is a powerful defense that is often dispositive of any claims within its scope. All employers—in particular general contractors and subcontractors—should be cognizant of the breadth of this immunity and exceptions that can defeat it. Employers may voluntarily incur obligations through contract that they otherwise would not have under the Workers Compensation Act. Under exceptional circumstances, an employer may be acting in a capacity beyond that as an employer and lose its immunity from civil tort actions. Careful consideration of contract terms and the scope of other transactions involved in the project will be critical in balancing the needs of the project with maintaining immunity from tort damages.

1. 45 U.S.C. §§ 51 et seq.
3. 33 U.S.C. §§ 901 et seq.
5. K.S.A. 44-501b(d).
9. K.S.A. 44-503(g).
10. Id.
11. 270 Kan. at 108.
12. Id. at 96.
13. Id.
14. Id. at 95.
15. Id.
16. Id. at 95-96.
17. Id. at 96.
18. Id. (citing then K.S.A. 44-501(b)).
19. Id. at 96.
20. Id. at 108.
21. Id. at 106-08 (emphasis in original, citations omitted).
23. Id. at 388.
24. Id.
25. Id.
26. Id. at 389.
27. Id. at 388. Bryant died during the proceedings. Therefore, Bryant’s estate and his surviving spouse replaced him as plaintiffs.
28. Id. at 388-89.
29. Id. at 389.
30. Id.
31. Id. at 395 (quoting McCleskey v. Noble Corp., 2 Kan. App. 2d 240, 244, 577 P.2d 830 (1978)).
32. Id. at 394-95.
33. Id. at 395; see K.S.A. 44-501b(d) ("... nor shall an employer be liable to any third party for any injury or death of an employee which was caused under circumstances creating a legal liability against a third party and for which workers compensation is payable by such employer.")
34. Estate of Bryant, 22 Kan. App. 2d at 395.
35. Id. at 396.
37. Id. at § 4.4.4.
38. Estate of Bryant, 22 Kan. App. 2d at 391 ("The policy of law in general is to permit mentally competent parties to arrange their own contracts and fashion their own remedies where no fraud or overreaching is practiced. Contracts freely arrived at and fairly made are favorites of the law.") (citations omitted).
40. Id.
41. Id. at 165.
42. Id.
43. Id.
44. Id.
45. Id. at 165-66.
46. Id.
47. Id. at 168.
48. Id. (citing K.S.A. 44-504(a), (b)).
49. Id. at 168.
50. Id. at 169-70.
51. Id. at 170.
52. Id.
Washburn Law Clinic: Integrating Service and Learning
by Michelle Y. Ewert

The Kansas Rules of Professional Conduct contain a clear charge to all attorneys: as public citizens, we have a responsibility to our communities to “seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.” (Comment 6 to the Preamble to the Rules of Professional Conduct) At Washburn University School of Law, students learn that practicing attorneys can fulfill this responsibility in many different ways. Students even have opportunities to begin these service activities while still enrolled.

Washburn Law has a rich history of pro bono activities. Law students assist veterans and their families at the Veterans Legal Assistance Clinic, help low income individuals file state and federal tax returns through the Volunteer Income Tax Assistance program, and provide countless hours of volunteer service with student organizations as well as state and local non-profits. The commitment to pro bono service is perhaps best exemplified, however, through the comprehensive training students receive in the Washburn Law Clinic.

Whether they participate in the Civil Clinic, the Criminal Defense and Tribal Court Clinic, the Family Justice and Immigration Clinic, the Small Business and Nonprofit Transactional Law Clinic, or the Criminal Appellate Advocacy Clinic, students in the Washburn Law Clinic have opportunities to begin to fulfill attorneys’ many responsibilities to their community. Clinic students provide direct legal services to individuals and entities who could not otherwise afford representation, conduct community education and outreach, lead CLEs for Kansas attorneys, and prepare for careers as policymakers and community leaders. Students leave the Washburn Law Clinic with both an understanding of their professional obligations to their community and the skills to immediately begin to perform those duties.
**Representation of low income clients**

Each student in the Washburn Law Clinic represents multiple clients throughout their time in clinic. The direct client representation helps students develop critical lawyering skills and provide much-needed legal services to low income individuals and organizations who would otherwise not obtain counsel. In May 2018, Professor Gillian Chadwick and students in Washburn’s Family Justice and Immigration Clinic helped secure an $8 million judgment on behalf of a survivor of human trafficking. The clinic served as co-counsel with pro bono firm McGuireWoods LLP. The judgment, which experts say is the largest single-plaintiff trafficking award in American history, is an example of the groundbreaking work that occurs at the Washburn Law clinic.

Another unique opportunity available to students in the Criminal Defense and Tribal Court Clinic is the representation of defendants before the Prairie Band Potawatomi Nation (PBPN) district court. Under the supervision of Professor John Francis, clinic students represent members of the Prairie Band Potawatomi Tribe who are charged under the PBPN Law and Order Code. Students draft pleadings, negotiate settlements and represent their clients in criminal trials before the tribal court.

Students enrolled in the Criminal Appellate Advocacy Clinic, a partnership between the Washburn University School of Law and the Kansas Appellate Defender Office, assist Professor Randall Hodgkinson in criminal felony appeals. The students review trial transcripts, conduct legal research and help write appellate briefs.

**Community education and access to justice**

In addition to client representation, students in the Washburn Law Clinic educate the public about their legal rights and responsibilities. Under Professor Michelle Ewert, the Civil Clinic has formed a relationship with Topeka West High School and conducts “know your rights” presentations to the high school students each semester. During the 2017-2018 school year, clinical students conducted presentations on employment law and landlord-tenant and consumer law. These presentations helped prepare the high school students for their transition to adulthood.

To increase access to justice for survivors of domestic violence, sexual assault, and human trafficking, clinic students in the Family Justice and Immigration Clinic conduct legal consultations at the YWCA. Survivors utilizing YWCA services can meet with clinic students, get legal advice and answers to their legal questions and learn about their rights. These consultations provide a critical accessible service to vulnerable community members.

**CLES for Kansas attorneys**

Just as Washburn Law Clinic students educate the public about the law, so they also educate the bar. Clinic students conduct CLE presentations on a regular basis. Students in the Criminal Defense and Tribal Court Clinic participated in the April 2018 Expungement Day project, which was a collaboration between the Topeka Bar Association, Third Judicial District Court, and various non-profit, government and law firm partners. Prior to the actual Expungement Day event, Washburn Law Clinic students led a CLE program for volunteer attorneys who would be participating in the expungement fair.

Also in April 2018, Professor Janet Jackson and students from the Small Business and Nonprofit Transactional Law Clinic led a CLE presentation on the formation and governance of 501(c)(3) tax exempt organizations. This webinar was available to attorneys all over Kansas and demonstrated to students ways in which lawyers can use their skills and technology to provide information and services beyond their immediate community. This distance learning CLE is one example of Washburn Law Clinic’s commitment to providing services in more remote parts of the state.

**Preparation for government service and community leadership**

In addition to using technology to train attorneys all over Kansas, the Washburn Law Clinic helps prepare students for leadership positions, including in rural Kansas. During the 2018 spring break, students from the Washburn Law Clinic traveled to Garden City for a service learning trip. The students conducted “know your rights” presentations at the Garden City High School and met with local government officials and other community leaders to discuss practice and leadership opportunities in rural Kansas. In meetings with the Garden City Assistant City Manager (Jennifer Cunningham, JD ’10) and staff from the Finney County Economic Development Corporation, Washburn Law Clinic students learned how their legal skills can not only address the needs of underserved communities, but also help shape public policy.

Similarly, students in the Small Business and Nonprofit Transactional Clinic learn valuable skills needed for nonprofit board leadership. They draft articles of incorporation and by-laws and learn how to help organizations navigate the complex network of government agencies and regulations. Washburn Law Clinic students are prepared for leadership and service in many different roles.

The Washburn Law Clinic is proud to be an active member of the Kansas legal community and to equip law students with the skills needed to serve low income clients, educate the public and the bar, and take on leadership roles in their community. Pro bono work covers a broad range of activities, and the Washburn Law Clinic trains its students for work in these different capacities. Even before they take the attorney’s oath, Washburn Law Clinic students demonstrate the pro bono ideals described in the Kansas Rules of Professional Conduct.

For more information about Washburn Law Clinic programming, visit the clinic’s website at http://washburnlaw.edu/academics/clinic.html or call the clinic at (785) 670-1191. ■
Public Citizen Lawyering and Pro Bono at KU

by Meredith A. Schnug

Last fall, KU Law hosted the Midwest Conference for Clinical Legal Education. Legal educators from across the country came to Kansas to share best practices for teaching law students and preparing them for practice. A focus of the conference was how to teach students to become “public citizen lawyers,” a concept embodied in the Preamble to the Model Rules and Kansas Rules of Professional Conduct. (Did you know there was a Preamble? Most of us have forgotten, if we ever knew!). According to the Rules, as members of the legal profession, we are public citizens and have “special responsibility for the quality of justice.” As public citizens, we should seek to improve the law, serve the profession, and promote access to justice. These professional values are certainly familiar to us, even if the Preamble is not.

The Pro Bono Program at KU is an integral part of how we teach law students to become public citizen lawyers. Our program formally began in January 2017, though KU has long been committed to pro bono service and encouraging students to perform it. The program links students with opportunities to do pro bono work and honors those who complete 50 hours during their law school tenure. Additionally, our annual Pro Bono Honor Roll recognizes students who perform 15 hours or more during the year. We define pro bono as uncompensated, supervised, law-related work that benefits the public, including persons of limited means, not-for-profit organizations, and government entities. Through this work, students have the opportunity to see how their efforts can provide critical access to legal services and improve the profession.

One of the highlights of KU’s Pro Bono Program last year was when students mobilized in response to the Trump Administration’s announcement to end the Deferred Action for Childhood Arrivals (DACA) program. With assistance from faculty, staff, and students, the Legal Aid Clinic coordinated a DACA Renewal Clinic to assist “dreamers” who were eligible to renew their status before an October 2017 deadline. More than 100 law students were moved to action; they attended training, helped spread the word, and volunteered at the clinic. Their energy and drive were inspiring reminders of what our profession can – and should – do in the face of injustice.

Throughout the year, law students continued to perform pro bono service in a range of placements, from the Low Income Tax Clinic at Kansas Legal Services to the League of Kansas Municipalities. Additionally, students served in a number of
programs coordinated in conjunctions with the law school. For example:

- During the spring semester, law students with the Vol-
  unteer Income Tax Assistance program prepared 190
tax returns for low income residents, helping many of
them secure tax refunds critical to economic stability.
- Law students joined Legal Aid Clinic interns to host the
second annual Clean Slate Expungement Clinic in
Douglas County. The students conducted screening
interviews of more than 30 walk-in clients over a
couple of hours. Their work contributed to the eventu-
tal expungement of dozens of criminal convictions for
Kansans seeking to move beyond their pasts.
- In March, volunteer law students traveled from Law-
rence to Wichita to take part in the Guardianship Assis-
tance Program, a collaborative effort involving Hinkle
Law Firm, Arc of Sedgwick County, financial planner
Marti Johnson, pro bono lawyers from the Wichita Bar
Association, and Kansas Legal Services. The program
provides much-needed representation to families seek-
ing guardianship of adult children with disabilities. KU
students conducted interviews with the families and
then drafted the required guardianship documents.
Their efforts helped provide potentially life-long legal
security for eleven families.

In just the second year of KU’s Pro Bono Program, 15 mem-
ers of the Class of 2018 were recognized for having completed
50 or more pro bono hours. In total, the graduating class re-
ported more than 2,050 pro bono hours. But students in all
three classes were active in pro bono efforts. During the 2016-
2017 academic year, KU law students recorded a total of 3,373
hours, with 29 students completing fifteen hours or more.

We hope that by learning and embracing pro bono as a pro-
fessional value in law school, graduates continue to provide
such service in practice. In reality, the research in this area
is limited. We know from studies on volunteerism in gen-
eral that people are more likely to provide volunteer assistance
when they feel competent to help. By that reasoning, if law
students are exposed to a particular type of pro bono work, they
may gain the competence, and confidence, to continue such
work in practice. Similarly, in a study involving manda-
tory pro bono programs, the majority of students reported
that their experience in law school “increased the likelihood
that they will engage in similar work as practicing attorneys.”
However, the limited research does not prove that link.
Many factors impact a lawyer’s capacity to do pro bono work, such
as workload demands, employer support, and family obliga-
tions. Overcoming these challenges requires all of us to find
creative ways to support each other in meeting our “special
responsibility” as public citizens.

Beyond professional identity formation, pro bono service
has other value for students. The experience develops students’
knowledge and lawyering skills in practical settings that may
challenge assumptions and inspire reflection about how to
further improve our legal system. Such work can develop students’ competen-
cy in cross-cultural lawyering and em-
pathy. One study found that nearly
70 percent of stu-
dents believed their
pro bono experience "taught them something
about people who are different
from themselves” and made them more
aware of the legal needs of the poor.
Additionally, 64 per-
cent of students re-
port that pro bono
work was “helpful
in gaining a practi-
cal understanding of
how the legal system
works.” After all, as
much as we try to
simulate practice in
the classroom, doing legal work for actual
clients is how stu-
dents bridge theory
and practice.

So, as we begin an-
other school year at
KU, we hope all of
our students gain that
valuable, “hands-on”
experience while serving the public good. I am eager to see all
the ways in which students fulfill this public citizen role. And for
attorneys in practice, I highly recommend spending some time
around law students; consider involving them in your own pro
bono efforts. Their desire to help people, to seek justice, and to
return this world a little better remind many of us why we became
lawyers in the first place. ■

1. Deborah L. Rhode, Pro Bono in Principle and In Practice, 53 J.
Legal Educ. 413, 420 (2003).
2. Id. at 439.
3. Id.
4. Id. at 447-48.
5. Id. at 440.
6. Robert Granfield, Institutionalizing Public Service in Law School:
Results on the Impact of Mandatory Pro Bono Programs, 54 Buff. L. Rev.
1355, 1378 (2007).
7. Id.

STUDENT PERSPECTIVES

I certainly plan to continue pro bono service once I am a practicing attorney, and I think it is directly related to my law school pro bono experience. Why I will continue pro bono service ties back to why I believe pro bono service is so important for law students to do. It is interesting, challenging, and very rewarding. I would hope that starting it as a student would make anyone want to continue it as a practicing attorney.

Traci Hagedorn (Class of 2019)

My pro bono experience allowed me the opportunity to work face to face with real clients in ways that could never be replicated in a classroom setting. It’s one thing to have a meeting, make a phone call, or send an email to a professor acting in the role of a client. It’s another to actually pick up the phone and call a complete stranger for the first time.

Jacob Nemeroff (Class of 2019)

Pro bono work is important for several reasons. The first obvious one is that if you are a person who finds fulfillment from helping people, this is an excellent way to use legal skills to do so. Secondly, it is a great introduction to doing actual legal work rather than learning about abstract doctrines. You can’t simulate actually helping people with real problems in a classroom. All the knowledge in the world does nothing in a vacuum.

Greg Gietzen (Class of 2020)
Spotlight on Washburn Law Clinic’s Expungement Activities
by Michelle Y. Ewert

Because a criminal record is a significant barrier to accessing housing and employment, students in the Washburn Law Clinic’s Criminal Defense Practice and Civil Practice represent people seeking expungements in both Shawnee County District Court and Topeka Municipal Court. The students prepare the expungement petitions for the clients and represent them at their hearings. Professor Michelle Ewert, who supervises the Civil Practice, says “The result is a win-win situation. People who could not otherwise afford attorneys obtain representation in these important cases and students gain valuable in-court experience. The expungement cases are often transformative, both for the clients and the clinic students.”

Former law clinic students agree. Justin Crawford, ’17, said “Washburn School of Law’s clinic provided me with a great experience in understanding the needs, culture, and worldview of those who could not afford or otherwise have access to legal services. One of the most rewarding of those experiences was providing expungement services for a client. Although he had diligently worked to improve his life and was about to earn a college degree, his future career path was hindered by past charges. It was a rewarding and practical learning opportunity to assist this gentleman in cleaning up his record and help provide him with a potentially brighter future.”

Tim Carney, ’18, similarly described the impact of expungement on his clients. He said, "During my time at the Washburn Law Clinic, I saw firsthand the positive effect of expungements. Whether they were getting the expungement at the behest of family, or simply to get closure on a rough period in their life, the people I assisted were all thrilled and very grateful to have the help."
In addition to representing individuals in their expungement cases, Washburn Law Clinic students conduct trainings in the community about expungement law. This spring, students from the Criminal Defense Practice trained attorneys who would be participating in the community expungement day on April 20. This effort was a partnership with the Topeka Bar Association, Third Judicial District Court, Office of the Shawnee County District Attorney, Public Defender Office, Kansas Legal Services and Butler and Associates. The clinic students explained expungement law and procedure to volunteer attorneys and the attorney participants received CLE credit. This training equipped local attorneys with the information needed to then prepare over three hundred expungement petitions at the expungement day event.

Tim Carney, who helped conduct the CLE training, said, "I was heartened to see such a robust turnout, and such an engaged audience of local lawyers who recognize that being an attorney should be about more than just a 9 to 5 job, and that we should hold ourselves to a higher standard when it comes to helping our communities." After the training, Professor John Francis, who supervises the Criminal Defense Practice, said "These Clinic students embraced the role of 'public citizen having special responsibility for the quality of justice' that we are called to under the preamble to the Kansas Rules of Professional Conduct." He went on to note that the opportunity to present to the bar provided the opportunity to round out the lawyering experience the clinic students were already obtaining during their direct representation of clients.

In addition to conducting CLE trainings for local attorneys, students in the Washburn Law Clinic also conduct community education presentations for people who might be eligible for expungement. This fall, students in the Civil Practice will conduct an expungement training at the Topeka Rescue Mission. The training will be available to all the Rescue Mission’s guests. The Washburn Law Clinic will also represent some of the Rescue Mission’s guests in their expungement cases. Professor Ewert says, “The Washburn Law Clinic is very excited to partner with the Rescue Mission to provide this service. We hope this partnership will help vulnerable people in our community take steps to improve their lives.”

About the Author

Michelle Y. Ewert is an Associate Professor at the Washburn University School of Law. Prior to joining the Washburn Law Clinic, she completed a clinical teaching fellowship at the University of Baltimore. Before that, she worked as a legal services attorney at non-profit organizations in Baltimore, the Central Valley of California, and the greater Chicago area.
The Kansas Bar Foundation: Helping Clean Slates
by Christy Campbell, KLS

In 2016, the Wichita Bar Association (WBA) performed a day-long expungement clinic called “Clean Slate Day.” The mere mention of it strikes one of two reactions in members of the WBA: warm fuzzies or sheer panic. There was a line wrapping around the courthouse hours before it even opened. Volunteers, prosecutors, judges, and court staff all helped to make the day go as smoothly as possible, with funding generously provided by multiple sources. At five o’clock, two hours after the event was supposed to end, participants were still finishing up pleadings and taking down information for later filings. Hundreds were helped, hundreds were turned away. One thing was for sure: there is definitely a need for this type of project in our community.

Why expungements? According to the American Community Survey one year estimates, the percentage of Kansans who fell below the poverty line ($24,340 for a family of four) in 2016 was 13%. One of the most important methods to reduce poverty and increase access to opportunity is to support education, workforce development, and connection to jobs. Many lack the necessary education and skills to take advantage of jobs, and some residents have backgrounds that include felony convictions or poor credit, which create barriers to employment. Some lack personal transportation and have to rely on an insufficient public transit system. Many Kansans have more than one job, and yet they still hover around that poverty line. Removing a barrier to better employment enables an individual to improve their financial situation, housing situation, and general outlook. This is where the Kansas Bar Foundation grant program comes in.

The Kansas Bar Foundation Community Redevelopment and Homeowners Assistance (KBF-CRHA) Grant Program received funding from a Bank of America settlement requiring the bank to make donations to state-based Interest on Lawyers’ Trust Account (IOLTA) organizations that provide funds to legal aid organizations to be used for foreclosure prevention and community redevelopment legal assistance. The Kansas Bar Foundation oversees the distribution of these funds through their grant application and selection process.

Kansas Legal Services applied for and received grant funding through the KBF-CRHA grant program for 2018 to provide free legal services to those who need resolution of persistent barriers to employment and housing in Shawnee, Sedgwick, Riley, and Wyandotte counties. These grants can cover expungements, access to or reinstatement of driver’s li-
October is pro bono month

The biggest hurdle to applicant qualification was payment of past due fines.

Sedgwick County kicked off their fall expungement drive on August 15th, despite any residual post-traumatic stress. Applicants applied before September 30, 2018, by phone or online through the Kansas Legal Services’ website, and were then prescreened to eliminate applicants who did not qualify for expungement. A background check was then done to verify information for the petition and, from October to November, pro bono attorneys will complete the expungement documents and turn them into the Sedgwick County District Attorney or file them with the City of Wichita. Stay tuned for the outcomes!

Riley County has elected for a one-day event tentatively scheduled for October 23, 2018. The event will take place at the Manhattan Public Library. Wyandotte County plans to use the courthouse’s new Self-Help Center to hold monthly expungement screenings that should carry into 2019. Next year? Kansas Legal Services hopes the momentum will continue and introduce more counties across Kansas to this type of community revitalization, all through generous KBF-CRHA funds.

Whether it is for a job, a lease, a license, or even just peace of mind, clearing someone’s criminal record can have quite an impact. Have you signed up to volunteer yet?

Interested in getting involved?
Contact Christy at: campbellc@klsinc.org.

https://klaprobono.org/

Law professionals in Kansas can participate in the pro bono community through clinics, posted projects, or by volunteering to take on specific cases displayed on the site. Opportunities are regularly updated by Pro Bono Coordinators in the 11 statewide KLS field offices.

Please check back often for new and exciting ways to put your skills, experience and training to good use by helping your fellow Kansans.
More than 40 years have passed since the Kansas Supreme Court first wrote of its support for purging one's criminal past – and the enduring stigma attached – through expungement. The court proclaimed:

The consequences of a criminal conviction include not only the formal penalties and restrictions imposed by law but also collateral sanctions incidentally imposed by society. Although the criminal offender has paid his debt imposed by law, society stigmatizes him with the ex-convict label...An annulment of conviction statute is an aid to an ex-offender in regaining his human dignity and self-esteem...Such statutes are based on the philosophy that fallen men can rise again and should be helped to do so.¹

Arguably the ability to expunge one's criminal record and, in a fashion, excise past sins, has never been more critical. Over the past four decades, the number of individuals incarcerated or with a criminal record has increased exponentially.² Simultaneously, more and more restrictions have been imposed on individuals already stigmatized with "the ex-convict label."³ These trends – mass conviction and the proliferation of collateral consequences – make expungement an especially...
important legal remedy for people seeking to move beyond past mistakes.

This article first examines the collateral consequences that commonly prevent people from moving beyond their past. It then analyzes the requirements for, and limitations of, expungement, and finally, it examines other legal issues that may arise in expungement practice.

Overview

The United States incarcerates more people than any other country in the world. Approximately 2.2 million individuals are currently in our prisons and jails. Over the past forty years, the number of people in state or federal prison increased more than 500 percent, largely due to the war on drugs and mandatory sentencing guidelines. Far more people are on probation or parole, and perhaps most significant, approximately one of every four Americans has a criminal record. Among the prison population in Kansas, the ratio of blacks to whites is 3,500 in Kansas, are released from prison and begin the process of re-entry. For these individuals, the walk through the prison gates and back into the community is just a first step along a difficult road. Yet the restrictions and legal consequences they face as a result of their conviction equally apply to the millions of Americans who are convicted but never incarcerated. In many cases, the later legal consequences of the conviction may be more serious than the punishment imposed by the court.

As a result of mass conviction, millions of people are living with the “mark of crime,” the stigma and sanctions associated with a criminal record. They face a growing list of indirect legal restrictions, or collateral consequences, as a result of their criminal record. For example, a conviction may result in ineligibility for military service, deportation, or loss of firearm privileges, driving privileges, voting rights, or custody rights. A criminal record can restrict a person’s access to housing, employment, education, and public assistance, which may, in turn, perpetuate a cycle of poverty and recidivism. These status-generated sanctions also disproportionately disadvantage communities of color, who are disproportionately impacted by the criminal justice system. People of color comprise more than 60 percent of today’s prison population. Among the prison population in Kansas, the ratio of blacks to whites is seven to one, and Latinos, 1.2 to one. Collateral consequences then perpetuate these disparities long after a person leaves the courthouse.

An expungement seals the criminal record, with some exceptions, and aims to return the person to their status before the conviction or arrest. In Kansas, expungements laws offer a legal remedy to overcome some of these collateral consequences.

Collateral Consequences

In recent years, there has been a growing focus on how a criminal record can impose a lifetime of consequences. As collateral consequences have become more pervasive and problematic, Congress responded by directing the National Institute of Justice to collect and analyze those consequences. The result is a publicly searchable database that catalogues more than 48,000 laws and regulations across the country that in some way restrict a person based on a criminal conviction. A recent search reveals that in Kansas, more than 600 such restrictions are in effect.

A Secret Sentence

Despite their pervasiveness, collateral consequences are not formally incorporated into the criminal process. Defendants routinely plead to crimes without any appreciation of the many ways a conviction will forever change their lives. In that respect, “[c]ollateral consequences can operate as a secret sentence.” Kansas is among the majority of jurisdictions holding that attorneys are not obligated to advise clients about collateral consequences before entering a plea. Under this “collateral consequences doctrine,” defense attorneys are obligated to advise clients only about the direct consequences of a plea – those that are “definite, immediate, and almost automatic as a result of the plea” – but not the collateral consequences.

In 2010, Padilla v. Kentucky changed that analysis. In Padilla, the U.S. Supreme Court held that “a defense attorney’s failure to advise his or her client that a conviction would lead to deportation was constitutionally deficient performance.” The Court acknowledged the collateral consequences rule followed by lower courts but it declined to apply that rule in Padilla, focusing instead on the severe nature of deportation and the difficulty in classifying it as a direct or collateral consequence. Post-Padilla, many courts have narrowly interpreted the Court’s decision based on the rather egregious facts of that case, and have continued to hold that an attorney is not obligated to advise a client about collateral consequences.

However, in State v. Schaefer the Kansas Supreme Court cautioned against limiting Padilla’s impact to cases in which deportation was the collateral consequence.” In Schaefer, an attorney did not advise her client about the possibility of involuntary civil commitment under the Kansas Sexually Violent Predator Act (KSVPA), as a result of pleading to charges of rape and attempted rape. The court held that the failure to advise did not constitute ineffective assistance of counsel because, in that case, there was only a remote possibility of involuntary commitment proceedings in the future. The court further opined, though, that “on other facts, the probability of an involuntary commitment...may be high enough to create a duty for defense counsel to advise the client of that consequence, prior to the plea hearing.” Thus, in Kan-
sas, the distinction between a “nearly automatic result” and a more speculative consequence remains important, but consequences themselves cannot simply be categorized as direct or collateral; it all depends on the facts.34

While the courts grapple with whether a consequence is severe and automatic enough to invoke an attorney’s duty to advise, people with criminal records live the reality of these consequences. They struggle to find safe and affordable housing and experience the sting of rejection from jobs. They face barriers going to college and worry about how to feed and support their families. These collateral consequences – related to housing, employment, education, and public assistance – make re-entry more difficult, and often prompt people to look for legal help.

**Housing**

A criminal conviction imposes a significant barrier to obtaining a safe and stable place to live.35 Housing providers—both public and private—routinely deny applicants with criminal backgrounds, which increases the risk of homelessness and recidivism.36 Under federal law, locally administered Public Housing Authorities (PHAs) are permitted to ask applicants about their criminal histories and obtain their criminal records for screening purposes.37 PHAs must deny any applicant who 1) is a lifetime registered sex offender, 2) has been convicted of manufacturing methamphetamine on public housing premises, or 3) has been evicted from public housing for drug-related criminal activity in the past three years.38 The law further provides that PHAs may deny an applicant who has engaged in drug-related activity, violent activity, or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises.39 This broad discretion permits a PHA to deny an applicant with even a minor conviction from several years ago.40 For example, the Kansas City Housing Authority permits denial of an applicant if any household member has been convicted of drug-related criminal activity (including, for example, possession of marijuana) within the past five years.41

Private landlords have followed the lead of the public sector in screening for criminal histories.42 Landlords, of course, have an interest in maintaining a safe environment for residents, but refusing to rent to anyone with a criminal record may effectively “deny housing to people who pose no threat to the public, tenants or property.”43 With the demand for affordable housing far exceeding the supply, a criminal conviction can be the difference between a family being able to access housing or not.44

**Employment**

Like housing, employment is also critical for stability and re-integrating into the community. Work provides an opportunity to develop positive social networks that reduce the likelihood of re-engaging in criminal activity.45 In fact, a 2011 study found that employment was the single most important influence on decreasing recidivism among the formerly incarcerated.46 Yet obtaining work after incarceration is a struggle, particularly for men of color. In a 2004 study, researchers sent young men, both black and white, to apply for entry level positions in New York City.47 The applicants submitted resumes with similar qualifications, but half reported that they were recently released from prison after serving 18 months for a drug felony.48 The study found that the criminal record reduced the likelihood of a callback or job offer by 50 percent, and that the negative effect of the criminal record was substantially greater for blacks than whites.49

Even for those who have never been incarcerated, a criminal conviction—no matter how minor—can be a barrier to obtaining work. According to a 2012 survey, more than two-thirds of private sector employers perform criminal background checks on applicants.50 Many of these employers will not consider an applicant who has a felony or misdemeanor conviction, or even an arrest record.51 In a 2010 review of online employment advertisements, the National Employment Law Project concluded that “openly exclusionary no-hire bans are commonplace.”52

In Kansas, an employer may obtain a criminal background check on a job applicant, with the applicant’s consent, and make hiring decisions based on criminal background, “provided the information…reasonably bears upon the [applicant’s] trustworthiness, or the safety or well-being of the employer’s employees or customers.”53 Yet some Kansas employers, including Koch Industries, Target, and Walmart, are choosing not to obtain a background check during the initial phases of the hiring process.54 In May 2018, Governor Jeff Colyer issued an executive order directing state agencies not to inquire about applicants’ criminal histories during the initial application phase.55 Kansas City, Wichita, Topeka, and Johnson County have adopted similar “fair chance” hiring policies for government positions, joining approximately 150 other localities across the country in a “ban-the-box” movement.56 These employers may still consider an applicant’s criminal record later in the process, but research indicates that the stigma and negative effect of a criminal record are significantly reduced when the employer has personal contact with the applicant.57

Despite these developments, expungement is still an important legal remedy for obtaining employment in many fields.58 Once expunged, a criminal record no longer presents an obstacle at any stage in the hiring process.

**Education**

A return to school can open doors to better employment and financial stability, but criminal convictions pose barriers to education, too. In the wake of concerns about campus safety, colleges and universities often ask applicants to disclose their criminal history. More than 60 percent of post-secondary institutions include such a question in their applications,
but less than half of those institutions have written policies or offer training about how to interpret criminal history information.70 Though research in this area is limited, no studies have found that screening for criminal history during the application process actually increases campus safety.60 However, institutions that inquire about criminal justice history do risk deterring qualified applicants who happen to have a criminal record.61 One study found that when an admissions application included a question about criminal history, applicants with a criminal record were nearly three times more likely than applicants without a record to abandon completing the application.62 The study concluded that “for every one applicant rejected by [an admissions committee] because of a felony conviction, 15 applicants are excluded by felony application attrition.”63 In other words, just asking about criminal history can deter someone from pursuing a college degree.64

Financial aid is yet another hurdle. Students with a drug conviction, for conduct that occurred while they were receiving federal financial aid, lose access to that aid for a certain period of time—even up to a lifetime.65 The disqualification period is longer for convictions involving the sale of a controlled substance compared to convictions for possession.66 Specifically, a first conviction for possession of a controlled substance results in one year of ineligibility, and a second conviction, two years.67 A third or subsequent possession conviction triggers an indefinite ban on federal financial aid.68 For selling a controlled substance (while receiving financial aid), a first conviction results in two years of ineligibility, and a second conviction, an indefinite ban.69

A student may regain eligibility for financial aid by successfully completing a drug rehabilitation program, which must include two unannounced drug screens, or by passing two unannounced drug screens and complying with any additional requirements set forth by the Department of Education.70 These reinstatement requirements, however, may be financially prohibitive, difficult to navigate, or unnecessarily burdensome, particularly for someone whose last drug-related conviction was many years ago. Federal law does specify that a student may regain eligibility if the “conviction is reversed, set aside, or otherwise rendered nugatory.”71 Therefore, expungement may be a particularly powerful tool for a student who seeks to return to school but is barred for life from federal financial aid.72

Public Assistance

For those struggling to obtain work (or work that pays enough to support a family), public benefits like food assistance (SNAP) and cash assistance (TANF) help meet basic survival needs.73 But for individuals with prior felony drug convictions, even these subsistence level benefits may be out of reach.74 As part of the 1996 welfare reform bill, Congress enacted a lifetime ban on SNAP and TANF benefits for individuals with state or federal felony drug convictions, unless a state specifically opts out of the ban.75 Kansas did opt out, but imposed a lifetime ban for those convicted of a second felony drug offense.76

In Kansas, a person becomes ineligible for SNAP benefits if convicted of a felony drug offense occurring on or after July 1, 2015, unless the person participates in an approved drug treatment program, passes a drug test, and agrees to submit to future drug tests.77 A second conviction for a felony drug offense results in a lifetime ban from food assistance.78 The penalties are similarly harsh for TANF benefits. A person convicted on or after July 1, 2013, of a first-time felony drug offense is ineligible for TANF for five years.79 On a second or subsequent felony drug conviction, the person becomes “forever disqualified.”80

This penalty—targeted only at felony drug convictions—especially hurts women and people of color, who are disproportionately represented both among those incarcerated in state prisons for a drug offense, and among those receiving TANF benefits.81 Children are impacted, too. Even though children may still receive assistance when a parent is ineligible, the total amount of an already modest benefit is reduced, which creates hardship for the whole family.82 Some states have moved away from the felony drug ban, taking the position that the ability to make ends meet is a key factor in reducing recidivism.83 In Kansas, with the felony drug ban still in effect, expungement may be the best means of restoring a person’s access to this social safety net.84

Expungement Law In Kansas

Kansas has long recognized the importance of expungement to provide a second chance for those seeking to move beyond past mistakes. In 1971, the Kansas legislature enacted the first expungement statute, which allowed offenders under the age of 21 to expunge a conviction any time after completing their sentence.85 Two years later, the legislature made expungement available to offenders 21 years or older if they exhibited good moral character and were not convicted of a felony for five years following completion of their sentence.86 Over the next four decades, the Kansas expungement laws have been re-codified and amended several times, but still remain some of the most generous expungement laws when compared to those of our neighboring states.87

The powerful effect of an expungement is that the petitioner is to be treated as if the conviction, diversion, adjudication or arrest never happened.88 The petitioner is only required to disclose the expunged record in certain limited circumstances.89 Similarly, the custodian of an expunged record is only permitted to disclose the record in certain circumstances, such as application for a commercial driver’s license, employment as a law enforcement officer, admission to the practice of law and employment with the Kansas lottery or gaming commission.90 If a person is convicted in the future, the court may always
access the expunged record, and an expunged conviction is still included in criminal history for sentencing purposes.\textsuperscript{91} But once an expungement is granted, members of the public, landlords, schools, and most employers and government agencies cannot access an expunged record—giving the petitioner the intended likelihood of a fresh start.

There are, of course, limitations to expungement. Beyond the restrictions outlined in the statutes, in the digital age, expunging a criminal record does not eliminate all references to that record or to the underlying facts that led to an arrest or conviction.\textsuperscript{92} For example, news articles about the person’s arrest or conviction may be readily accessible online, even if the criminal record itself has been expunged. After an expungement, petitioners are permitted, in most circumstances, to answer “no” to questions asking if they have ever committed a crime.\textsuperscript{93} But with pervasive background checking, there is still some risk in choosing to deny a conviction. After all, “[i]f having a criminal record is not disqualifying, being caught in a lie about it probably is.”\textsuperscript{94} Attorneys need to advise clients about the practical limitations of expungement and ensure that expungement has the greatest chance of meeting the client’s goals.

Additionally, people who need expungement the most may not be able to afford it, particularly if they are seeking to expunge multiple records. The current docket fee for an expungement of a diversion or conviction in district court is $195.\textsuperscript{95} Petitioners may qualify for a fee waiver if the court determines they are unable to pay.\textsuperscript{96} But even then, attorneys’ fees can be another barrier, which is why legal representation through Kansas Legal Services, pro bono attorneys, and free expungement clinics remains vital.\textsuperscript{97} Although the Kansas Judicial Council provides downloadable expungement forms on its website for pro se petitioners, the full potential of expungement law is only possible with support from the Kansas bar.\textsuperscript{98}

### Requirements for Expungement

In Kansas, there are five different statutes that govern the expungement process, depending on the court and type of record to be expunged. They are as follows:

- **K.S.A. 21-6614:** Expungement of a conviction or diversion in district court;
- **K.S.A. 22-2410:** Expungement of an arrest record;
- **K.S.A. 12-4516:** Expungement of a conviction or diversion in municipal court;
- **K.S.A. 12-4516a:** Expungement of an arrest record for a city ordinance violation;
- **K.S.A. 38-2312:** Expungement of a juvenile record.

A person seeking to expunge a conviction or diversion in district court is not eligible until a certain period of time after completing the sentence imposed or fulfilling the terms of the diversion.\textsuperscript{99} The “wait period” depends on the severity of the offense, but ranges from one year to ten.\textsuperscript{100} A one-year wait period applies to convictions for selling sexual relations, when the person was acting under the coercion of another.\textsuperscript{101} A three-year wait period applies to traffic infractions, most misdemeanors and lower severity level felonies.\textsuperscript{102} The wait period increases to five years for more severe felonies and some misdemeanors, including driving with a suspended license, driving with no liability insurance and driving under the influence.\textsuperscript{103} A second or subsequent conviction for driving under the influence results in a 10-year wait period.\textsuperscript{104} Additionally, the statute sets forth a list of convictions for which there is no expungement, including sex offenses, murder, manslaughter, abuse of a child, and endangering a child.\textsuperscript{105}

If the petitioner has satisfied the requisite wait period, then the court shall grant expungement if the court finds the following:

1. The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;
2. The circumstances and behavior warrant the expungement; and
3. The expungement is consistent with the public welfare.\textsuperscript{106}

As to the first factor, case law clarifies that a “pending” proceeding refers to a case that has not yet been adjudicated.\textsuperscript{107} Therefore, a person who is currently on probation or parole is not prohibited from expunging a prior conviction. But the court may, of course, consider probation or parole status when evaluating whether the petitioner’s behavior and circumstances warrant expungement and whether expungement is consistent with the public welfare.\textsuperscript{108}

The second and third factors in the statute afford the court significant discretion to grant or deny the expungement. On appeal, the standard of review is “abuse of discretion,” so the case law is replete with affirmations of district court decisions when the law is correctly applied. For example, in *State v. Sandstrom*, the district court refused to expunge a first degree murder conviction, despite acknowledging that the petitioner led an “exemplary life” post-conviction.\textsuperscript{109} The Kansas Supreme Court affirmed the decision and found no abuse of discretion in the district court’s reasoning that the severity of the offense and “the public’s interest in keeping the conviction on the record” outweighed the petitioner’s interest in expungement.\textsuperscript{110}

The statute pertaining to expungement of convictions and diversions in municipal court mostly mirrors the district court statute.\textsuperscript{111} The municipal court statute lists only one city ordinance violation that can never be expunged—driving under
the influence while operating a commercial vehicle. Otherwise, the factors required to grant expungement are consistent with the district court statute.

Expunging a Juvenile Record

In some respects, the expungement statute pertaining to juvenile records is more generous, but in one significant way, it is not. For most offenses, a person must wait only two years after final discharge of the case, or reach age 23, to be eligible for expungement. There is no waiting period to expunge a record of a crime if committed because the juvenile was a victim of trafficking, and there is only a one-year wait period for the offense of selling sexual relations. The statute establishes that the court shall order the expungement if: 1) the waiting period has been met, 2) the circumstances and behavior of the petitioner warrant the expungement, and 3) since the final discharge, the petitioner has not been convicted or adjudicated of another crime (other than a traffic offense) and no such proceedings are pending. Additionally, the court may require that all fines and costs be paid in the case before granting expungement.

The third requirement—that the petitioner has no subsequent adjudications or convictions—is a significant departure from the district court expungement statute. For petitioners who do have a subsequent juvenile adjudication or conviction as an adult, the statute does not specify if expungement may be granted. The result is that a petitioner may not ever be able to expunge a juvenile record because of a subsequent adjudication or conviction, even though a petitioner with the same record as an adult could.

For example, consider the facts in In re J.A.Y. In 1991, when he was 15 years old, J.A.Y. was adjudicated guilty of a misdemeanor battery charge. In 1994, he entered into, and successfully completed, a diversion for another battery charge. In 1995, he was adjudicated on two more misdemeanors that were not expunged. And later that same year, now as an adult, J.A.Y. was convicted of felony possession of marijuana. In 2006, after maintaining a clean record for more than a decade, J.A.Y. successfully petitioned to expunge his adult felony conviction. He then sought to expunge his 1991 juvenile battery adjudication. The district court granted the expungement, but the State appealed. The appellate court reversed, finding that J.A.Y. did not qualify for expungement because of his subsequent adjudications. The court did not have to decide “whether a felony diversion or an expunged felony offense may be considered as a conviction or juvenile adjudication” because J.A.Y. had also been adjudicated on two other subsequent misdemeanors that were not expunged. Had J.A.Y. been convicted of the battery offense as an adult, subsequent convictions would not have barred him from expungement, provided he met the other statutory factors. Petitioners facing this dilemma may be able to expunge subsequent adjudications and convictions before petitioning to expunge a juvenile record, but such an approach can be time- and cost-prohibitive.

Expunging an Arrest Record

Expungement is also available for records of arrest that do not result in a conviction or diversion. A petitioner does not have to wait a specific period of time before petitioning the court to expunge an arrest record. Furthermore, the court shall expunge the record if one of the following four factors is met:

1) The arrest was due to mistaken identity,
2) The court found no probable cause for arrest,
3) The petitioner was later found not guilty, or
4) The expungement would be in the best interests of justice and i) charges have been dismissed, or ii) charges are unlikely to be filed.

The fourth category again affords the court significant discretion in determining whether to grant the expungement. For example, in the unpublished case of State v. Miller, a district court declined to expunge a petitioner’s record of arrest for lewd and lascivious behavior and indecent liberties with a child. The district court determined that, even though the prosecutor ultimately dismissed the case, it was not in the best interests of justice to expunge the arrest record. The appellate court affirmed, finding no abuse of discretion.

If the court grants expungement based on the fourth category, the court must determine whether, “in the interest of public welfare,” the record should be available for any of several listed purposes, including application for admission to the practice of law, employment with the Kansas lottery, application for a commercial driver’s license or “any other circumstances which the court deems appropriate.” If the court makes no such orders, then the expunged arrest record can only be disclosed to the Kansas Bureau of Investigation for the purposes of completing a person’s criminal history information or determining a person’s qualification to possess a firearm.

Other Issues in Expungement Practice

Determining the Applicable Statute

Although the main requirements of the expungement statute have been consistent since 1978, the list of prohibited offenses, the waiting periods for particular crimes, and restrictions related to offender registration have changed over time. Thus, the statute in effect at the time the crime was committed may be significantly different from current statute, raising the question: which version applies?

Generally, the statute in effect at the time of the crime will apply. Kansas courts have long held that a statute operates prospectively, unless 1) “its language clearly indicates a leg-
The petitioner to continue registering, but did not. Therefore, the Kansas Supreme Court held that the expungement terminated the petitioner’s registration requirement as a matter of law.

The legislature responded swiftly and amended the statute to prohibit expungement for individuals still required to register. However, expungement is available to registering offenders whose crimes were committed before the law changed in 2011. In those cases, the court may still consider the registration requirement when analyzing whether expungement is in the public welfare. If the court grants the expungement, though, the registration requirement no longer terminates as a matter of law. Effective July 1, 2012, KORA was amended to provide that if the court expunges a conviction for which the petitioner is required to register, the person must still register, but is not subject to the public registry. Thus, unlike Divine, expungement does not extinguish the requirement, but it may still provide some relief for reformed offenders.

Civil Judgment Law and Expungement

Kansas courts generally will not expunge a conviction when the petitioner still owes court costs, fees, fines, or restitution in the case. Thus, debt to the court can be a significant barrier to expungement. Low-income petitioners in particular may feel trapped – unable to pay their debt to the court, and therefore, unable to expunge a conviction in order to access better employment. For some petitioners, though, civil judgment law may provide a way to break this cycle.

Pursuant to K.S.A. 60-2403, if an order for costs, fees, fines, or restitution was void as of July 1, 2015, the court must release the judgment upon request. Prior to July 1, 2015, a judgment for costs, fees, or fines became dormant within five years, and a judgment for restitution, ten years, if a renewal affidavit was not filed or execution not issued. In other words, if the trustee’s office took no action to renew or collect on the judgment within the set time period, it became dormant. Then, if the trustee’s office did not file a motion to revive the dormant judgment within two years, the judgment became void, “absolutely extinguished and unenforceable.” After the 2015 amendment, though, a judgment no longer becomes void and released from record.

Kansas appellate courts have only addressed a void judgment in the context of expungement in one unpublished decision. In State v. Firley, the petitioner sought to expunge her 1999 conviction for theft by deception, even though she still owed more than $23,000 in restitution. Ms. Firley also petitioned for release of the restitution judgment, arguing that it was void. The appellate court determined that on September 9, 1999, the district court ordered Ms. Firley to pay restitution, and that the district court trustee did not issue execution or file a renewal affidavit at any time within the next ten years. Therefore, the restitution order became dormant.
collateral consequences and Kansas expungement law

on September 9, 2009. Because no revivor motion was filed within two years, the dormant judgment became void on September 9, 2011, and should have been released by the district court upon the petitioner’s request. Moreover, the district court abused its discretion by denying the expungement “based solely on its ruling that the restitution judgment was still outstanding.” In sum, when a judgment is void, expungement may still be within reach for petitioners who cannot pay their debt to the court.

Conclusion

As our communities continue to deal with the effects of mass conviction and expanding collateral consequences, expungement laws provide a promising remedy for people seeking a second chance. Although imperfect, expungement can open previously closed doors—to stable homes, more education, better jobs. But in many cases, petitioners are not seeking expungement solely as a means of addressing the myriad collateral consequences complicating their lives. Sometimes they are seeking expungement for reasons of self-worth— to have the court affirm that “[e]ach of us is more than the worst thing we’ve ever done.” For these individuals, expungement is redemption—a reminder that, indeed, “fallen men can rise again.”

About the Author

Meredith A. Schnug is a clinical associate professor and the Associate Director of the KU Legal Aid Clinic. She also coordinates the law school’s Pro Bono Program.

2. See infra text accompanying notes 4-7.
5. Id.
10. Id., at 1806.
13. Id.; Pinard, supra note 8, at 667-78.
17. Pinard, supra note 8, at 629.
20. Id.
22. Id., at 630.
23. Chin, supra note 12, at 700.
29. In Padilla, the attorney gave incorrect advice to the client about deportation as a consequence of a criminal conviction, which the Court held to be ineffective assistance of counsel. The Court suggested that the outcome of the case may have been different had the attorney given no advice. Some have argued that “the collateral-consequences rule and its affirmative-misadvice exception send a troubling message to parties involved in the guilty-plea process: it is better to say nothing to a defendant about consequences that are ‘collateral’ to a conviction than to attempt to provide information and risk being wrong.” Jenny Roberts, Ignorance is Effectively Bliss: Collateral Consequences, Silence, and Misinformation in the Guilty-Plea Process, 95 IOLA L. REV. 119, 126 (2009).
30. Schaef er, supra note 27, 285 P.3d at 926.
31. Id., at 924.
32. Id., at 927.
33. Id.
34. While this article uses the term “collateral consequences,” in some cases, these consequences may be direct and automatic enough under Padi lla that defense counsel’s failure to advise a client accordingly constitutes constitutionally deficient performance. For example, a defense attorney representing a student who is currently receiving federal financial aid and is charged with a drug offense may need to advise the student about how a conviction is a disqualification for financial aid. See infra text accompanying notes 65-71.


37. Carey, supra note 35, at 561. For an example of criminal history questions on a public housing application, see page 12 of the Lawrence/Douglas County Housing Authority Application for Housing Assistance, available at http://www.ldcha.org/housing/documents/Application20164.pdf (asking, inter alia, if any household member has ever been arrested, even if not charged with a crime).


40. In November 2015, HUD issued guidance to PHAs, encouraging them to adopt clear standards to evaluate applicants’ criminal history limits, the “lookback periods,” and allow applicants to present mitigating circumstances prior to admission decisions. Notice PIH 2015-19, supra note 36, at 5-6. The notice emphasized the importance of providing second chances for formerly incarcerated individuals, while balancing the need for safety of public housing residents.

41. Admissions and Continued Occupancy Policy of the Kansas City, Kansas, Housing Authority 3-13 (2016), available at http://www.kckha.org/uploads/6/8/8/4/68497415/kckha-acom-full-20160616.pdf. According to the policy guidelines, the housing authority may consider any evidence of “drug-related criminal activity,” including an arrest, eviction, or conviction, but should weigh a conviction more heavily than an arrest. Id. at 3-4. Notably, when evaluating a prior criminal activity to determine an applicant’s eligibility, the housing authority may also consider all “relevant circumstances,” including “the likelihood of favorable conduct in the future.” Id. at 3-17, 3-18.

42. Carey, supra note 35, at 553.

43. Kelly Saltzmann & Margaret Love, Internal Exile: Collateral Consequences of Conviction in Federal Laws and Regulations 40 (2009), available at https://www.americanbar.org/content/dam/aba/migrated/cecs/inside/exileauthcheckdam.pdf. These practices may also violate the Fair Housing Act, which prohibits rental discrimination on the basis of race, color, religion, sex, disability, familial status, or national origin. HUD GUIDANCE 2016, supra note 36, at 1. In 2016, the Department of Housing and Urban Development (HUD) cautioned housing providers that categorically excluding renters with criminal convictions discriminate on the basis of race or national origin. Id. at 2. Under HUD’s analysis, because people of color are disproportionately arrested, incarcerated, and convicted in this country, refusing to rent to ex-offenders has a disparate impact on a protected class of people. Id. HUD advised that “a policy or practice that fails to consider the nature, severity, and recency of criminal conduct” is unlikely to pass muster. Id. at 7. Nonetheless, the practice persists. For example, a civil rights non-profit organization, Equal Rights Center, recently raised a disparate impact Fair Housing Act claim against a housing provider for its policy of excluding all applicants with felony convictions and certain undisclosed misdemeanors. Equal Rights Ctr. vs. Mid-America Apt. Communities, Inc., Case No. 1:17-cv-02659 (D.D.C. filed Dec. 12, 2017).

44. Id.; Carey, supra note 35, at 553.


48. Id.

49. Id. at 199.


51. Rodriguez & Emsellem, supra note 7, at 1.

52. Id. at 18. The Equal Employment Opportunity Commission has cautioned employers that these exclusionary policies may violate Title VII, which prohibits employment discrimination based on protected categories, including race and national origin. EEOC Enforcement Guidance No. 915.002 (2012), available at https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm. Litigation raising disparate impact claims, however, has had limited success. See Alexandra Harwin, Title VII Challenges to Employment Discrimination Against Minority Men with Criminal Records, 14 KELERBLY J. AFR.-AM. L. & POL’Y 2, 12-16 (2012).


57. Pager, supra note 47, at 209. Some research has concluded that “ban-the-box” initiatives have the unintended result of adversely impacting job applicants of color. Researchers theorize that when employers do not have access to conviction history, they are falling back on assumptions instead and discriminating against applicants of color. Although such practices violate anti-discrimination laws, enforcement can be challenging. See, e.g., Amanda Agan & Sonja Staar, Ban the Box, Criminal Records and Racial Discrimination: A Field Experiment, 133 Q. J. OF ECON. 191 (2018).

58. There are some exceptions. Kansas expungement laws set forth a list of employers, such as the Kansas Lottery Commission and law enforcement agencies, that may still access an applicant’s prior conviction, even if expunged. See infra text accompanying notes 89-91.

59. Marsha Weissman et al., CTR. FOR COMM. ALTERNATIVES, The
Use of Criminal History Records in College Admissions Reconsidered i
(2010), http://www.communityalternatives.org/pdf/Reconsidered-criminal-hist-recs-in-college-admissions.pdf. This trend may be changing. The
Common Application, accepted by hundreds of colleges, recently an-
nounced that it would no longer include a question about criminal his-
tory. Scott Jaschik, Common App Drops Criminal History Question, Inside
sions/article/2018/08/13/common-application-drops-criminal-history-
question-although-colleges.

60. U.S. DEP’T, OF EDUC., BEYOND THE BOX: INCREASING ACCESS TO HIGHER EDUCATION FOR JUSTICE-INVOLVED INDIVIDUALS 12 (2016),

61. See Alan Rosenthal et al., CTR. FOR COMM. ALTERNATIVES, Boxed Out: Criminal History Screening and College Application Attrition 23

62. Id.
63. Id. at 26.
64. Id.
that, students were ineligible for federal financial aid based on a prior
drug conviction regardless of whether the conduct leading to the convic-
tion occurred while the student was receiving federal financial aid.
67. It should be noted that this law applies even to misdemeanor
convictions of possession of marijuana.
68. Id.
69. Id.
70. 20 U.S.C.A. 1091(r)(2).
72. Expungement will not help with a one-year or two-year ban to
federal financial aid. Due to the statutory “wait periods” discussed below,
a person would not be eligible to expunge a drug conviction until a mini-
imum of three years after completing the sentence, which would be after
the expiration of the one- or two-year ban. See infra text accompanying
notes 98-104.

73. The Supplemental Nutritional Assistance Program (SNAP) ben-
efits are commonly referred to as food stamps. Temporary Aid to Needy
Families (TANF) is also known as welfare. To be eligible for TANF, a
family must include at least one minor child, or pregnant woman. Kan.
DEPT. FOR CHILDREN & FAMILIES, TANF FACT SHEET 1 (Sept. 2015),
Fact%20sheet%20109.18.15.pdf.
74. The average TANF benefit in Kansas in 2015 was $269 per
Fact%20sheet%20109.18.15.pdf.
75. 21 U.S.C.A. 862a. Despite the far-reaching implications of this
provision, it received only two minutes of congressional debate before pas-
sage. Patricia Allard, SENTENCING PROJECT, Life Sentences: Denying Wel-
fare Benefits to Women Convicted of Drug Offenses 1 (2002), available at
77. K.S.A. 39-709(b)(13).
78. K.S.A. 39-709(b)(13).
at https://sentencingproject.org/wp-content/uploads/2015/12/A
-Lifetime-of-Punishment.pdf. Nationwide, more than 85 percent of adult
TANF recipients are women, and more than 63 percent are people of color.
Pamela J. Loprest, U.S. DEPT. OF HEALTH & HUMAN SERV. ADMIN. FOR
CHILDREN & FAMILIES OFFICE OF PLANNING, RESEARCH & EVALUATION,
How Has the TANF Caseload Changed Over Time, 4 (Mar. 2012), available

82. Allard, supra note 81, at 5.
83. Teresa Wilz, PEW, More States Lift Welfare Restrictions for Drug
84. It should be noted that the felony drug ban applies to both federal
and state felony drug convictions. Expungement under Kansas law has
limitation because it does not address drug convictions in federal court.
/recording legislative history of Kansas’s first expungement laws.
86. Id. A similar statute was enacted at the same time to make expungement
available to offenders convicted in municipal courts. Id.
87. See Margaret Love, Josh Gaines & Jenny Osborne, Collat-
eral Consequences Resource Ctr., Forgiving and Forgetting in
American Justice: A 50-State Guide to Expungement and Resto-
ration of Rights 8 (2017), https://www.prisonpolicy.org/scans/Forgiv-
ing_report_CCRC.pdf. Missouri only recently expanded its expungement
law. Prior to January 1, 2018, expungement was available only if a person
was convicted of an offense included in a narrow list of thirteen crimes.
Expungement is now available for offenses other than Class A felonies and
violent felonies and sex offenses. Caitlin Campbell, Options Available
to Missourians Wanting to Expunge Criminal Records, COLUMBIA DAILY
88. See K.S.A. 21-6614(k), K.S.A. 12-4516(k), K.S.A. 22-2410(d),
K.S.A. 12-4516da(d), and K.S.A. 38-2312(f). See also State v. Divine, 291
89. K.S.A. 21-6614(i)(2) and K.S.A. 12-4516(i)(2).
91. K.S.A. 21-6614(l)(3) and K.S.A. 12-4516(l)(3). See also K.S.A.
21-6810(d)(2) (establishing that all prior adult felony convictions, includ-
ing expungements, will be considered and scored when determining an
offender’s criminal history classification.)
92. For a more complete discussion of this dilemma and a call for a
more multifaceted solution, see Jenny Roberts, Expunging American Rap
93. See supra note 88.
94. Margaret Colgate Love, Paying Their Debt to Society: Forgiveness,
Redemption, and the Uniform Collateral Consequences of Conviction Act, 54
HOWARD L.J. 753, 758 (2011) (arguing for a relief mechanism that, unlike
expungement, acknowledges and forgives the crime, rather than attempt-
ing to conceal and deny it).
95. K.S.A. 21-6614(g)(2).
96. K.S.A. 60-2001(b).
97. Rebecca Beitsch, Here’s Why Many Americans Don’t Clear Their
Criminal Records, PBS NewsHour (June 6, 2016), available at https://
www.pbs.org/newshour/nation/heres-why-many-americans-dont-clear-
their-criminal-records. See also Oliver Morrison, Clean Slate Day a Chance
to Expunge Criminal Records, WICHITA EAGLE (Feb. 16, 2016), available at
98. KAN. JUD. COUNCIL, Legal Forms, https://www.kansajudicial-
council.org/legal-forms.
99. K.S.A. 21-6614
100. Id.
102. K.S.A. 21-6614(a). Felonies in this category include class D
and E felonies (committed before July 1, 1993); nongrid felonies and felonies
ranked in severity levels 6 through 10 of the nondrug grid (committed on
www.ksbar.org | October 2018 53
collateral consequences and Kansas expungement law

or after July 1, 1993); felonies ranked in severity level 4 of the drug grid, if committed on or after July 1, 1993, but prior to July 1, 2012; and felonies ranked in severity level 5 of the drug grid, if committed on or after July 1, 2012.

103. K.S.A. 21-6614(c). Felonies in this category include class A, B, or C felonies (committed before July 1, 1993); offgrid felonies and felonies ranked in severity levels 1 through 5 of the nondrug grid (committed on or after July 1, 1993); felonies ranked in severity levels 1 through 3 of the drug grid, if committed on or after July 1, 1993, but prior to July 1, 2012; and felonies ranked in severity levels 1 through 4 of the drug grid, if committed on or after July 1, 2012.


105. K.S.A. 21-6614(e). The statute also prohibits expungement of any conviction for an attempt to commit one of the offenses listed in this subsection.

106. K.S.A. 21-6614(h).


108. See id. at 475-76 (finding harmless error where the district court mistakenly concluded that parole was a pending proceeding but still determined that the petitioner’s behavior and circumstances did not warrant expungement and that expungement was not consistent with the public welfare).

109. State v. Sandstrom, 273 Kan. 558, 562, 44 P.3d 434, 437 (2002). The district court applied and analyzed the expungement statute that was in effect at the time of the crime (K.S.A. 1997 Supp. 21-4617), which did not prohibit expungement of murder convictions.

110. Id. at 438-39.

111. K.S.A. 12-4516.

112. K.S.A. 12-4516(f).

113. K.S.A. 38-2312(e).


115. K.S.A. 38-2312(e)(1)(A).

116. K.S.A. 38-2312(e)(2).


118. Id.

119. Id.

120. Id.

121. Id.

122. Id.

123. Id.

124. Id.

125. Id. at 2.

126. Id.


128. K.S.A. 22-2410(c), K.S.A. 12-4516a(c).


130. Id.

131. Id. at *2.

132. K.S.A. 22-2410(e) and K.S.A. 12-4516a(e).

133. K.S.A. 22-2410(f) and K.S.A. 12-4516a(f).


135. Id. at 420.

136. Id. at 418.

137. Id. at 420.

138. Id.

139. Id. at 421. Although the Jaben court was interpreting language in the 2008 expungement statute, the language in today’s statute is substantively the same. Specifically, the Court analyzed 2008 Supp. K.S.A. 21-4619(c)(22), which prohibited expungement of “any conviction for any offense in effect at any time prior to the effective date of this act, that is comparable to any offense as provided in this subsection.” Id. at 610-11. This same provision is now found in 2018 Supp. K.S.A. 21-6614(e)(19), which prohibits expungement of “any conviction for any offense in effect at any time prior to July 1, 2011, that is comparable to any offense as provided in this subsection.”

140. Id.


142. Id. at *4.

143. Id.

144. In Kansas, people convicted of certain drug offenses and violent offenses, in addition to sex offenses, are required to register with law enforcement four times per year and pay a $20 fee each time. See K.S.A. 22-4901 et seq.


146. Divine, 246 P.3d at 693.

147. Id.

148. Id. at 694.

149. Id.

150. Id. at 695.

151. Id.

152. Id.


159. State v. Morrison, 14 P.3d at 1193.

160. K.S.A. 60-2403(b)(3). If the judgment is not void as of July 1, 2015, it can never become void. But, if it meets the statutory requirements for dormancy, the judgment no longer operates as a lien on the real estate of the judgment debtor.


162. State v. Firley, No. 115-231, slip op. at 1.

163. Id. at 2.

164. Id. at 2, 7.

165. Id. at 7. For additional guidance on application of the dormancy statute to restitution orders, see State v. Alderson, 299 Kan. 148, 322 P.3d 364 (2014).

166. Id. at 9.

167. Id.

The Kansas Lawyers Assistance Program (KALAP) extends well wishes to all attorneys in Kansas and to the new and returning law students of our Kansas law schools just starting the 2018-2019 school year. My name is Lou Clothier, and I am the new Executive Director of KALAP (succeeding Anne McDonald who served in that capacity for the past 9 years.) During her tenure, Anne set very high KALAP leadership standards which I hope to meet in the future. The Kansas legal community owes Anne a great debt of gratitude for her tireless work on behalf of KALAP and her many successes expanding the program to help our Kansas attorneys and law students.

Some of you may not be familiar with KALAP, so I will take this opportunity to briefly introduce you to the program. For those familiar with KALAP, I want to remind you of the services KALAP provides to the Kansas legal community.

KALAP was created by Kansas Supreme Court Rule 206 in 2001 to:

1. Protect citizens from potential harm that may be caused by lawyers in need of assistance due to physical or mental disabilities;
2. Provide assistance to lawyers in need at no cost, including lawyers against whom disciplinary complaints are pending;
3. Plan and present educational programs to:
   a. increase the awareness and understanding of the bench and bar about problems of lawyers with physical or mental disabilities;
   b. enable members of the legal profession to recognize and identify problems in themselves and in their colleagues;
   c. Reduce the stigma associated with addiction and other physical and mental disabilities; and,
   d. Enable members of the legal profession to understand appropriate ways of interacting with affected individuals.

KALAP has a Board of Directors; its members are appointed by the Supreme Court. The Board is charged with overseeing the operation of the program to achieve the purposes specified above. Board members are important resources for KALAP, regularly making CLE seminar presentations when needed. KALAP staff includes Executive Director Lou Clothier; Program Director Brynn Mroz; and Eddie Hernandez, Administrative Technician. Staff members maintain strict confidentiality as to all members of the legal profession who contact us seeking help and those who are concerned about the welfare of colleagues. We refer to those seeking help as “clients,” emphasizing our strictly confidential relationship.
Attorney volunteers are the backbone of KALAP. KALAP cannot fulfill its mandate without the assistance of attorney volunteers. Under S.C. Rule 206, volunteers are also bound by confidentiality, are given immunity and are relieved of the obligation to report unethical conduct. KALAP offers annual training sessions for volunteers and has a good stock of materials for use by volunteers. Our staff and board members are always available to assist if requested. Volunteers are always asked if they are in a position to work with someone and are free to decline for any reason. We do our best to pair volunteers with someone with whom they have things in common. Please consider contacting KALAP to volunteer to assist your colleagues who need your help.

KALAP is very fortunate to have the support not only of the Kansas Supreme Court, but also other Kansas courts, the Office of the Judicial Administrator, the KBA and ABA, both Kansas law schools and local bar associations throughout Kansas. With the continuing help of all, I am confident KALAP will thrive as it continues its work providing assistance to members of the legal community.

I am proud to be a Kansan. My connections to Kansas run deep. I was born in Lawrence. I graduated from Emporia State with a BS in Education, and I taught English and coached at West Jr. High School in Leavenworth. I graduated from Washburn University Law School in 1981 and returned to Leavenworth to practice law. For 37 years, I practiced primarily in the areas of school law and family law after serving as an assistant county attorney under former Chief Justice Robert E. Davis who was the Leavenworth County Attorney in the early 1980’s.

I am honored to be chosen by the Kansas Supreme Court to lead KALAP, and I’m grateful for the opportunity to help other Kansas attorneys. I needed and received help from KALAP as a “client” in the past, and I have served as a volunteer. I hope my varied life experiences both before and after law school can be of help to other Kansas Lawyers. I look forward to working with all members of the Kansas legal community in the future.

About the Author

Lou Clothier was appointed the Kansas Lawyers Assistance Program Executive Director in July 2018. He graduated from the Washburn University School of Law in 1981. He practiced law in Leavenworth, Kansas for 37 years prior to his appointment, focusing on school law and domestic relations law. Lou is a member of the ABA, KBA and Leavenworth Bar Associations.
New Positions

Louis Clothier, longtime attorney from Leavenworth, has been named to succeed Anne McDonald as executive director of the Kansas Lawyers Assistance Program. See the full article on Page ___ of this issue of The Journal. Clothier received his law degree at Washburn University School of Law.

Krystle Dalke has joined Hinkle Law Firm in Wichita as an associate. She will support the firm’s litigation and business litigation areas.

Glenn Kerbs of Dodge City was reappointed to a four-year term on the Kansas Board for Discipline of Attorneys. Members of the board meet in three-person panels, which include two board members and one at-large attorney, to conduct hearings in cases where the review committee has found probable cause that a lawyer has violated the Kansas Rules of Professional Conduct.

Troy Larson, Shawnee, was approved for the position of Kansas Department of Labor Administrative Law Judge, Workers Compensation Division, in Lenexa. Troy was a research attorney for the Kansas Court of Appeals for two years before practicing law in Kansas City. In private practice, he represented employers and insurers on workers compensation claims in Kansas and Missouri. Troy will succeed Judge Steven Howard who retired in March.

Candace R. Lattin, of Iuka, has been selected by the 30th Judicial District Nominating Commission to fill a magistrate judge vacancy in Barber County. She is a practicing attorney in Pratt County. The vacancy was created by the departure of District Magistrate Judge Richard Raleigh who left in July. Candace will stand for a retention vote after a year, and if retained, will serve a four-year term.

Lora Smith has joined Hinkle Law Firm in Wichita as an associate. She will support the firm’s practice area of estate planning and probate.

Holly Teeter’s nomination to the U.S. District Court was confirmed on Aug. 1. She replaced Judge Kathryn Vratil who retired from the district court bench in 2014. Judge Holly
members in the news

Teeter graduated from the University of Kansas School of Law and was working as an assistant U.S. attorney for the Western District of Missouri when she was nominated for the judgeship.

Gaye Tibbets of Wichita was reappointed to a four-year term on the Kansas Board for Discipline of Attorneys. Members of the board meet in three-person panels, which include two board members and one at-large attorney, to conduct hearings in cases where the review committee has found probable cause that a lawyer has violated the Kansas Rules of Professional Conduct.

Jeffrey Wilson has joined Hinkle Law Firm in Wichita as an associate. He will support the firm’s litigation and business litigation areas.

New Locations:

Although staying at the same physical location in Topeka, the firm of Alderson, Alderson, Weiler, Conklin, Burghart & Crow, LLC has changed its name to Alderson, Alderson, Conklin, Burghart, Crow & Slinkard, LLC.

Jeffery R. Brewer, P.A., announced that as of September 7th, its new address is 310 W. Central, Suite 104 • Room A • Wichita 67202. The new phone is 316.978. 9031. The new FAX is 316.978.9125. The individual attorneys can be reached as follows:

- Jeff Brewer 316-978-9031 jbrewer@jbrewerlegal.com
- Julie Lyons 866-795-3160 jlyons@jbrewerlegal.com
- Michelle (Shelley) Butterfield 316-978-9036 mbutterfield@jbrewerlegal.com

Darcy Domoney and John Domoney have formed the law firm of Domoney & Domoney located at 18 East Wea, Paola, Kansas. Darcy has been in practice since 1981, and John has been in practice since 2007. Darcy and John are both graduates of the University of Kansas School of Law. Both partners will continue in the general practice of law. They can be reached at: office@domoneylaw.com

Notables:

Eric Anderson of the Salina law firm of Clark, Mize & Linville, Chartered, was named to The Best Lawyers in America. He’s been listed in the practice areas of Medical Malpractice—Defendants, and Personal Injury Litigation—Defendants for the second year in a row.

Mark Dupree Sr., Wyandotte County District Attorney, has initiated a new “conviction integrity unit” to officially check into claims of those who say they have been wrongfully convicted. The unit will include a full-time senior attorney, a part-time investigator and a part-time assistant. Mark Dupree is an active KBA member, serving as the District 11 representative on the Board of Governors.

Vincent Cox, an attorney with Cavanaugh, Biggs & Lemon in Topeka was selected to Topeka Top 20 Under 40. Nominations for the honor are submitted by the community, and then nominees are invited to apply. A committee of community leaders makes the final selection of the top 20. Cox and other honorees will be recognized at a banquet in November.

Dustin J. Denning, of the Salina law firm of Clark, Mize & Linville, Chartered, was named to The Best Lawyers in America. He’s been listed in the practice areas of Medical Malpractice—Defendants, and Personal Injury Litigation—Defendants for the second year in a row.

Amy Brozenic Kimbrough, partner at Lathrop Gage LLP, was named among this year’s class of 25 NextGen Leaders by the Kansas City Business Journal. Amy leads the firm’s trademark and copyright transactional group. She said in her profile that someone she looks up to is Cameron Garrison, the managing partner at the firm. Garrison was in the inaugural class of NextGen Leaders in 2013. He joined the firm after graduating from law school in 2002; joined its executive committee in 2014 and became managing partner in 2017.

Julia A. Craft of Joseph, Hollander & Craft, LLC has been named by the Wichita Business Journal’s annual Women in Business awards as one of the area’s outstanding businesswomen. Julia is chair of the firm’s statewide Family Law Division and manager of its Wichita office. A former Sedgwick County Assistant District Attorney, she moved to private practice in 1989 and merged with Joseph & Hollander in 2011. A graduate of the University of Kansas School of Law, Julia’s practice covers all aspects of domestic and juvenile law.

Roger L. Falk was honored by Best Lawyers in the area of DUI/DWI Defense by “Best Lawyers in America, 2019 Edition.” A litigator for more than 40 years, Roger merged his practice earlier this year with Joseph, Hollander & Craft. His practice covers the spectrum of criminal defense, from misdemeanor DUls to capital murder cases. A graduate of
Washburn University and the Washburn University School of Law, Roger is a Kansas Bar Association Fellow and member of its Criminal Law Section, and a past president of the Kansas Association of Criminal Defense Lawyers. He serves on the Legal Committee for the National Organization for the Reform of Marijuana Laws and is a founding member of the National Association of DUI Defense Lawyers.

John R. Hamilton of Hamilton, Laughlin, Barker, Johnson & Jones was recently selected by his peers for recognition in the 25th Edition of The Best Lawyers in America. He as honored in the section on eminent domain and condemnation law. He earned his law degree from Washburn University School of Law, which then conferred upon him an honorary doctorate in 2016.

Ross A. Hollander was named Wichita Lawyer of the Year in the Labor Law Management Section. He was further recognized for his expertise in Employment Law—Management, and Litigation—Labor and Employment. Hollander is chair of the firm’s Civil Litigation and Employment Law Division and has practiced employment, labor, and commercial law for more than 40 years. Hollander received his Juris Doctor from the University of Kansas School of Law. He is a member of the Wichita, Kansas and American Bar Associations, Kansas Association of Defense Counsel, and Defense Research Institute.

Sal Intagliata of Monnat & Spurrier, Chartered, has been named by Best Lawyers in America as Wichita’s “Lawyer of the Year” in the area of criminal defense: white collar.

Peter Johnson of the Salina law firm of Clark, Mize & Linville, Chartered, was named to The Best Lawyers in America. He’s been listed since 2016 in the practice areas of medical malpractice—defendants, personal injury litigation—defendants, and insurance law.

Christopher M. Joseph was honored in the Criminal Defense: General Practice. He represents individuals and businesses during the investigation and prosecution of criminal charges in federal and state courts. He also represents businesses and individuals in complex civil litigation, primarily in federal court. He leads the firm’s criminal and civil asset forfeiture practice groups. A graduate of the University of Kansas School of Law, Christopher has earned Martindale-Hubbell Law Directory’s highest “AV” rating for lawyers. He is a lifetime member of the Kansas and National Associations of Criminal Defense Lawyers. He has served on the Kansas Bar Association criminal law committee and chaired the Topeka Bar Association legislative committee. He regularly presents CLEs for other attorneys at seminars throughout the state.

Norman Kelly of Norton, Wasserman, Jones & Kelly in Salina has been selected for inclusion in the 25th edition of The Best Lawyers in America for his practice in personal injury litigation—defendants.

M. Kristine Lawless was named Topeka Lawyer of the Year for Criminal Defense: White Collar; she was also honored in the sector of Criminal Defense: General Practice. Kristine has extensive experience in complex federal and state criminal cases, including appeals. Her primary practice now focuses on family law, and the Kansas Supreme Court has certified her as a mediator in domestic cases. Lawless earned her Juris Doctor at Washburn University School of Law. She has been an adjunct professor for the law school and has served as Judge Pro Tem in Shawnee County District Court.

Jim Lawrence, partner with Bryan Cave Leighton Paisner LLP, was named among this year’s class of 25 NextGen Leaders by the Kansas City Business Journal. Jim leads the litigation team, overseeing work assignments, professional development, financial oversight, strategic planning and retention. Practicing law is Jim’s second career; he spent seven years working for Atlantic Records in New York City. He received his law degree from Yeshiva University.

Casey Y. Meek earned recognition by Best Lawyers in the area of Criminal Defense: General Practice. His practice has an emphasis on DUI and traffic crimes. Casey is a member of the Kansas Bar Association, the Douglas County Bar Association, the National College for DUI Defense, and the National Organization for the Reform of Marijuana Laws. He earned his bachelor’s degree from the University of Kansas and his juris doctorate from the University of Kansas School of Law. He has been named a “Rising Star” by the Missouri & Kansas Super Lawyers® and has been selected to the Super Lawyers list each year since 2015.

John Mize of the Salina law firm of Clark, Mize & Linville, Chartered, was named to The Best Lawyers in America. He’s been listed since 1995 in the practice area of health care law.

Dan Monnat of Monnat & Spurrier, Chartered, has been recognized every year for more than 30 years by Best Lawyers in America. He was honored this year in four practice areas: Criminal Defense—General Practice; Criminal Defense—White Collar; Bet-the-Company Litigation; and Appellate Practice. Dan holds a juris doctor from Creighton University School of Law and also graduated from Gerry Spence’s Trial Lawyer’s College.

John Peck, special counsel to Foulston Siefkin (Overland Park) has been named a 2018 recipient of the Rocky Mountain Mineral Law Foundation’s Clyde O. Martz Teaching Award, a national honor for meritorious teaching in natural resources law or development to students. Selection is based on excellent teaching performance and recognizes those fostering a
broad understanding of the law, mentoring students and an innovative style. John serves as a member of the KBA Board of Editors. He received his law degree from the University of Kansas School of Law and worked for two governmental agencies before joining the KU faculty in 1978. John teaches classes in contracts, family law, land transactions and water law. He has served as special counsel for Foulston Siefkin since 1996, concentrating on water law and real estate transactions.

Peter Peterson of the Salina law firm of Clark, Mize & Linville, Chartered, was named to The Best Lawyers in America. He's been listed in the practice areas of trusts and estates, Non-Profit/Charities Law, Tax Law, and Employee Benefits Law. Peterson was selected in 2013 as Lawyer of the Year in the Wichita/Salina region in the practice area of trusts and estates.

Trevor Riddle of Wichita's Monnat & Spurrier, Chartered, was recognized by Best Lawyers in America for the second consecutive year in the area of Criminal Defense—General Practice. Trevor is a graduate of the University of Kansas School of Law. His practice focuses on the defense of those accused of white collar crimes, violent crimes, drug offenses and sex offenses.

John Robb of Somers, Robb & Robb has been included in the 2018 edition of Best Lawyers in America in the field of education law.

Alan Rupe, managing partner of Wichita’s Lewis Brisbois, has been recognized by Best Lawyers in America for outstanding work in the areas of Litigation—Labor and Employment; Employment Law—Management; Litigation—Municipal; and Civil Rights Law.

Richard Samaniego, Wichita, has been nominated by Kansas Attorney General Derek Schmidt to serve as chair of the state’s Crime Victims Compensation Board. If confirmed by the Kansas Senate, Samaniego will succeed current board chair Suzanne Valdez who retired from the board in August.

Richard is active in the KBA, the Wichita Bar and the Wichita Crime Commission. He earned his law degree from Washburn University School of Law.

Rekha Sharma-Crawford, recent recipient of the KBA’s Courageous Attorney Award, was profiled in the Aug. 5 edition of the Kansas City Star. The article outlined her activism and high-profile immigration practice, Sharma-Crawford Attorneys at Law, where she fights for the rights of immigrants with her husband, Michael. Sharma-Crawford’s family came to America in the 1970’s because her father wanted his daughters to have a better life than was possible in Indian culture that was politically corrupt and dismissive of women. Rekha earned her law degree from Michigan State University, and has become one of the top immigration lawyers in the country. She is known internationally, in part, because of her representation of Syed Jamal, a chemist in Lawrence who was nearly deported after residing there for 30 years.

Jessica Skladzien, a partner in Wichita’s Lewis Brisbois law firm, has been recognized by Best Lawyers in America for outstanding work in the area Litigation—Labor and Employment.

John Weckel celebrated his 90th birthday on August 12 in his native Salina. John earned his law degree from Washburn Law School and practiced in Salina for 20 years, during which he served two terms as Saline County Attorney. He then served as a probate judge, district court judge and a Kansas senior judge. After retirement, he served as a volunteer district judge pro tem for the 28th Judicial District, for a total of 42 years on the bench. John has been a member of the KBA for 65 years.

Joseph M. Weiler was congratulated by his firm, Alderson, Alderson, Weiler, Conklin, Burghart & Crow, LLC, upon his retirement; members of the firm also expressed their appreciation for his 32 years of service. The firm’s name has now been changed to Alderson, Alderson, Conklin, Burghart, Crow & Slinkard, LLC.
Obituaries

Henry Lee Graf (0/0/1926– 8/2/2018)

Henry Lee Graf, much-loved husband of Roma Lee Taunton, died on Aug. 2, 2018. A lifelong resident of KCMO., Henry, 92, was acknowledged as an outstanding athlete, adept lawyer, and avid jazz fan. He was a devoted son; loving uncle; reluctant, but doting and supportive life partner; and loyal friend.

Henry marched to his own drummer. With partner Bill Ege, he emerged as a standout junior tennis player in Public Parks Tournaments and the Kansas City Interscholastic Tennis League. Early 1940s KC Star writers dubbed him "the mighty mite of the 15 and under boy’s doubles". They described him further as "so small he could almost chin himself on the net”, noting his "speedy footwork” and that he played a "sparkling game against his taller opponents". One article began, “Westpport Still Rules” as Henry and Bill, along with Bill Miller, Bob Gershon, and other team members, continued to dominate the KC Interscholastic Tennis League. 1945 found Henry in the US Navy and on the roster for the Fleet Sonar School Varsity Basketball Team. Acknowledging the indomitable spirit of the School’s cagemen, the Feb. 15, 1945, Echo reported that the team "continues its whirlwind pace toward the Island Serviceman’s Basketball League Championship”.

Henry started his career trek by enrolling at the University of Missouri-Columbia (BA, 1950). The next stop was the University of Kansas City School of Law, where he was initiated into the Phi Delta Phi Legal Fraternity (BL, 1953). He enjoyed a solo general law practice for 52 years. In 1971 he obtained a Master’s Degree in International Law at UMKC. Tennis remained a lifetime driving force for Henry. With partners Leonard Prosser, Larry Belt, Terry Tippin Miller, and Graydon Nichols, he achieved regional and national ranking, winning many local and Missouri Valley championships. He was a finalist in the 1991 USTA National Indoor Mixed Doubles Tournament, and took Third Place in the 2000 USTA National Men’s 75 Indoor Doubles Tournament. Henry loved jazz, especially the piano. He delighted in concerts presented by either the Kansas City Jazz Orchestra or the UMKC Jazz Bands. Piano virtuoso Frank Mantooth was his favorite artist.

Henry made you smile when you saw him. He treasured his nieces and nephews, and was always there as friend, counselor, and wise sage. He always told you what he thought!

Surviving to cherish Henry’s memory are wife Roma Lee; nephews Gary Lee Graf, Karl Graf (Kathy); nieces Rebecca Danby (Jim), Vicki Bell (Jim); sister-in-law Kay Doubleday (John); grandnieces Jennifer Seagroves (Shane), Taylar Graf; grandnephews Travis Lee Graf (Megan), Cody Lee Graf (Jennifer), Jeremy Bell; great grandniece/nephews Nora Jean Seagroves, Riley William Graf, Mason Lee Graf. Preceding him in death have been parents Carl and Wilhelmina Graf, sister Frieda Davis and husband Stanley, brother Victor Graf and wife Jean.

The family extended special thanks to the staff at Garden Terrace-Overland Park for 2.5 years of exemplary care and to Cheryl Westra and Greg Brown for valued assistance and friendship. Condolences may be expressed at Cremation-CenterKC. com. Memorial contributions will be appreciated. Suggestions for donations are to the UMKC Jazz Studies Scholarship Fund UMKCFoundation.org or the Taunton Nursing Student Research Fund kumc/iami/ku-endowment. html JAZZ ’N HENRY II: A Celebration of Life, was held on Sat, Aug 25 at All Souls UU Church in KCMO. Casual attire, tennis togs were requested.

James Hanson (7/15/1929 – 8/14/2018)

Hanson, James 89, Retired Wichita Attorney, died Tuesday, August 14, 2018. Funeral Service will be at 2:00 pm, Friday, August 24, 2018, at Downing & Lahey East Mortuary. Preceded in death by his parents, Robert and Winifred Hanson. Survived by his wife, Mary Hanson; sons, Robert (partner, Tracy Lovato) Hanson of Phoenix, AZ, James (Lynn) Hanson of Chester, NJ; brother, Kenneth Hanson of Audubon, PA; 4 grandchildren. Memorials have been established with: Glaucoma Research Foundation, 251 Post St., Ste. 600, San Francisco, CA 94108; University of Kansas Endowment Fund, P.O. Box 928, Lawrence, KS 66044. Share tributes online at: www.dlwichita.com
Michael Raymond Hull (5/1/1955 – 8/26/2018)

Michael Raymond Hull, 63, Chanute, Kan., passed away due to complications related to cancer, on August 26, 2018 at Stormont Vail Hospital in Topeka, Kan. He was born to Ray and Mary (Huffmaster) Hull in Wichita, Kan. on May 1, 1955. He attended Altoona Midway High School, graduated from Chanute High School, and went on to earn his Bachelor's degree from Pittsburg State University and his Juris Doctorate from Washburn University School of Law.

Mike was a loving partner, dad, and Papa. His greatest joy was time spent with his family, and especially enjoyed time with his nine grandchildren. He worked as an attorney in Chanute, Kansas for almost 30 years and served as the Chanute Municipal Court judge for over 20 years. His dedication to his family, friends, and community will be missed by all who had the honor of knowing him.

Mike is survived by: Partner: Philip Fontes, of the home; Mother: Mary Hull, Humboldt, KS; Children: Christina Morris and husband, Travis, of Topeka, KS, Caitlyn Abbott and husband, Jeremy, of Springdale, AR; Philip Fontes Jr. and wife, Angela, of Cherryvale, KS, and Sara Fontes, of Independence, KS; Brother: Steve Hull and wife, Angela, of Wichita, KS; Grandchildren: Madison Morris, Brady Morris, Nolan Morris, Owen Abbott, Oliver Abbott, Connor Fontes, Kenzley Fontes, Philip Fontes III, and Adalyn Fontes; Former Spouse and Mother to Christina and Caitlyn: Helen Hull; and numerous Aunts, Uncles, Cousins, Nieces, and Nephews.

He was preceded in death by his father, Raymond Lee Hull, and his grandparents.

Visitation was held Friday, August 31, 2018 and a memorial service was held at 10 a.m. on Saturday, September 1, 2018 at Countryside Funeral Home, 16 N. Forest, Chanute, Kan. 66720. Inurnment was in Mount Hope Cemetery, Humboldt, Kansas, at a later time. Memorials have been suggested to the American Cancer Society and may be left with or mailed to the funeral home. Arrangements have been entrusted to: Countryside Funeral Home 16 N. Forest, Chanute, KS 66720.

Wendell W. Kellogg (7/1/1941 – 8/18/2018)

Wendell W. Kellogg, 77, of Salina, passed away Saturday, Aug. 18, 2018. Wendell was born in Rooks County on July 1, 1941, to Leona (Cook) and Walter Kellogg.

He was in the National Guard, with service in Vietnam as a Jagg officer from 1968-1970 and was a member of the VFW. Wendell graduated from K-State and KU with the Juris Doctorate. Wendell was an attorney for 52 years with Marietta, Kellogg and Price Law Firm, where he was a founding partner. Wendell was a charter member of the Civitan Chapter and was a loyal supporter of the Boy Scouts, especially Troop 214. Wendell mowed Camp Brown (Abilene) for many years and volunteered for Troop 214. He loved his dogs and the outdoors. Wendell was also a member of Trinity United Methodist Church, Salina.

Left to honor Wendell are: his wife, Carol (Witschi) Kellogg, of the home; daughters, Patricia Kellogg, of Utah, Tammy Harmon (Greg), of Topeka, and Sherry Halferty (Ryan), of Salina; sons, Chris R. Kellogg, of Nebraska, and Chris J. Kellogg (Becky), of Leavenworth; brother, Everett Kellogg (Lanetta), of Hastings, Neb.; sisters, Pearl Jones, of Salina, Lois Allen (Gayle), of Lebanon, and Karen Kellogg, of Abilene; aunt, Wilda Hustus, of Salina; grandchildren, Lena and Carson Kellogg, Chase Kellogg, Emily and Grant Harmon, and Makayla and Madison Halferty; and many nieces and nephews.

Wendell was preceded in death by a baby sister, Anita Joyce Kellogg; and his parents.

At the family's request, there will be no visitation as cremation has taken place.

Memorial service was held Thursday, Aug. 23, at Carlson-Geisendorf Funeral Home, Salina, with Judge Jerry Hellmer officiating.

Memorial contributions may be made to Kansas Honor Flight, in care of Carlson-Geisendorf Funeral Home, 500 S. Ohio, Salina, KS 67401.

Online condolences: www.carlsonfh.net.
The Kansas bar has lost one of its most admired members. James K. Logan, lawyer, professor, judge, and friend, died September 8, 2018, at the age of 89. Jim loved the company of judges and lawyers and was faithful member of the KBA. He was recognized the Phil Lewis Medal of Distinction earlier this year.

Jim gave generously to the bar as a leading CLE presenter for many years.

Jim was born in Quenemo, Kansas, the oldest of six children of John and Maurine Logan. Upon graduation from Quenemo High, Jim enlisted in the army. After his service, he enrolled at the University of Kansas. Jim had the great good fortune to meet an equally accomplished coed, Beverly Jo Jennings, who became his wife in 1952 shortly after their graduation. Their great love was an enduring joy for all who have known them. And it was life-changing for them.

Jim had excelled at KU, graduating with all A's, serving as president of All Student Council, and winning a Rhodes scholarship to Oxford. But only single men were eligible, so Jim resigned the scholarship and married Bev. He did, however, have another good option: Harvard Law School. Jim learned law well, becoming an editor of the Law Review and graduating magna cum laude in 1955. Tenth Circuit Judge Walter Huxman selected Jim to serve as his law clerk for a year. Jim and Bev then went to Los Angeles, where Jim joined a major law firm. But Kansas was home for both of them, and Jim left a promising career in California to teach law at KU. Jim became Dean of the KU Law School at age 31. His academic career included stints as visiting law professor at Harvard, Texas, Stanford, Michigan, and Duke Universities.

By 1968 Jim and Bev were busy and happy raising their four children, Dan, Amy (Sliva), Sarah (Sherard), and Sam, in Lawrence. That year was a turning point for the country and for the Logans as well. Jim left the KU faculty. He had been working with Senator Robert Kennedy’s presidential campaign on a farm policy speech when Senator Kennedy was assassinated. The next week, Jim filed as a candidate for U.S. Senate in the Democrat primary. He ran second. Jim then returned to private practice as a partner in Payne & Jones, and Olathe became the family home. Jim was a premier tax lawyer, corporate lawyer, estate planner, and all-around counselor beloved by his clients — until 1977 when a new opportunity for public service was realized.

The Honorable James K. Logan, Judge of the United States Court of Appeals for the Tenth Circuit, was appointed by President Carter and confirmed unanimously by the U.S. Senate. Circuit judges may establish their chambers pretty much wherever they want, and Jim chose downtown Olathe. This was in some ways, Jim once said, “a dream job for a bookworm former professor.” “I liked the work though it was hard and lonely. One year, one of my law clerks reminded me that other than the mail man and janitor only two people visited my Kansas office in a year.” In nearly 21 years on the bench, Judge Logan served on the panel in more than 9,000 cases. He authored more than 840 officially published opinions and many more unpublished opinions.

Though Jim felt cloistered as an appellate judge, he loved the company of his fellow judges and had innumerable great friends among his colleagues on the federal bench, his 45 law clerks, and the entire federal court family. While a judge, he served as Chair of the Federal Judicial Center’s Committee on Appellate Education Programs for Circuit Judges, and on the Judicial Conference of the United States he served as Chair of the Advisory Committee on Federal Rules of Appellate Procedure (redrafted during his tenure). He was also awarded the Frances Rawle Award by the American Law Institute-American Bar Association for his lifetime contribution to post-law school professional education.

History was also an important part of his life. He edited a multi-author history of the federal courts of the Tenth Judicial Circuit (Kansas, Oklahoma, Colorado, Utah, Wyoming and New Mexico), incorporated and advised the Historical Society of the Tenth Judicial Circuit, and served as president of the Kansas State Historical Society.

Jim was in line to become Chief Judge of the Tenth Circuit, but declined the opportunity and returned to private practice in 1998 with his brother Max and son Sam in the Logan Law Firm. After Max retired, Jim and Sam merged their practice into Foulston Siefkin LLP. Jim was of counsel to the firm for the next thirteen years, serving as a mediator in major national cases and again serving his clients’ estate planning needs. Jim fully retired after celebrating his 86th birthday in the hospital being treated for colon cancer. Jim recuperated, but the cancer later recurred, metastatic, ultimately untreatable. He was gracious and courageous throughout.

I intended to write more about Jim Logan as a person, not a curriculum vitae. But his life has been so remarkable that it is inescapable. It should be retold and appreciated. Jim grew up during the depression when there was nothing more precious than the ability to work and make a living. He went to work at his first paying job nearly 75 years ago. In his youth Jim worked many hours of exhausting, backbreaking manual labor as a railroad section hand. He knew that work means first and foremost the blessed ability to put food on the table and a roof over your family. Jim had an obviously rare combi-
nation of intellectual gifts, strong character, and self-discipline that produced prodigious achievements. But his work ethic and love for his family drove him. He wanted to be a good husband, a good provider, a help to his children and grandchildren, and a builder of the communities in which he lived and worked.

Maybe you, like me, more or less expect people like Jim Logan to be different than the rest of us. The Harvard Law Review background, being the Dean, and the years as Judge sitting on the big bench looking down at us lawyers could create the expectation that this guy had to be a snob. But he wasn’t. He was still just a small town Kansan who loved life and lived it with zest and energy. He worked hard and never complained. He enjoyed a laugh and bending your ear in long conversations, including unabashedly sharing his most embarrassing moments, which actually didn’t seem to embarrass him. He always said yes when help was needed. He was devoted to Bev and his children and grandchildren and constantly thought of ways to do something good for them.

For those of us in the legal profession, he has been our teacher and friend and a judge on whom we could rely to be fair, wise, and diligent. He expounded the principles of law for this generation and others to come. He taught hundreds of law students and uncountable hours of continuing legal education for practicing lawyers. He mentored many judges and lawyers, including especially his 45 law clerks. He recorded our history for us and left us to remember him with a smile breaking across our faces.

(Written and submitted by Jim Oliver)
ATTORNEY DISCIPLINE

ORDER OF DISBARMENT
IN THE MATTER OF DAVID BEN MANDELBAUM
NO. 13,026—AUGUST 21, 2018

FACTS: Mandelbaum has been accused of violating Kansas Rule of Professional Conduct 8.4(b) pleading guilty to a felony count of attempting to evade or defeat tax. On the day of his plea, Mandelbaum voluntarily surrendered his license to practice law in Kansas. The court accepted his surrender and he is disbarred.

ORDER OF REINSTATEMENT
IN THE MATTER OF LYLE LOUIS ODO
NO. 114,863—SEPTEMBER 5, 2018

FACTS: Odo’s license to practice law in Kansas was suspended for one year in July 2016. In July 2017, Odo filed a petition for reinstatement. After a hearing, the Kansas Board for Discipline of Attorneys recommended that the petition for reinstatement be granted. After careful consideration, the court accepted the panel’s findings and grants the petition for reinstatement.

CIVIL

CONTRACT INTERPRETATION
TREAR V. CHAMBERLAIN
LYON DISTRICT COURT—REVERSED AND REMANDED
COURT OF APPEALS — AFFIRMED
NO. 115,819—AUGUST 24, 2018

FACTS: Trear purchased land from Chamberlain in 1986. The sale contract included a preemptive provision covering an adjoining tract of land; the provision gave Trear the right of first refusal should Chamberlain wish to sell the parcel. In 2013, Chamberlain offered the parcel to Trear for $289,000. The offer stated that it would expire after eight days and that silence would be deemed as a refusal to purchase. Trear did not respond, and Chamberlain listed the parcel for $295,000. The property did not sell; a year later, Chamberlain sold part of the parcel to her daughter for $91,124. At that time, Trear sued, claiming that she violated his right of first refusal. As a remedy, he asked to be able to purchase the land from the daughter for the price that she paid. The district court ruled that the right of first refusal clause violated the rule against perpetuities and was unenforceable. It also held that the clause did not violate the statute of frauds and that Chamberlain did not comply with the provision requiring right of first refusal to Trear. Trear appealed the dispositive rule against perpetuities decision. Chamberlain cross-appealed arguing that she was entitled to judgment on the statute of frauds and contract compliance arguments. The court of appeals reversed, overruling the district court’s rule against perpetuities decision. It agreed with the district court on the statute of frauds issue and that Chamberlain did not fully perform under the original purchase contract. The only issue preserved in the petition for review was whether Chamberlain complied with the contractual right of first refusal provision.

ISSUE: (1) Contract interpretation

HELD: Chamberlain initially complied with the contract when she offered to sell Trear the entire parcel for $289,000. He chose not to pursue the offer. Any interpretation that differs from this conclusion reads into the contract something that is not there and is erroneous.Similarly, the contract did not require Chamberlain to again contact Trear and offer him the smaller parcel. But factual issues remain regarding whether Chamberlain acted in good faith and in fair dealing. Because there remain factual questions about whether Chamberlain acted in good faith, this case must be remanded for further factfinding.

CONCURRENCE AND DISSENT (Johnson, J. joined by Beier, J.): The majority’s decision is correct regarding the contract interpretation. But there is no need for a remand to determine whether Chamberlain acted in good faith.

STATUTES: No statutes cited.
FACTS: Castleberry suffered a stroke and, a year later, fell and sustained a fatal head injury. Her heirs sued Dr. DeBrot, claiming that he missed signs of her stroke and that this negligence then caused the fatal injury. A jury found Dr. DeBrot at fault and awarded damages to Castleberry’s estate. On appeal, the court of appeals affirmed. Dr. DeBrot’s petition for review was granted.

ISSUES: (1) Scope of petition for review; (2) causation instructions; (3) improper closing argument; (4) admission of expert testimony

HELD: In order to preserve an issue for review by the Kansas Supreme Court, the petition for review must list with specificity all issues that will be argued. A general statement about scope will not preserve issues for review. Expert testimony opined that Castleberry’s stroke would not have happened had Dr. DeBrot met the standard of care. The court of appeals erred by finding that the causation instruction given was legally inappropriate, although harmless. In actuality, the instruction was both legally and factually appropriate. Castleberry’s counsel exceeded the scope of permissible closing argument when he asked the jury whether it wanted “safe or unsafe medicine”. But the error was harmless. Expert testimony was required to prove the standard of care, and the witnesses were allowed to explain the applicable standard.

CONCURRENCE (Beier, J., joined by Luckert and Johnson, JJ): The majority’s decision is sound and none of the other issues raised before the court of appeals would have changed the outcome here. But Rule 8.03, as it exists now, did not prevent the Supreme Court from reviewing all issues raised by Dr. DeBrot in front of the court of appeals.

STATUTES: K.S.A. 2015 Supp. 60-456; K.S.A. 60-404, -456(b)

FACTS: Joel Burnette sued Dr. Eubanks and her clinic alleging negligence in administering epidural steroid injections for back pain. Joel believed that the negligent manner of delivering the injections caused side effects which included nerve damage and significant pain. Four years after the injection, Joel committed suicide. Joel’s parents filed a wrongful death case against the defendants on behalf of the estate and the lawsuits were consolidated by the district court. A jury found Dr. Eubanks liable for Joel’s injuries and death. The verdict was affirmed by the court of appeals and the Burnettes’ petition for review was granted.

ISSUES: (1) Causation instructions; (2) expert testimony; (3) damages

HELD: Taken as a whole, the jury instructions correctly supplied the cause-in-fact requirement for causation. The use of the phrase “contributed to” was not erroneous. Expert testimony proved but-for causation tying Dr. Eubanks’ negligence to Joel’s back pain and subsequent death. The $550,000 economic damages awarded by the jury to Joel’s parents were improperly categorized as economic. The jury should not have been allowed to allocate damages for the harm of “loss of a complete family” and there was inadequate evidence to justify any additional economic award.

STATUTES: K.S.A. 2017 Supp. 60-250, -250(a); K.S.A. 60-1901, -19a02, -1903, -1903(e), -1904(a), 65-6319
OPEN RECORDS
STATE V. GREAT PLAINS OF KIOWA COUNTY, INC.
KIOWA DISTRICT COURT—AFFIRMED
COURT OF APPEALS—AFFIRMED IN PART AND
REVERSED IN PART
NO. 115,932—AUGUST 24, 2018

FACTS: Kiowa County Memorial Hospital operates in Greensburg. The Hospital is managed by a Board of Trustees which is elected according to statute. The Board has statutory authority to levy a tax to operate and maintain the hospital. Great Plains is a non-profit corporation which is responsible for operating the hospital under the terms of a lease. Under the terms of the lease agreement, if Great Plains believes that additional revenue is necessary, it will inform the board of the need and the board will request that the county levy a tax. After three years of escalating levies, the county commission sought information about the hospital’s budget and finances. The county commissioner sent a letter seeking, under the Kansas Open Records Act, certain budget documents. Great Plains refused the request, claiming that it was exempt from KORA. The state filed an action in district court seeking KORA enforcement and a fine for what it viewed as Great Plains’ bad-faith refusal to comply. The district court granted the state’s motion for summary judgment, ordered disclosure of the requested records, and imposed a $500 fine. The court of appeals affirmed the finding that Great Plains is subject to KORA but remanded the case for further findings about whether specific requested records were relevant to Great Plains’ contractual performance. The Supreme Court granted both a petition and a cross-petition for review.

ISSUES: (1) Great Plains’ status under KORA; (2) need for a remand

HELD: The Court finds for the first time on appeal that KORA explicitly covers instrumentalities of political and taxing subdivision and that Great Plains meets the definition of an instrumentality of county government. It is uncontroversial that the hospital is meant to be an arm of county government. As an instrumentality, Great Plains is a public agency and as such, is covered by KORA. The nature of the records sought by the state is irrelevant. As an agency covered by KORA, Great Plains has a duty to disclose. The court of appeals’ order of remand is reversed.


CONCURRENCE—STARE DECISIS
MCCULLOUGH V. WILSON
WyANDOTTE DISTRICT COURT—AFFIRMED
COURT OF APPEALS—AFFIRMED
NO. 115,067—SEPTEMBER 7, 2018

FACTS: Wilson was driving excessively fast when he collided with the back of a car carrying McCullough and his passenger, Risley. McCullough and Risley filed a lawsuit against Wilson, seeking monetary damages for lost wages, pain and suffering, and medical expenses. Risley’s medical expenses were paid by the PIP coverage provided by his AAA insurance. But AAA never requested reimbursement from Wilson’s insurance company. After a jury decided in Risley’s favor, Wilson sought to overturn part of the verdict on grounds that

INSURANCE—STARE DECISIS

www.ksbar.org | October 2018 67
Risley’s cause of action passed to AAA and that only AAA could recover damages for Risley’s medical expenses. The district court denied the motion and the Court of Appeals affirmed. Wilson’s petition for review was granted.

ISSUES: (1) Assignment of subrogation rights

HELD: The doctrine of stare decisis suggests that the district court’s decision should be affirmed. Especially in cases involving contracts, reliance on prior precedent is important. Because there is no reason to depart from prior holdings, Risley is entitled to the entire verdict awarded by the jury, including the portion covering medical expenses.

STATUTES: K.S.A. 40-3103, -3113a, -3113a(c)

CONSTITUTIONAL LAW—CRIMINAL LAW—FOURTH AMENDMENT
SEARCH AND SEIZURE
STATE V. BOGGESS
BUTLER DISTRICT COURT—AFFIRMED
COURT OF APPEALS—AFFIRMED
NO. 111,361—AUGUST 24, 2018
FACTS: Motley allowed law enforcement officers to search car she was driving with Boggess as front-seat passenger. Among clutter on passenger floorboard, officer found and opened a small nondescript black zippered bag that held drug contraband. When it was discovered the bag belonged to Boggess, she was charged with drug offenses. She filed motion to suppress, claiming Motley had neither actual nor apparent authority to consent to a search of Boggess’ belongings. District court denied the motion finding Motley had apparent authority to consent to the search, and found Boggess guilty on all counts. Court of appeals affirmed in unpublished opinion. Boggess’ petition for review was granted.

ISSUE: Apparent authority to consent to search

HELD: Motley had apparent authority to consent to the search of the zippered bag. Under facts in case, when Motley gave her consent, it was objectively reasonable for officers to believe she had authority to consent to a search of the nondescript zippered bag. Cited facts included: (1) driver’s easy access to front passenger floorboard often used to store objects while driving, and Eleventh Circuit case (United States v. Barber, 777 F.3d 1303 [2015]) on similar facts; (2) Boggess was aware of the consent and that officers were going to search the vehicle but remained silent and did not claim ownership in any item in the vehicle; (3) nothing about the small zippered bag would signal to a reasonable person that Motley did not exercise common authority over it; and (4) the presence of clutter on the floorboards suggested the driver either placed the clutter there or sanctioned its presence in the vehicle.

DISSENT (Luckert, J.) (joined by Beier and Johnson, JJ.): Disagrees that officer’s reliance on Motley’s consent to search bags located at feet of passenger was objectively reasonable. Agrees that Motley had apparent authority to consent to a search, but once the zippered bag was found in passenger area, a person of reasonable caution would have questioned whether the driver had apparent authority to consent to a search of that bag. Disagrees with decision in Barber. Rejects majority’s dismissal of expectation of privacy in a small, zippered bag, as opposed to a purse. And under facts in this case, rejects majority’s reliance on Boggess’ silence. Would reverse judgments of
court of appeals and district court, and remand for new trial.

STATUTE: K.S.A. 22-3216,-3216(3), 60-2101(b)

CRIMINAL PROCEDURE—STATUTES—WITNESSES
STATE V. BROSEIT
FRANKLIN DISTRICT COURT—AFFIRMED
COURT OF APPEALS—AFFIRMED
NO. 114,753—AUGUST 17, 2018

FACTS: Brosseit was convicted of DUI. At trial, State sought endorsement of a person not identified in the complaint as a potential witness—the EMS paramedic (Harris) who drew Brosseit's blood sample. District court allowed the late endorsement. Brosseit appealed, claiming in part that K.S.A. 22-3201(g) requires the State to endorse all known witnesses when it files the complaint, and only permits endorsement after that time if the State was unaware of the witness when it filed the complaint. State argued this claim was not preserved in district court. Court of appeals affirmed in unpublished opinion without addressing preservation. Review granted on this claim and argument that K.S.A. 22-3201(g) had been wrongly interpreted.

ISSUES: (1) Preservation of issue for appellate review, (2) late endorsement of a witness

HELD: As in State v. Gray, 306 Kan. 1287 (2017), State failed to cross-petition for review of Court of Appeals conclusion or lack thereof regarding preservation. Nor did the State submit a response to the petition for review. The preservation issue thus is not before the Kansas Supreme Court.

In light of ambiguity in the statute and the legislature's more than century-long acquiescence, the doctrine of stare decisis is followed. Kansas Supreme Court cases interpreting K.S.A. 22-3201(g) and its predecessors are upheld. To show reversible error on appeal, the defendant must have objected to the late endorsement, requested a continuance, and been denied that continuance. In this case, Brosseit did not request a continuance. Court of appeals is affirmed.

CONCURRENCE (Rosen, J., joined by Johnson and Stegall, JJ.): Concurs in the result only. Does not agree with majority's interpretation of K.S.A. 22-3201(g). On plain language of the statute, the long-standing interpretation of K.S.A. 22-3201(g) is incorrect. Would hold that if the State wishes to endorse a witness after it has filed its complaint, then the State has a duty to show that it was unaware of the witness at the time of filing. The district court erred in allowing State to endorse Harris on the day of trial, but under facts in the case the error was harmless.

STATUTE: K.S.A. 2013 Supp. 8-1567(a)(1), -1567(a)(2), -1567(a)(3); K.S.A. 22-3201(g)

PROBATION—SENTENCES—STATUTES
STATE V. CLAPP
RENO DISTRICT COURT—REVERSED AND REMANDED
COURT OF APPEALS—REVERSED
NO. 112,842 – SEPTEMBER 7, 2018

FACTS: Clapp sentenced to a 118-month prison term and granted a downward dispositional departure to 36-month probation with a 60-day jail sanction to be suspended when inpatient drug treatment had been arranged. State filed first motion to revoke in January 2014. District court revoked probation and imposed a 180-day prison sanction. State filed second motion to revoke in August 2014. District court revoked probation and imposed the underlying sentence, specifically stating he did not feel Clapp valued Community Corrections as a way to help change how Clapp thought and lived his life. District court agreed that Clapp had not committed a new crime, had not absconded, had a job, and was still in treatment, but commented on the convictions leading to Clapp's probation, his criminal history, and his dishonesty with his intensive supervision officer. Clapp appealed, claiming in part the district court failed to make the statutory findings required by K.S.A. 2014 Supp. 22-3716(c)(9) to bypass the statutory intermediate sanctions for parole violators. Court of Appeals affirmed in unpublished opinion, finding in part that K.S.A. 2014 Supp. 22-3716 does not require district court to make statutory findings to bypass intermediate sanctions when a violator has already served a 180-day intermediate sanction, and that even if required in this case, district court implicitly satisfied the particularity requirement to revoke based upon public safety. Clapp's petition for review granted.

ISSUE: Probation violation sanctions under 2013 and 2014 Versions of K.S.A. 22-3716

HELD: District court's revocation of Clapp's probation under subsection (c)(1)(E) for a second probation violation did not conform to the graduated sanctioning scheme in the 2013 and 2014 versions of K.S.A. 22-3716. For a second violation district court could have utilized the prison sanction of 120- or 180-days under subsections (c)(1)(C)-(D). Imposition of the underlying sentence on a probation violator was not authorized under subsection (c)(1)(E) because no previous jail sanction pursuant to K.S.A. 2014 Supp. 22-3716(b)(4)(A)-(B) or K.S.A. 2014 Supp. 22-3716(c)(1)(B) had been imposed, notwithstanding the 60-day jail term in the original sentence or the district court's error in imposing a 180-day sanction for Clapp's first violation. Nor did the district court set forth the particularized reasons required by K.S.A. Supp. 22-3716(c)(9) to bypass the graduated intermediate sanctions. Instead, district court's remarks were akin to historical reasoning for revoking probation prior to the 2013 amendment to K.S.A. 22-3716. Reversed and remanded for a new dispositional hearing to comply with K.S.A. 2014 Supp. 22-3716.

STATUTES: K.S.A. 2014 Supp. 22-3716, -3716(b), -3716(b)(4)(A)-(B), -3716(c)(1)(A)-(E), -3716(c)(8), -3716(c)(9), -3716(c)(12); K.S.A. 2013 Supp. 22-3716(c)(1)(D)-(E), -3716(c)(8), -3716(c)(9); and K.S.A. 22-3504(1)

APPEALS—CRIMINAL PROCEDURE—CRIMINAL LAW—EVIDENCE—STATUTES
STATE V. CAMPBELL
SEDGWICK DISTRICT COURT—AFFIRMED
NO. 116,430—AUGUST 17, 2018
FACTS: Jury convicted Campbell of first-degree premeditated murder of his wife. On appeal, Campbell first claimed the State improperly rehabilitated a jailhouse informant by introducing testimony of former prosecutor (Morehead) regarding past instances when the informant was credible, but State contends defense counsel failed to preserve this argument with an appropriate objection. Second; he claimed district court erred by admitting testimony of a witness who described Campbell as controlling of his wife. Campbell contends this evidence was inadmissible under K.S.A. 2017 Supp. 60-455 because it did not constitute evidence of a “crime or civil wrong,” but State counters this evidence of marital discord was properly admitted through K.S.A. 60-455. Third; he claimed the jury should have been instructed on a heat-of-passion voluntary manslaughter based on Campbell’s sudden quarrel with his wife. And fourth; he claimed cumulative error denied him a fair trial.

ISSUES: (1) Appellate review of Witness Rehabilitation claim, (2) evidence of marital discord, (3) voluntary manslaughter jury instruction, (4) cumulative error

HELD: Campbell objected to Morehead’s testimony on grounds of hearsay and of bolstering or vouching for the informant’s credibility. He now asserts for first time on appeal the more salient objection that Morehead’s proposed testimony would violate the specific instances rule. This newly asserted challenge on appeal is not considered.

District court properly admitted testimony describing Campbell as controlling of his wife. Prior caselaw on marital discord evidence is reviewed, with modification to the holding in State v. Gunby, 282 Kan.39 (2006). Evidence of discord in a marital relationship that does not amount to a crime or civil wrong is not subject to the limitations of K.S.A. 2017 Supp. 60-455. Under facts in this case, the evidence of discord was not subject to K.S.A. 2017 Supp. 60-455. District court’s admission of this evidence is affirmed.

An instruction for heat-of-passion voluntary manslaughter, which would have been legally appropriate, was not factually appropriate in this case.

Cumulative error doctrine not applicable where no error has been found.

DISSENT (Johnson, J.): Disagrees that the defense objection to Morehead testifying was not preserved for appeal. District court’s error in allowing the testimony was not the result of a misunderstanding as to the reasons the defense objected to the testimony. Would address the issue, find in favor of the defendant, reverse the conviction, and remand for a new trial.


CRIMINAL LAW—CRIMINAL PROCEDURE—EVIDENCE—SENTENCES—STATUTES
STATE V. POWELL
SEDGwick DISTRICT COURT—AFFIRMED
COURT OF APPEALS—REVERSED
NO. 115,457—AUGUST 24, 2018

FACTS: Powell was convicted of aggravated indecent liberties with a child. District court imposed a hard 25 life sentence under Jessica’s Law, and denied Powell’s motion under K.S.A. 2017 Supp. 21-6627(d)(1) for a downward durational departure of 29.5 months. Powell appealed, claiming district court failed to follow the required analytical framework set forth in State v. Jolly, 301 Kan. 313 (2015), by failing to determine if mitigating circumstances existed, and by including aggravating circumstances and inappropriate facts of a stepchild’s testimony about Powell’s prior uncharged abuse. Divided court of appeals panel reversed and remanded for resentencing in compliance with Jolly because district court did not affirmatively declare that it reviewed Powell’s mitigating circumstances without weighing them against aggravating circumstances. 53 Kan. App. 2d 758 (2017). Dissent argued the district court had complied with Jolly, and urged review to clarify how sentencing courts should conduct hearings on departure motions under Jessica’s Law. State’s petition for review was granted.

ISSUES: (1) Jessica’s Law departure motion, (2) abuse of district court’s discretion

HELD: The district court’s failure to perform Jolly steps on the record is not reversible error. District courts considering a Jessica’s Law departure motion need not affirmatively state they are not weighing aggravating and mitigating circumstances. Language in caselaw contrary to today’s holding is no longer sound.
On review, an appellate court should disregard characterizations of evidence that might reasonably bear on a defendant’s sentence for a first time Jessica’s Law conviction as “aggravating.” The question is whether the evidence relates to the decision to be made, i.e., whether the mitigating circumstances advanced both exist and supply a substantial and compelling reason to depart from the hard 25 life sentence. Here, Powell failed to show the district court abused its discretion by denying departure. District court’s consideration of the prior-sex-crime evidence in ruling on the departure motion was proper because: (1) it was a “fact of the case” for the substantial and compelling reason determination required under K.S.A. 2017 Supp. 21-6627(d)(1), showing the convicted crime was not an isolated incident; (2) it was relevant to whether Powell proved his claimed mitigating circumstances; and (3) Powell failed to contemporaneously object to this evidence. Panel majority’s decision is reversed. Powell’s sentence is affirmed.

CONCURRENCE (Beier, J.)(joined by Nuss, C.J. and Johnson, J.): Agrees the district court’s judgment must be affirmed. No abuse of discretion in what district judge said—with or without majority’s criticism and clarification of Jolly. Writes separately to distance from overbroad and unnecessary statements that how a district judge labels or characterizes evidence or the fact it has been admitted to prove is of no moment.

STATUTES: K.S.A. 2017 Supp. 21-5506(b)(3)(A), -6627, -6627(a)(1), -6627(d), -6627(d)(1), -6804, 22-3608(c), 60-455(d); K.S.A. 20-3018(b), 21-4643, 60-404, -2101(b)

CRIMINAL LAW—CRIMINAL PROCEDURE—PROBATION—SENTENCING—STATUTES
STATE V. SANDOVAL
SEDGWICK DISTRICT COURT—AFFIRMED COURT OF APPEALS—AFFIRMED
NO. 113,299 - AUGUST 31, 2018
FACTS: Sandoval convicted in 2011 of aggravated indecent solicitation. Probation ordered with underlying 34 month prison term and 24 month postrelease supervision. Probation revoked in 2012. District judge denied defense request for modification, and ordered service of the original underlying sentence. Later recognizing the 24-month postrelease supervision did not comply with sentencing statute at the time of Sandoval’s crime, State filed K.S.A. 22-3504 motion seeking substitution of lifetime postrelease supervision. District judge granted the motion. Sandoval appealed, arguing the district judge was empowered by K.S.A. 2017 Supp. 22-3716(b)(3)(B)(iii) to impose a lesser sentence than the lifetime term required at the original sentence, thus no illegality existed in the postrevocation sentence. Court of appeals affirmed in unpublished opinion. Sandoval’s petition for review granted.

ISSUE: Sentencing after probation revocation

HELD: After revoking probation, a district judge may choose to sentence anew, even if some component of the original sentence was illegal because it failed to match a mandatory statutory minimum. In the alternative, a judge may simply require the defendant to serve the original sentence. If a new sentence is pronounced from the bench after probation revocation, any original illegality no longer exists, and the new sentence is not subject to challenge or correction under K.S.A. 22-3504. If the judge instead requires the defendant to serve the original sentence, any original illegality continues to exist and is subject to challenge or correction under K.S.A. 22-3504(1). Here, no new sentence was imposed. The judge who revoked Sandoval’s probation explicitly declined to modify the original sentence and required Sandoval to serve it. This left an illegal postrelease term in place and open to correction. State v. McKnight, 292 Kan. 776 (2011), is factually distinguished.
CONCURRENCE (Beier, J.)(joined by Nuss, C.J., and Biles, J.): Writes separately to reinforce majority's decision with alternative and more broadly applicable plain language rationale. K.S.A. 2017 Supp. 22-3716(b)(3)(B), read as a whole including introductory “[e]xcept as otherwise provided,” has additional benefit of harmonizing the statute with the explicit purpose of the Kansas Sentencing Guidelines Act: uniformity.

DISSENT (Johnson, J.)(joined by Rosen, J.): A judge pronouncing sentence after probation revocation inevitably sentences anew, and any illegality in the original sentence no longer exists. While judge in this case did not appreciate at time of revocation the error in the postrelease supervision term in the original sentence, when he refused to modify that term he effectively reduced it. This reduction was legal and could not be modified through a motion under K.S.A. 22-3504. Facts in this case are not meaningfully different from McKnight. Would vacate the lifetime postrelease supervision component of the sentence and remand for journal entry substituting a term of 24 months.


APPEALS—CRIMINAL PROCEDURE—EVIDENCE— JUDGES
STATE V. SMITH
SEDGWICK DISTRICT COURT—REVERSED AND REMANDED
NO. 116,968—AUGUST 17, 2018

FACTS: Smith convicted in 1993 of first-degree felony murder, aggravated kidnapping, aggravated robbery, and possession of a firearm by a minor. Twenty years later, he filed a pro se motion to file a direct appeal out of time, claiming his defense counsel never acted on Smith's request to file an appeal. Kansas Supreme Court remanded to district court for an Ortiz hearing to determine if Smith was eligible to appeal out of time. District court denied the motion, making no findings but referencing Smith's failure to do anything for all the years. Holding the length of time is a factor but not a threshold bar, Kansas Supreme Court remanded to district court to determine credibility of Smith's testimony that he repeatedly tried throughout 1993 and 1994 to tell his attorney to file an appeal. State v. Smith, 304 Kan. 916 (2016). Second Ortiz hearing held before a different judge who denied the motion to appeal out of time, finding Smith's testimony was not credible. Smith appealed, arguing the district court arbitrarily disregarded undisputed testimony that he told his trial counsel he wanted to appeal.

ISSUE: Appearance of judicial bias and prejudice

HELD: Court reviews the district court's stated reasons for denying the motion and notes the failure to consider the potentially corroborating testimony of Smith's grandmother. In two stated reasons—Smith's taste in music and Smith's tattoos/brands—the district court improperly considered information irrelevant to the credibility determination and applied a negative stereotype. Also, district court inappropriately conducted independent factual research through a post-hearing sua sponte request to department of corrections for Smith's tattoo/brand information, and failed to provide parties reasonable opportunity to respond before denying Smith's motion. Reversed and remanded for a new Ortiz hearing before a different judge to consider only evidence in the record that is relevant to Smith's credibility.

FACTS: An employee received workers compensation benefits for years of repetitive use injuries. The claims spanned two employers and several insurance companies. OneBeacon American Insurance Company paid approximately $152,000 to the employee after March 1, 2005. After an appeal, the award was remanded back to the Workers Compensation Board of Appeals for further factual findings. The board awarded a maximum disability benefit of $200,000, total, for two different injuries but did not address which insurance company was responsible for paying which injury. OneBeacon informed Karns, the Director of Workers Compensation, that it was not responsible for covering any preliminary medical benefits. OneBeacon identified the Workers Compensation Fund as the likely source for reimbursement, a position echoed by Travelers. The Fund believed that Travelers was the source of repayment to OneBeacon. Karns considered the parties' submissions and then issued an order which included findings of fact and conclusions of law. The order directed Travelers to reimburse OneBeacon. Travelers filed a petition for review with the district court, which ruled that Travelers had no statutory remedy in district court. Travelers appealed.

HELD: Contracts between parties in a fiduciary relationship are due close scrutiny. In this case, Steven held a position of confidence with his parents. Because of that fact, the district court failed to instruct the jury on the appropriate burden of proof on an undue influence claim. The evidence shows that the case was a close one, meaning that the absence of an instruction on how to allocate the burden of proof was not a harmless error. This is true even if the contracts are viewed as testamentary documents, as a rational fact-finder could have found the existence of suspicious circumstances. The claim of an inappropriate comment during closing argument is difficult to address because it was handled by an off-the-record bench conference. Because so much is unknown, the appellate court can’t find an abuse of discretion.

STATUTE: K.S.A. 2017 Supp. 60-460(a)
Baker objected, arguing she completed her 18-month probation, and thus her sentences on the forgery convictions, well before the State took action to revoke her probation. District court disagreed, reasoning a unitary probation period of 24 months applied to the case. Baker appealed.

ISSUE: Sentencing—probation in multiple cases

HELD: District court’s pronouncement was technically incomplete and should have included a probation period for each of the three convictions. Pertinent sentencing statutes are reviewed, finding K.S.A. 2017 Supp. 21-6819(b)(8) is susceptible to two conflicting readings. Concept of in pari materia interpretation underscores the reasonableness of applying rule of lenity to Baker’s advantage. When the district court revoked Baker’s probation and ordered her to prison, she had already completed her probation and satisfied the sentence on each of the forgery convictions. Only service of the sentence on the theft conviction could be required. District court’s revocation of Baker’s probations on the forgery convictions are reversed, and the resulting sentences of imprisonment for those convictions are vacated.

STATUTES: K.S.A. 2017 Supp. 21-6603(g), -6604(a)(3), -6608, -6608(c)(1)(B), -6608(c)(3), -6608(c)(4), -6608(c)(5), -6819, -6819(b)(8); K.S.A. 22-3202(a)

Appellate Practice Reminders From the Appellate Court Clerk’s Office

Show Cause! A Stop Sign or a Yield Sign?

Let’s try and clear up a misconception some attorneys have regarding show cause orders.

If the appellate courts have issued a show cause order, the time for you to file your brief continues to run. Take, for instance, the following language: "Appellant is ordered to show cause, by written response to be served and filed within 30 days of the date of this Order, why this appeal should not be dismissed for lack of jurisdiction." Nothing about the show cause order stops the briefing schedule. We sometimes get attorneys who assume that everything shuts down on briefing until the show cause order is resolved. That’s a big No, Negatory, No Way, Nope, Not Gonna Happen. If you are coming up on a deadline, you still need to file a motion for additional time, and please file the motion before your time has expired.

Despite what some attorneys and pro se litigants believe, we are not cold and heartless in the clerk’s office or either appellate court. The courts understand that responding to the orders of the court takes time and the need to respond could certainly be a justification for an extension of time in the right situation. If you truly believe that resolving the show cause process will be so burdensome as to make briefing impossible, the proper action is to file a motion for stay. The court may very well say, "Granted, the appeal is stayed pending further order of this Court. The Appellant is to file on or before (date) a report on the status of the record on appeal."

So pay attention to the road signs, a show cause order is not a stop sign; it’s a yield while everything keeps moving.

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.

CRIMINAL LAW—CRIMINAL PROCEDURE
PROSECUTORS—STATUTES
STATE V. LACY
SEDGWICK DISTRICT COURT—REVERSED
AND REMANDED
NO. 117,884—AUGUST 24, 2018

FACTS: K.S.A. 2015 Supp. 21-5506(b)(2) and (b)(3) sets forth two forms of indecent liberties with a child - with the required criminal intent the offender either touches the victim or solicits the victim to touch another person. Prosecutor charged Lacy with the solicitation form of aggravated indecent liberties, but trial evidence and jury instructions involved only the touching form of that aggravated offense. Lacy appealed, claiming insufficient evidence supported his conviction on the charged offense.

ISSUE: Sufficiency of the evidence

HELD: State charged Lacy with the wrong crime, never asked for the charge to be amended, and obtained a conviction for the wrong charge. Facts in case supported only the touching form of aggravated indecent liberties, and jury was instructed about that form rather than the charged offense. Because the evidence did not support the elements of the crime charged and convicted, and there were no potential lesser-included offenses at issue, Lacy’s conviction must be reversed. As a teaching tool, Court identifies points when prosecutors and district court might have recognized and corrected the error in this case. District court’s judgment is reversed, and Lacy’s sentence is vacated.

STATUTES: K.S.A. 2015 Supp. 21-5506(a), -5506(b), -5506(b)(2), -5506(b)(3), -5506(b)(3)(B); K.S.A. 22-3201(e)
WHAT IS ABA FREE LEGAL ANSWERS?
ABA Free Legal Answers allows users to pose legal questions to be answered by volunteer attorneys:
- Users will need to meet income eligibility guidelines
- Questions must be regarding civil legal matters
- Answers will be provided by volunteer attorneys in the users’ respective states
- Links will be provided to lawyer referral and other legal services projects for those not eligible or who need more in-depth legal representation

ABA Free Legal Answers increases services to low-income populations:
- Allows users in rural areas to access legal resources from across the state
- Provision of brief advice allows legal services staff attorneys to focus on full representation
- Provision of brief advice can prevent larger legal crises from developing
- OnlineTNjustice.org—the Tennessee model for ABA Free Legal Answers—has, in its few years of service, received over 10,000 legal questions

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

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

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

QUESTIONS?
If your state is not already participating and you are interested in learning more, contact Tali Albukerk at 312.988.5704 or abafreelegalanswers@americanbar.org.
### Statement of Ownership, Management, and Circulation

1. **Publication Title**: The Journal of the Kansas Bar Association (All Periodicals Publications Except Requester Publications)

2. **Publication Number**: 1

3. **Filing Date**: 5/19/18

#### Statement of Ownership

**A. Publication Characteristics**

- **Publication Frequency**: Monthly; July/August and November/December combined
- **Owner**: Kansas Bar Association, 1200 SW Harrison St., Topeka, KS 66612
- **Managing Editor**: Patti Van Slyke
- **Editor**: Meg Wickham
- **Publisher**: Kansas Bar Association, 1200 SW Harrison St., Topeka, KS 66612

**B. Ownership and Management Information**

- **Publisher**: Kansas Bar Association, 1200 SW Harrison St., Topeka, KS 66612
- **Editor**: Patti Van Slyke, KBA, 1200 Harrison St., Topeka, KS 66612
- **Managing Editor**: Meg Wickham, KBA, 1200 Harrison St., Topeka, KS 66612

**C. Distribution**

- **Statement of Ownership, Management, and Circulation**

<table>
<thead>
<tr>
<th>Date Published</th>
<th>Average No. Copies</th>
<th>No. Copies of Single Issue Published Nearest to Filing Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2014</td>
<td>5,690</td>
<td>5,690</td>
</tr>
<tr>
<td>August 2014</td>
<td>5,600</td>
<td>5,600</td>
</tr>
<tr>
<td>November 2014</td>
<td>5,700</td>
<td>5,700</td>
</tr>
<tr>
<td>December 2014</td>
<td>5,677</td>
<td>5,677</td>
</tr>
</tbody>
</table>

#### Statement of Circulation

- **Each Issue During Average No. Copies Distribution**
- **By Mail**: 5,665, 5,600
- **Free or Nominal Rate Distribution Outside the Mail**: 25, 30

#### Publication Data

- **Publication Title**: The Journal of the Kansas Bar Association
- **Issue Date for Circulation Data Below**: 5/19/18
- **Tax Status**: Not claimed for federal income tax purposes

#### Instructions to Publishers

1. Complete and file one copy of this form with your postmaster annually on or before October 1.

2. Where the stockholder or security holder is a trustee in item 10 or 11, include the name, function, and nonprofit status of the organization and the exempt status for federal income tax purposes.

3. Be sure to furnish all circulation information called for in item 15. Free Non-Requester circulation must be shown in item 15a.

4. Item 15g. Copies not distributed, include (1) newsprint returns to the publisher, (2) returns from news agents, and (3) copies for office use, leftovers, spoiled, and all other copies not distributed.

5. If the publication had Periodicals authorization as a general publication, this Statement of Ownership, Management, and Circulation must be published in a nonprofit organization, give its name and address and complete item 12. In item 11, include all stocksholders, mortgagees, and other security holders owning or holding one (1) percent or more of the total amount of stock. If not owned by a corporation, give the names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. The publication is published by a nonprofit organization, give its name, function, and nonprofit status in item 5, if applicable.

6. Item 17. Report the date of the issue in which this Statement of Ownership will be published, if applicable.

7. Item 17 must be signed.

**Failure to file or publish a statement of ownership may lead to suspension of periodicals authorization.**
Classified Advertisements

Positions Available

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

Attorney Position Available
Arn, Mulsins, 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@arnmullsins.com).

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

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

Evans & Dixon, LLC seeks to hire an attorney with strong transactional expertise for our Overland Park office. We offer a rewarding work environment with a commitment to creating long-term relationships with our clients by providing excellent service.

Qualified candidates must have:
• A license to practice law in KS and MO
• Substantial experience in large commercial transactions
• Some established clients or other prospective business generation potential, an excellent professional reputation and desire to further the firm’s business development efforts.

Email cover letter and resume to lauf-vitate@evans-dixon.com

Overland Park Law Firm
Ferree, Bunn, Rundberg & Ridgway seeking attorney experienced in complex Estate Planning and Probate work. Must be licensed in Missouri and Kansas. If interested, please forward introductory letter and resume for consideration to pbunn@br2law.com

Overland Park/Corporate Woods Law Firm
Jones & McCoy, P.A. seeking experienced associate attorney with 3+ years of civil litigation experience in business, estates and trusts, family law, personal injury and other civil matters. Must have Kansas and Missouri licenses. Great opportunity for the right person to learn and grow their practice. Please send cover letter and resume to brant@jones-mccoy.com.

Part-Time Legal Assistant
A private law firm in Topeka has an immediate opening for a qualified Legal Assistant processing collections. Experience in general office administration required and legal office experience is preferred. Only applicants meeting specific criteria will be considered; please contact for duties and requirements. Please send resume and cover letter for consideration to the attn. of Alisia at info@probascoslaw.com or via fax (785) 233-2384.

Wichita Firm Seeks Associate Attorney
Morris, Laing, Evans, Brock & Kennedy, Chrd, is seeking an associate attorney for our expanding Oil and Gas practice in our Wichita office. 1-5 years of experience in traditional oil and gas matters is preferred. Litigation experience is a plus. Strong academic credentials, excellent verbal and written communication skills, and an ability to initiate and support business development efforts is required. To apply, please send a cover letter and resume to Sarah Briley (sbriley@morrislaing.com).

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

Attorney Services

Appeals

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

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

Estate & trust litigation
Available to assist you in probate and trust litigation in Kansas, Missouri and other states. www.nicholsjilka.com.

Florida legal needs
I'm here to help. Florida Bar board certified appellate lawyer and experienced trial lawyer. Contact tom@twylaw.com or visit www.TomAppeals.com. Also admitted to active practice in Kansas, 10th and 11th Circuit Courts of Appeal, and U.S. Supreme Court.

QDRO Drafting
I am a Kansas attorney and former pension plan administrator with years of experience in employee benefit law. My services are available to draft your QDROs or other retirement plan matters. Let me help you and your client through this technically difficult process. For more information call Curtis G. Barnhill at (785) 856-1628 or email cgb@barnhillatlaw.com.

Contract brief writing
Former federal law clerk and Court of Appeals staff attorney available to handle appeals and motions. Attorney has briefed numerous appeals in both the Kansas and federal appellate courts. Contact me if you need a quality brief. Michael Jilka, (316) 218-2999 or email mjilka@jilkalaw.com.

QDRO Drafting
I am a Kansas attorney and former pension plan administrator with years of experience in employee benefit law. My services are available to draft your QDROs or other retirement plan matters. Let me help you and your client through this technically difficult process. For more information call Curtis G. Barnhill at (785) 856-1628 or email cgb@barnhillatlaw.com.

Security Expert Witness
Board Certified Protection Professional and former Senior Police Commander providing forensic consulting to both plaintiff and defense counsel in all areas/venues of security negligence. A comprehensive CV, impeccable reputation and both criminal and civil experience equate to expert litigation support.
Veterans services. Do you want to better serve your veteran clients without going to the trouble of dealing with the VA? I am a VA-accredited attorney with extensive experience applying for various VA benefits, including Improved Pension. I regularly consult with attorneys (and their clients) about the various services attorneys can offer their clients to help qualify veterans and their families for various VA programs. As soon as a client is in position to qualify, I can further assist by handling the entire application to the VA for you. For more information about my various consultation and application services, please contact the Law Office of Scott W. Sexton P.A. at (785) 409-5228.

Office Space Available

2 Updated Office Spaces for Lease—601 N. Mur-Len Rd. Ste. 20, Olathe, KS 66062. Office 1) Large window with large ledge; Office 2) Storage closet and large picture window. *Coffee bar, waiting area and receptionist/paralegal area. *Fax, Wi-Fi and ground floor parking. Call Chris Fletcher: (913) 390-8555

Large office space now available at One Hallbrook Place in Leawood, KS. Two conference rooms, kitchen, high-speed internet, postage services, copier/fax all included. For more information or to schedule a viewing, contact Bryson Cloon at (913) 323-4500

Leawood Law Office. Looking for office sharing and/or work sharing arrangement, ideally with estate planning/probate attorney, although any civil practice is welcome. Conference room, phone system, internet, high-speed copier/printer, and lunchroom. Plenty of surface parking. In a great area in south Leawood—bright and modern space on second floor of hank building. Contact Paul Snyder (913) 685-3900 or psnyder@snyderlawfirmllc.com.

Office for Rent. 12’ x 15’ office space for rent at I-435 and Nall Ave., Overland Park, Kansas. Receptionist provided. Internet access and conference rooms are available. Rent $850 per month, with the possibility of trading rent for work on some cases. Possibility for referrals from three other attorneys in the suite. For more information, contact Samantha Arbegast at 913-652-9937 or sct@theronlawfirm.com

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

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

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

Other

Elegant hand-crafted cherry wood counselor's desk (29” high, 40.5” wide and 78” long) and a secretarial desk (29” high, 30” wide and 66” long”) from the law office of the late Clyde Hill (Speaker of the Kansas House of Representatives, 1965). One-of-a-kind pair; fine wood craftsmanship. Call 620-496-7356.

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

The following books from my library are available due to retirement.

- Kansas Reports Vol. 1-300 (Current)
- Kan. App. 2d Vol. 1-50 (Current)
- West Digest 2nd Vol. 1-36
- Handling Accident Cases, Averbach Vol. 1-7
- Kansas Judicial Counsel Probate Forms
- Trial Lawyer Series Depositions x2
- Trial Lawyers Series Premises Liability x2
- Trial Lawyers Series Damages

Am. Jur. 2nd Vol. 1-83 Complete (not current), Index
Vernons K.S.A. Forms
Rabkin & Johnson Current Legal Forms Vol. 1-10, Index
Gards Kansas Codes of Civil Procedures Vol. 1 & 2
Contact Richard G. Tucker, Parsons, KS 620-423-9693 for details
Need clients?
Need increased VISIBILITY?
Join
The Kansas Bar Association’s

Lawyer Referral Service

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

~ Joseph Seiwert, Snider & Seiwert LLC, Wichita

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

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