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JUSTICE FOR ALL

Kentucky Bar Association ★ 2015 Annual Convention

June 17-19, 2015
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The B&B – Bench & Bar (ISSN-1521-6497) is published bi-monthly by the Kentucky Bar Association, 514 West Main Street, Frankfort, KY 40601-1812. Periodicals Postage paid at Frankfort, KY and additional mailing offices.

All manuscripts for publication should be sent to the Managing Editor. Permission is granted for reproduction with credit. Publication of any article or statement is not to be deemed an endorsement of the views expressed therein by the Kentucky Bar Association.

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What has happened to trial by jury? The right to a trial by our peers goes back to the Magna Carta. When I started practice as a young lawyer it was not unusual for me to be engaged in three jury trials in one week. This could include a trial in circuit court, one in Frankfort Police Court and one in county court. Now I hear lawyers say they are lucky if they try one jury trial per year.

What caused the decline in jury trials? In the criminal area the establishment of sentencing guidelines in federal criminal actions has contributed to citizens accused pleading to charges offered by the prosecutor rather than subjecting themselves to the possibility of lengthy sentences if convicted. Prior to the sentencing guidelines with draconian sentences, citizens accused were more inclined to take their chances with a jury. States, including Kentucky, have enacted criminal laws which have more severe penalties with less opportunity for parole. This has led to more guilty pleas in cases that formerly would go to trial by jury. The citizen accused often feels that he or she just can’t take a chance of conviction and lengthy sentences when offered a lesser sentence by a plea of guilty. This happens in some cases where the citizen accused believes he or she is not guilty or believes the prosecution cannot prove the case.

In civil cases there are several things that have contributed to the decline of jury trials. One, the cost of litigation has grown over the years. Excessive discovery has contributed to the cost. Two, courts are demanding mediation in most cases. Settlement is strongly recommended. Settlement is generally a good thing unless the client feels pressured to give up a right to a jury trial.

Is this decline of jury trials a bad thing? It is if citizens accused of a crime are so afraid of the existing system that they will accept a plea to a lesser charge rather than going to trial when they believe they are not guilty. In the civil trial setting perhaps a rethinking of the discovery process will help bring down the costs of litigation and encourage more trials.

The legal community must be vigilant in protecting the rights of the public to a trial by jury.

**TERMS EXPIRE ON THE KBA BOARD OF GOVERNORS**

On June 30 of each year, terms expire for seven (7) of the fourteen (14) Bar Governors on the KBA Board of Governors. SCR 3.080 provides that notice of the expiration of the terms of the Bar Governors shall be carried in the Bench & Bar. SCR 3.080 also provides that a Board member may serve three consecutive two-year terms. Requirements for being nominated to run for the Board of Governors are contained in Section 4 of the KBA By-Laws and the requirements include filing a written petition signed by not less than twenty (20) KBA members in good standing who are residents of the candidate’s Supreme Court District. Board policy provides that “No member of the Board of Governors or Inquiry Commission, nor their respective firms, shall represent an attorney in a disciplinary matter.” In addition any member of the Bar who is considering seeking or plans to seek election to the Board of Governors or to a position as an Officer of the KBA will, if elected, be required to sign a limited waiver of confidentiality regarding any private discipline he or she may have received. Any such petition must be received by the KBA Executive Director at the Kentucky Bar Center in Frankfort prior to close of business on the last business day in October.

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By Kentucky Lawyers. For Kentucky Lawyers.
The Kentucky Bar Association invites its members to the 2015 Annual Convention scheduled for Wednesday, June 17 through Friday, June 19, at the Lexington Convention Center in downtown Lexington. Convention brochures were included in the March issue of the Bench & Bar. Online registration is now available at http://kybar.site-ym.com/event/2015annualconvention.

Under our convention theme of “Justice for All: Securing Access in a Diverse Society,” this year’s event will offer more than 60 top-notch CLE programs and provide up to 19.0 CLE credits, including 8.0 in ethics. Bryan Stevenson, founder and executive director of the non-profit Equal Justice Initiative (EJI) in Montgomery, Ala., will serve as featured speaker on opening day of convention. Stevenson is a widely acclaimed public interest lawyer who has dedicated his career to helping the poor, the incarcerated and the condemned. Under his leadership, EJI has won major legal challenges eliminating excessive and unfair sentencing, exonerating innocent death row prisoners, confronting abuse of the incarcerated and the mentally ill and aiding children prosecuted as adults.

Justice Alan C. Page, Minnesota’s first African-American Supreme Court Justice, will serve as the featured speaker on Thursday, June 18. Prior to his election to the court in 1992, Justice Page served as an assistant attorney general and a special assistant attorney general. Widely renowned for his former career as a professional football player, he is best known for his defensive efforts with the Minnesota Vikings in the 1970s and was elected to the Pro Football Hall of Fame in 1988.

Travis Tygart, with the United States Anti-Doping Agency (USADA), will serve as featured speaker on the closing day of the 2015 annual convention. Known as the “Eliot Ness of sports,” Tygart has been involved, in some way, in nearly every major doping investigation during the past decade. Marion Jones, Barry Bonds, Floyd Landis, Jason Giambi and Lance Armstrong were all exemplars of sporting excellence until investigations by Tygart and the USADA exposed their excellence was obtained through cheating. In addition to our feature speakers, we also have outstanding “Spotlight” speakers, such as Justice James Kitchens, Talmage Boston, J. Cheney Mason, Professor George McGee, Professor Gregory Gordon and Mark Curriden. For details on their programs, visit: c.ymcdn.com/sites/kybar.site-ym.com/resource/resmgr/2015_Convention/PreCon_Section_web.pdf or see pages 9-18 of your preconvention brochure in the March issue of the Bench & Bar.

The convention offers many activities for members to attend throughout the three day event. The KBA looks forward to welcoming its members to Lexington! Please make plans now to attend.
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TUESDAY, JUNE 16

MEMORIAL SERVICE
3:30 p.m. – 4:30 p.m.
First Presbyterian Church
174 North Mill, Lexington

The Kentucky Bar Association will celebrate the lives and legacies of those KBA members who have passed since June 1, 2014, during its 24th Annual Memorial Service at the First Presbyterian Church, 174 North Mill Street in Lexington.

THURSDAY, JUNE 18

YOUNG LAWYERS DIVISION LUNCHEON
12:00 p.m. – 1:30 p.m.,
HYATT REGENCY HOTEL, $20 per person

The Young Lawyers Division (YLD) wishes to extend an invitation to all KBA members and guests to attend its annual luncheon. The Division will honor recipients of the 2015 Outstanding Young Lawyer Award, Service to Young Lawyers Award and Young Lawyer Service to Community Award. Immediately following the luncheon program, all YLD members are invited to remain for the annual meeting of the Young Lawyers Division.

YOUNG LAWYERS DIVISION RECEPTION
5:00 p.m. – 6:30 p.m.
Belle’s Cocktail House
152 Market Street
Complimentary with Registration
Pre-Registration Required

Enjoy complimentary beverages and hors d’oeuvres with your friends and colleagues at Belle’s Cocktail House, just a short walk from the convention center. This event is sponsored by the Young Lawyers Division, with generous support from Lawyers Mutual Insurance of Kentucky, and is open to all YLD members and friends.

KBA ANNUAL BANQUET
6:30 p.m.
BLUEGRASS BALLROOM
LEXINGTON CONVENTION CENTER
$60 per person

Enjoy a special evening as we celebrate the investiture of the KBA’s new Officers and Bar Governors and present the 2015 Distinguished Judge, Distinguished Lawyer and Chief Justice’s Special Service Award.

Sony Recording Artists, The Acoustikats, founded in 1993 by Dr. Jefferson Johnson as a subsection of the University of Kentucky Men’s Chorus, the premier all-male a cappella ensemble in the state of Kentucky, will provide entertainment during dinner and after the presentations for our listening and dancing pleasure. This group of 12 young men has been featured on national television as a part of NBC’s The Sing-Off, an a cappella competition, and has performed in countless venues across the United States from the shores of Hawaii to “Elvis Week” in Memphis. Check out these ‘Kats on Facebook, Twitter, and Instagram to follow them on their musical journey!
Each year, the Kentucky Bar Association’s Annual Convention Planning Committee identifies a public service project aimed at improving the lives of Kentuckians, with an emphasis often placed on those living within the host city. The committee has selected Fostering Goodwill, a nonprofit organization that assists older foster youth in the child welfare system successfully transition to adulthood. The organization has pledged its commitment to fostering a sense of empowerment and support to individuals who have aged out of the child welfare system in the community.

These youth need specific resources and support that can increase their chances of being independent and productive members of society. Many of the resources that aging out youth need are not available to them. Fostering Goodwill challenges individuals and businesses to help these foster youth reach their full potential and assist them in their successful transition to adulthood.

Fostering Goodwill sponsors several events throughout the year for the youth: Christmas Wishes in December where the youth are served a meal and given gift cards and door prizes – 145 youth plus their children were served at the 2014 event at Gattitown – a record number! In June, an outdoor graduation celebration is held to honor the youth who have graduated from high school, technical school and college.

In addition, Fostering Goodwill assists with repaying college debt so that youth can return to college by applying for the Second Chance Scholarship. Emergency loans are also provided for expenses such as utilities and textbooks. All of these services help them maintain self-sufficiency and decrease the likelihood of the youth becoming homeless. Fostering Goodwill relies solely on donations and volunteers for funding and support – there are no paid staff or administrative expenses. We appreciate being selected as the Public Service Project for the 2015 KBA Annual Convention.

SUPPORT FOSTERING GOODWILL BY MAKING A MONETARY DONATION ON YOUR CONVENTION REGISTRATION FORM. Volunteers with this effort will be on-hand during the convention in the Rotunda of the Lexington Convention Center to share information and build awareness among KBA members for this organization.
Every week seems to bring news about data breaches. It was not until the Target data breach in 2013 that Kentucky lawmakers decided to establish a data breach notification law, KRS 365.732, bringing Kentucky in line with 46 other states and the District of Columbia. Pursuant to the new law, Kentucky attorneys have obligations with respect to their clients’ data.

Unlike larger firms and corporations, small firms and solo practitioners do not have the resources to dedicate to Information Security. Even if small firms and solos had millions of dollars to dedicate to the task of securing their personal, and more importantly their client data, it would still not be enough to thwart a breach from a determined and well-funded hacker. If the White House, security firms like EMC® and insurance firms like Anthem® can be hacked, so can a small firm.

The ABA expects all lawyers to keep aware of the changes in technology; specifically to know its benefits and dangers. Comment 8® to Model Rule 1.1 tells us to “keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.” Comment 18® to Model Rule 1.6 provides us with the factors we need to consider regarding how reasonable are attorneys’ efforts at preserving confidentiality:

- the sensitivity of the information;
- the likelihood of disclosure if additional safeguards are not employed;
- the cost of employing additional safeguards;
- the difficulty of implementing the safeguards; and
- the extent to which the safeguards adversely affect the lawyer’s ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use).

Your clients depend on you to protect their information. In addition to your duty to provide client confidentiality, the client information in your files could contain data that would trigger additional data protection requirements. HIPAA® and HITECH® may be required for storage of client health information. If you hold client credit card information, you need to be aware of the rules required by PCI DSS®. You also need to protect your client’s data so that you can perform the services for which your clients are paying.

Changes to the practice of law are bringing opportunities as well as challenges.

Computers have drastically changed the way attorneys practice law. Twenty-five years ago, we relied on banker’s boxes and filing cabinets to store client data. We communicated with clients primarily by letter or phone. We did our work in an office, at home, and in the courts. We kept our client data secure by locking the doors.

Now our client data is stored on computers, and increasingly those computers are no longer in our offices. Clients send us emails or text messages on phones they carry in their pockets and expect us to respond in minutes. We are expected to be able to work anywhere and at any time. Even the courts are asking us to file our cases electronically rather than in person. Passwords have replaced keys as the primary means of protecting our client data. The weaker the password, the less security you provide to your clients.

Technology has long been called the great equalizer. Lawyers no longer need libraries full of law books for research when they can use on-line research sources that provide more current case law as well as tools to compare and contrast those cases faster. Computers allow us to be more productive and to lower the cost of practicing law. With data stored on the cloud and accessible and editable by smart phones and tablets, a lawyer can practice anywhere there is a cell phone or WiFi connection. Technology makes it easy for attorneys to be productive wherever they are and with minimal support. Even large law firms are reducing their reliance on legal secretaries as younger lawyers write their own correspondence and briefs.®
By outsourcing the IT environments and support costs, a small firm can trade the costly capital expenditures for hardware and for software licenses with the ability to expense the remotely hosted solutions. The small firm can also eliminate the expenses related to ensuring it has access to IT staff with expertise in the hardware, network, operating systems, and business systems needed to practice law today.

WHAT SHOULD YOU DO TO PROTECT YOURSELF AND YOUR CLIENT’S DATA?

Knowing that it is impossible to prevent a dedicated hacker from accessing your system may feel very uncomfortable to an attorney, both professionally and personally. We like to have control, and we take our responsibilities seriously. So what should an attorney do to provide business-reasonable protection of their information systems and their clients’ data?

VET YOUR TECHNOLOGY PROVIDERS AND INFORM YOUR CLIENTS.

Because most attorneys are either not IT experts or because they realize that outsourcing their IT services makes great business sense, more attorneys are moving client data to the cloud. Doing this can greatly improve your information security risks, but you need to remember that anytime an attorney uses a third party on behalf of a client, Comment 3 to Model Rule 5.311 must be considered: “A lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer’s professional obligations… the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality.”

The general rule in information security is to use the paid version of Internet services rather than the free versions. The free versions tend to have fewer, if any, security features. In the Information Security realm, we say that if you are not paying for the service, you are part of the revenue stream. This can mean that you receive advertisements based on your activity or location or even the content of your email.12 Some providers make all content made with their free versions available to anyone on the Intranet and only allow secure content with a paid version.13

A best practice for attorneys who will store client data in the cloud is to ensure that each client is aware and consents to the storage of his or her data on the cloud. Several state bar associations14 are moving so far as to require attorneys to document their use of cloud services for employee data in engagement letters. Some prohibit client data from being stored in or transmitted by the means of the Internet without client consent. In today’s world, especially with the increase of electronic filing, this may be impossible. My suggestion is that attorneys include a clause in their engagement letters to let clients know how they will store and transmit client data, and that they will use reasonable security procedures to protect their data. If the client’s data is on a device that connects to the Internet, that data can be at risk.

STRONG PASSWORDS ARE THE MINIMUM BUSINESS-REASONABLE PROTECTION

User authentication is the primary way a user can secure his or her data and systems. There is a spectrum that extends from no authentication, e.g., a smartphone that can be operated by simply turning it on, to a multiple factor authentication system, e.g., a data center that requires a coded badge, a password, and a palm scan to enter a data center. The authentication factors are:

- something you know (e.g., a password, an answer to a secret question);
- something you have (e.g., a unique certificate bound to your device, a token);
- something you are (e.g., a fingerprint, a retinal scan).

Simply using two passwords or using both a certificate and a token is still considered weak authentication. A mix of at least two of these factors is necessary.

The basic level of business-reasonable authentication is the use of strong passwords. The characteristics of strong passwords are:

- they have a minimum length of 8 characters (at least 12 is preferable);
- they use mixed case letters, numbers, and special characters. At a minimum, there should be at least one upper, one lower, and one number in the password;
- they are not words found in a dictionary;
- they are not based on words that people could guess from your life (e.g., the names or birthdates of a spouse, child, pet, bar number);
- they do not follow a regular cycle. (January 2015, February 2015, …);
- they are changed regularly (at least annually).

There are several sites on the Internet that can help determine the strength of a potential password.15 The more resources the hacker has, the faster he or she can crack your password. No password is 100 percent secure. There are also several sites16 that track the previous year’s most used passwords. These lists are based on hacked passwords and white-hat hacking of password systems. Leaving your systems and devices without a password is like leaving the front door of your house unlocked.

I once sat down to help someone with a computer problem and immediately logged into his account without asking for the user’s ID or password. He asked me how I knew his ID and passwords. I explained that IDs followed a standard naming convention based on his name. I reminded him I had helped him two months before and could have remembered his password, but I knew that his passwords rotated between his son’s name and his daughter’s name followed by the month. He was amazed that I knew this. I then pointed to a small piece of paper attached to his monitor that listed his passwords. No matter how strong your password is, it must be kept secret. Change your password if you think others know it.

Another security best practice is to use different passwords for your critical sites. With the number of sites we use on a daily basis, it would be foolish to suggest that every site have a unique password. Password managers17 can make this possible. At a minimum, one should use a different password for personal and business email accounts, for banking, and for credit card sites.

When you stop using a site, shut down your account. Do not leave a dormant MySpace account or a Twitter because it is not fun anymore. People forget accounts on old systems. Many people do not realize that they may be at risk when those systems are breached. There are many stories about how a hacked dormant account has been used to hack into active email and business accounts.

PROTECT YOUR COMPUTER AND SMARTPHONE

For device security, the basic business-reasonable security requirement is to ensure that before the device can be used, a password is needed. Some smartphones are now using fingerprint scanning or facial recognition to unlock a device. It is still important to use a strong password, even if a device offers these capabilities. A four-digit Personal Identification Number can be hacked in less than two minutes with standard tools. Fingerprints can be lifted and used to open the device. Ensure that the device has an inactivity time-out that will lock the device and require the password be entered to make the device active again.

Encryption is another key security measure for making device and storage media secure. Without encryption, the device or media can usually be connected to another system and the contents read just like a
USB drive. Most of the privacy regulations exclude encrypted data from being subject to breach notification requirements. The loss or theft of a device is consistently one of the root causes of data breaches. If the device is both password protected and encrypted, the data on the device is essentially secure.

**KNOWLEDGE IS KEY FOR MAINTAINING SECURITY.**

Although it might be tempting to believe that attorneys are less likely to fall for Internet scams, it takes only a casual search on the Internet to find that this is not the case. The root causes are lack of technological knowledge and Internet scams. It is valuable to share a few examples of instances in which attorneys have experienced such problems in these areas.

An Iowa attorney fell for a “Nigerian Letter Scam” brought in by a client.\(^8\) The attorney would receive 10 percent of the client’s $18.8M “inheritance” if he could raise the “inheritance tax.” The attorney raised the funds by soliciting clients. After wiring over $175K, the scammers requested and received an additional $35K. Disciplinary action was taken and the lawyer suspended for failure to make a competent analysis of the Nigerian legal matter.

The New York Times published an article in 2012 that documented the easy access of hacking into videoconference rooms, including those at law firms.\(^9\) This was possible because lawyers have a tendency to choose technology settings to make the use of technology easier and automatic.

A law firm in North Carolina fell victim to a phishing email, which let the hackers install a keylogger. A keylogger is a tool that allows a hacker to covertly record the keys struck by a user, thereby learning the user’s account numbers, passwords and other valuable information. Using the information from the keylogger, the hackers were able to wire $336K to Moscow from the law firm’s bank account. The bank initially refunded the money to the firm, but later filed a suit to recover the refund. The bank argued that the firm should have opted for a secure wire option the bank had available for wire transfers.\(^10\)

**PARTING NUGGETS OF WISDOM TO REDUCE YOUR SUSCEPTIBILITY TO INTERNET SCAMS.**

If an email sounds like it is too good to be true, it probably is. Phishing attacks are emails directed to get you to click on links that will infect your computer. Phishing attacks usually target attorneys and those that promise a large cut for simply clicking on an “X” or a close button. Hackers can set up the window to download the malicious code when the “X” or close button is selected. A window can be closed using Ctrl+F4 in Windows or Command+w on a Mac.

When using secret questions for password recovery, do not use easy to guess answers. By adding an important number to all answers, a user makes the passwords more secure. (Example: Q: favorite color? A: blue1967; Q: mother’s maiden name A: smith1967).

**SUMMARY**

To adequately protect client data, it is not necessary to be the most Internet-secure attorney in Kentucky. Few clients will understand the technological controls and security vetting practices involved with best-in-class Internet security. Even fewer clients will pay the additional fees needed to run your firm with this level of security. Generally, an attorney should focus on business-reasonable security protections. If there is a specific reason for enhancing security, the client should be advised of the risks as well as the additional costs to secure the content.

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9. Payment Card Industry Data Security Standard (PCI DSS) is an industry standard for protecting credit card information and reducing credit card fraud.
10. Jennifer Smith and Joe Palazzolo, Legal Secretary, A Divin, Job, Wall Street Journal (June 27, 2013), www.wsj.com/articles/SB10001424127887323689
104578569920585692346.
12. An example of how a free email provider can use your search history and email content to deliver advertisements in a fully automated manner is documented in a Frequently Asked Question topic on Ads in Gmail, support.google.com/mail/answer/6603?hl=en (last followed Feb. 15, 2015).
13. Prezi is a software solution that allows people to create visually appealing presentations. Their Security FAQ clearly documents that only subscribers have the ability to create private presentations that cannot be accidentally viewed by others. See prezi.com/support/article/account/security-faq/?lang=en (last followed Feb. 15, 2015).
15. howtorecovermypassword.net/ provides a quick evaluation of password strength.
16. SplashData is one of these sites. splashdata.com/press/worst-passwords-of-2014.htm.
17. For a list of popular password managers, see Alan Henry, Five Best Password Managers, Lifehacker, (Jan. 11, 2015), lifehacker.com/5529133/five-best-password-managers.
The ever-increasing and alarming number of large companies that have been the recent targets of cyber security attacks, despite their robust security measures, is a wake-up call to every business that stores data electronically. This trend will continue as the sophistication of cyber criminals outpaces modern technological advances. It is not if, but when, the next large data breach will occur. No industry is immune and certain industries, such as healthcare, are under heightened alert for potential attacks. The theft of confidential information of individuals and the disclosure of private information about companies is a frightening prospect for all lawyers, whose job it is to protect clients’ confidential information. Further, the financial costs of cyber attacks to companies can be staggering. The Ponemon Institute’s 2014 “Cost of Data Breach Study: Global Analysis” estimates that the average cost of a data breach for a U.S. company is $5.85 million.

Yet, despite these very public cyber security incidents and data breaches, many companies, including law firms, are still not taking adequate steps to protect their own data or the confidential information of their clients. This article outlines some of the key risks to law firms’ data, the obligations lawyers have to protect data, and actions that can and should be considered by all law firms as they take steps to comply with their ethical and other obligations with respect to their clients’ information.

**DATA BREACH RISKS FOR LAW FIRMS**

While all entities have some level of risk of cyber attack, law firms are particularly inviting targets for cyber criminals because they maintain a wide array of confidential and sensitive data, both about individuals and large companies. In addition to being targets of cyber attacks, law firms are also subject to the more commonly occurring data breaches that result from loss or theft of laptops, desktops, smart phones, thumb drives, and other devices that carry electronic data. Misconduct or negligent behavior by employees remains a primary risk within a law firm.

With the advent and increased use of cloud computing and other emerging technologies, law firms that utilize cloud services and store their clients’ data in cloud-based or other solutions owned by third parties should carefully consider the risks and benefits of doing so and take steps to ensure that cloud and other third party providers adequately secure their data. Law firms should conduct due diligence into cloud and other third party data storage providers and have all required written agreements in place before moving any of their data. A data breach caused by a third party provider could be disastrous to a law firm from both a client relations and financial standpoint.

Data breaches may occur as a result of many system and user weaknesses, including through the improper disposal of electronic devices (including even copy machines), as well as an old-fashioned, low-tech data breach as a result of loss, theft, or improper disposal of paper documents containing confidential information.

**THE DUTY TO PROTECT CLIENT INFORMATION IS MULTI-LAYERED**

**Current Regulatory Requirements**

Lawyers are subject to a variety of federal, state, and international regulatory and professional conduct requirements that mandate how lawyers protect client information. Law firms with either lawyers or clients, or both, operating across multiple states or internationally, must contend with the administrative challenges of complying with a multitude of state or international privacy and data security requirements.

At this time, no general federal breach notification law exists. Recently, however, the Obama Administration proposed the Personal Data Notification & Protection Act, which would serve to create more uniform national privacy and security standards, including breach notification requirements, and attempt to unify the patchwork of state laws that currently exists. Forty-seven states and the District of Columbia have enacted data breach laws impacting businesses, including law firms, within each state. California, in particular, has been seen as on the leading edge of enacting privacy and data security laws, many of which reach well beyond the borders of California. Kentucky was the most recent state to enact a state data breach law, which took effect in July 2014. Kentucky’s breach notification law requires organizations that are not subject to various other federal privacy laws, like HIPAA or the Gramm-Leach-Bliley Act, to disclose a breach of any Kentucky resident’s unencrypted personally identifiable information to the individual if such breach could reasonably cause theft or fraud against the individual.

At a federal level, many law firms are subject to the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended by the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”) and the Omnibus Final Rule ("HIPAA"). Lawyers and law firms that use, disclose, maintain or otherwise access protected health information (“PHI”) to perform legal services on behalf of their clients are now directly regulated as “business associates.” The HIPAA Security Rule sets out specific physical, administrative, and technical safeguards with which lawyers and law firms must comply. In the event that a law firm suffers a data breach involving unsecured PHI, it could be investigated by the Office for Civil Rights, civil and/or
criminal fines could be imposed, and costs associated with required breach notification and mitigation procedures could be incurred, including potential contractual liability to the client whose data was compromised. Additionally, law firms that accept credit card payments may be subject to the financial privacy and data security requirements under the Payment Card Industry Data Security Standards (known as “PCI DSS”), which were established by the major credit card companies and govern the collection, storage, and transmission of credit card data.

Finally, law firms and their clients may be subject to the various international privacy and data security requirements. Many countries outside the United States have taken a more extensive approach to the right to privacy. The European Union, for example, has actively focused on privacy and data security across the EU, including its expansion of EU citizen’s privacy rights through the General Data Protection Regulation’s inclusion of the “right to be forgotten.” Lawyers or clients operating in Canada need to consider Canada’s Personal Information Protection and Electronic Documents Act (“PIPEDA”), which establishes privacy and data security requirements for private sector businesses; in addition, various provincial statutes have enacted their own privacy and data security requirements. As firms and their clients expand internationally, the privacy and data security requirements also greatly expand.

**ETHICAL OBLIGATIONS TO PROTECT CLIENT DATA**

In addition to the more generally applicable state and federal privacy regulations, the ethical issues associated with the security of clients’ data, both internally and when stored in the cloud, have been the subject of concern and debate by the legal community for several years. In a December 2010 memorandum from the ABA Standing Committee on Client Protection to the ABA Commission on the Implications of New Technologies, the Committee members commented on the Working Group’s September 2010 memorandum, saying that “extraordinary diligence in protecting client information” is necessary:

While there is inherent risk in any form of electronic records storage, whether it is in the “cloud” or lawyer controlled, lawyers who choose to take advantage of these technologies should exercise extraordinary diligence in protecting client information. The Committee believes that the standard should be in line with a best practices standard, and a failure to adhere to that standard that results in the exposure of confidential client information should carry disciplinary consequences.

Despite the Committee’s desire to introduce heightened standards, the American Bar Association has taken a more moderate approach. Currently, the Model Rules of Professional Conduct state that a lawyer must implement “reasonable efforts” to protect a client’s information and comments to Model Rule 1.6 also state that the duty to prevent unauthorized disclosure does not require “special security measures.” However, the comments also explicitly provide that a client may require the lawyer to implement special security measures beyond the requirements of the Model Rules, and that the “reasonable efforts” standard is evaluated in light of factors including the “sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement.”

Kentucky’s Bar has also provided ethical guidance on the use of cloud-based services. Similar to the commentary to the Model Rules, the KBA Ethics Opinion E-437 states that use of cloud-based services by lawyers is acceptable, but lawyers who do so must use “reasonable care” to ensure confidentiality, and to ensure that client property is safeguarded. As part of this obligation, lawyers are required to “act consistent with [their] duty of competence in selecting and monitoring the providers of cloud-based services,” and law firm management must use “reasonable efforts” to ensure any use of cloud-based services is consistent with the ethical obligations.

The KBA Ethics Opinion also requires lawyers to “consult with the client about the use of the cloud if the matter is sufficiently sensitive such that the duty to ‘reasonably consult with the client about the means by which the client’s objectives are to be accomplished’ is implicated.”
Again, ethical obligations of law firms operating across multiple states may vary and must be reviewed and policies and procedures developed in accordance with the various ethical and regulatory requirements.

**STEPS TO PROTECT LAW FIRM DATA MUST BE SIMILARLY MULTI-LAYERED.**

The threats to confidential and sensitive information are numerous, and lawyers’ obligations to their clients are significant. Lawyers must develop a proactive and vigilant approach to securing the information entrusted to them. There are a number of steps that lawyers can take to protect their data:

1. **Evaluate Cyber Security Budget and IT Staff Resources**

   Robust cyber security efforts begin with laying the necessary groundwork. Without proper allocation of resources, the ability to take the steps necessary to protect data will be continually hampered. Without proper IT staff – whether hired internally or engaged as a consultant or independent contractor – lawyers are unlikely to have the technological knowledge to implement the proper protections or evaluate the choice of cloud providers or other necessary security vendors. If the budget and staff resources are properly allocated up front, law firms are much more likely to be proactive in developing and keeping current cybersecurity policies and procedures.

2. **Conduct a Security Risk Analysis**

   Conducting a security risk analysis is a necessity in today’s cyber security environment. Such an analysis will provide the law firm management – and the IT staff – with a comprehensive review of the firm’s IT systems and information that it can use to improve upon any identified security risk areas or vulnerabilities. Risk analyses should be conducted regularly and any time a major change occurs affecting the lawyer’s or law firm’s administrative, physical, or technical security measures.

3. **Encrypt, Encrypt, Encrypt**

   Encryption is the conversion of data by way of a cryptographic algorithm into a form, called a ciphertext, which is indecipherable for unauthorized individuals. Only an authorize party with a “key” can convert the message back into a decipherable message. Many federal and state laws that regulate the protection of data, including HIPAA and Kentucky’s state breach notification law, include safe harbors for encrypted data. The National Institute of Standards and Technology (“NIST”) has multiple published white papers on current accepted encryption standards and the costs of encryption technology have decreased significantly over the past several years. As such, encryption is increasingly being considered a reasonable security measure for industries that use or store sensitive consumer information. In fact, in the wake of multiple recent large breaches in the health care sector, federal lawmakers are considering greater encryption requirements under HIPAA.

   In order to protect confidential information, and to take advantage of available data breach safe harbors, law firms and lawyers should consider encryption of all mobile devices including laptops, smart phones, and thumb drives (if thumb drives are permitted under your firm’s security policies). In the nearly inevitable event that one of these devices is lost or stolen, the fact that the device was encrypted should serve to protect the confidential data contained on the device. Further, if the device is encrypted, the law firm will most likely avoid the difficult position of potentially having to provide notice of a data breach to the affected individuals, clients, the state Attorney General, the Office for Civil Rights, the media, or other parties, depending upon the nature and scope of data contained on the lost or stolen device.

4. **Scrutinize use of Cloud-Based Programs and Third-Party Vendors**

   There are a multitude of cloud-based apps and services that help lawyers and clients communicate with each other more easily, make information more accessible to both lawyers and their clients, help lawyers be more efficient, and even help lawyers and law firms better secure their data. However, there are a number of applications (or “apps”) that, while acceptable for personal use, do not pass muster for use in the legal arena. The challenge for many lawyers and law firms is objectively evaluating an app that, while potentially very useful and convenient, simply does not meet the security requirements necessary for use with confidential data.

   Law firms should designate an individual or committee with the responsibility to manage third-party vendor contracts, including Business Associate Agreements required under HIPAA, and other cloud-based vendors. All firm staff and lawyers should be trained to consult with that individual or committee before entering into an agreement or taking on an engagement that may require increased data security.

5. **Implement and Update Policies and Procedures, including a Data Breach response and Disaster Recovery Plan**

   Policies and procedures for a law firm need to address: (1) physical security issues, such as properly locked doors or file cabinets, protection of physical files, and proper disposal of confidential information; (2) administrative security issues, such as risk analyses, disaster recovery plans, employee access termination procedures, and other procedural, administrative actions necessary to implement and maintain security measures; and (3) technical security issues, such as use of passwords, access controls, encryption, and audit controls.

   Basic policies about passwords and password management, proper use of mobile devices, use of VPN encryption for public networks, and other such policies can often be enforced through software deployments by IT staff and are critical protections for sensitive data. Other simple steps, such as preventing physical access to a law firm by non-personnel through properly locked doors and cabinets, require training of lawyers and law firm staff.

   In addition, law firms should proactively develop a breach response plan with individual(s) responsible for coordinating analysis of any potential unauthorized access, use, or disclosure of sensitive information, and a disaster recovery plan that will allow for a client’s data to be preserved and accessed in the event of a disaster.
6. Consider use of a third-party nationally-certified data center

In some cases, the use of a nationally-certified data center for storage of data is an option to be considered, particularly for a small firm without an IT staff or a firm located entirely in one city. A nationally-certified data center has the advantage of having technological expertise to design and maintain data storage in accordance with the best cybersecurity practices. Furthermore, certified data centers are built in such a way as to protect data during a natural disaster, such as a tornado or flood. However, using a data center means less control over a lawyer’s or law firm’s data and the potential for data to be inaccessible during service outages. The terms of the contract with the data center must be thorough, and must prevent any situation in which the data could be held “hostage” or released to any third-party without consent, such as under a subpoena issued on the data center.17

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7. Train all lawyers and law firm personnel

Perhaps most importantly, law firms should implement a training program for lawyers and for all staff who have access to information that is subject to heightened security obligations. Lawyers and law firm staff must understand their ethical and other compliance obligations. Furthermore, they must understand the policies and procedures of the firm itself, what actions must be taken in the event of a potential breach, and who to contact to report actual or potential unauthorized use or disclosure of protected information.

Most lawyers and law firms rely on a multitude of devices, technologies, and apps to stay connected to, and to provide quality and efficient services to, their clients. However, lawyers’ confidentiality and data security obligations must remain a top priority for law firms. As the technologies continue to expand and change, lawyers and law firms must continue to adapt and update policies and procedures. While no industry is immune from a cyber threat, law firms can take steps to reduce the threat to their clients’, and their own, confidential information.

7 On March 18, 2015, the Senate Intelligence Committee also approved the Cybersecurity Information Sharing Act of 2015, which encourages companies to voluntarily share information about cyber-threats and authorizes certain defensive measures for private entities’ computer networks.
Data breaches continue to dominate the news, with companies such as Target, Home Depot, Sony Pictures Entertainment, eBay, and Anthem reporting incidents affecting millions of customers and employees. No company is immune. And it is not just payment cards or health care information at risk—employee data, intellectual property, and business sensitive data is also being taken. Between 2005 and March 20, 2015, there have been 5,203 breaches exposing more than 778 million records, according to the Identity Theft Resource Center. In 2014 alone, the Privacy Rights Clearinghouse estimated that over 67.5 million records were affected as a result of 295 publicly-known security breaches caused by unintended disclosures, hacking or malware, payment card fraud, persons with legitimate access, or lost or stolen paper documents or devices.

Depending on the incident and data at risk, affected individuals may face an increased risk of fraud or identity theft. According to a study conducted by the National Consumer League and Javelin Strategy & Research in July 2014, affected individuals face a one-in-three chance of becoming a victim of identity fraud. The consequences of a breach for an organization also can be significant, and may include lawsuits, government investigations, adverse media attention, business disruption, and reputational damage. According to a May 2014 study by IBM and the Ponemon Institute, the average cost of a data breach for an organization was $5.85 million and the average cost for each lost or stolen record was $201.

There is currently no national standard for data breach notification. Existing federal laws governing data breach notification are limited to specific sectors such as financial institutions (e.g., the Gramm-Leach-Bliley Act (“GLBA”)) and healthcare (e.g., Health Insurance Portability and Accountability Act (“HIPAA”)). With no national data breach disclosure law on the books, companies are forced to adhere to a patchwork of state laws. State data breach notification laws are designed to help protect individuals who might be adversely affected by a compromise of their personal information by imposing a requirement upon information holders whose data has been compromised to provide timely notice to all affected individuals. By receiving timely notice, affected individuals can take steps to protect themselves against the potential consequences of a data breach, which could include identity theft or fraud. State laws, however, vary in terms of who must comply, the definition of personal information, what constitutes a breach and notification requirements.

Prior to 2014, Kentucky was one of only four states—including Alabama, New Mexico, and South Dakota—that did not have a data breach notification law. This changed when the Kentucky legislature passed and Governor Beshear signed H.B. 232 into law, making Kentucky the 47th state to enact a data breach notification law. The law became effective July 15, 2014.

Companies now hold vast amounts of personal information about individuals. Once an individual’s personal information is breached, it is difficult for a company to retrieve and secure what has been lost. Recognizing the reality of data breaches and the potential harmful effects, the Kentucky legislature has instituted a statutory scheme to prevent the main threat caused by data breaches, namely, identity theft. All companies must be aware of Kentucky’s data breach notification law, and be ready to comply with its requirements.

What entities/persons are covered? The law applies to an “information holder,” which is defined as any person or entity that conducts business in Kentucky. The law does not apply to any person or entity subject to HIPAA and GLBA. The law also does not apply to any agency of the Commonwealth or any of its local governments or political subdivisions. There is a separate breach notification law applicable to any agency of...
the Commonwealth and nonaffiliated third parties,9 which includes "any person that (a) has a contract or agreement with an agency; and (b) receives personal information from the agency pursuant to the contract or agreement."10

What information is covered? The law covers "personally identifiable information," which is defined as "an individual's first name or first initial and last name in combination

The law defines a "breach of the security of the system" as the "unauthorized acquisition of unencrypted and unredacted computerized data that compromises the security, confidentiality, or integrity of personally identifiable information maintained by the information holder as part of a database regarding multiple individuals that actually causes, or leads the information holder to reasonably believe has caused or will cause, identity theft or fraud against any resident of the Commonwealth of Kentucky."12 Upon notification or discovery of a breach of the security of the system, an information holder must notify "any resident of Kentucky whose unencrypted information was, or is reasonably believed to have been, acquired by an unauthorized person."13

When must affected individuals be notified? Notifications to affected individuals must be "made in the most expedient time possible and without unreasonable delay."14 The law allows the information holder to take into account the "legitimate needs of law enforcement ... [and] any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.... [and] notification... may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation."15 The law requires that the individual or entity promptly notify the affected individuals once the law enforcement agency determines the investigation will not be compromised by notification.16

How must notice to affected individuals take place and what must it include? Notice may be provided in writing (e.g., on paper and sent by mail) or in electronic form (e.g., by e-mail but only in compliance with the federal Electronic Signatures in Global and National Commerce Act ("E-SIGN").17 Under E-SIGN, sending a breach notification notice to an individual in electronic form is acceptable only if the individual affirmatively consents to receive an electronic notice in lieu of a paper notice, provides such consent electronically, and does so in a manner that "reasonably demonstrates" that he or she can access the electronic information in the form that will be used.18 Moreover, prior to consenting, the individual must be provided with a clear and conspicuous notice that informs the consumer of: (1) his/her option to have the information provided on paper; (2) the procedures the individual must use to update information needed to contact the consumer electronically; (3) how, after consent to electronic notification, he/she may obtain a paper copy of the electronic notice, and the fee therefore; (4) the hardware and software requirements for access and retention of the electronic notice; (5) his/her option to withdraw consent to electronic notification, and the procedures the individual must use to withdraw consent; and (6) the conditions, consequences, and fees of withdrawing such consent.19

If the information holder has "notification procedures as part of an information security policy for the treatment of personally identifiable information, and is otherwise consistent with [the law's] timing requirements ... [the information holder] shall be deemed to be in compliance with [the law's] notification requirements ... , if it notifies [affected individuals] in accordance with its policies...."20 The law does not contain any specific notification letter content requirements.

Can substitute notice be provided to affected individuals? Notification can be provided via substitute notice if the information holder can demonstrate the number of individuals to be notified exceeds 500,000, the cost of providing notice would exceed $250,000, or a lack of sufficient contact in-
For companies to be prepared to respond to an incident in a manner that complies with the law and protects their reputation and customer relationships, they need to establish an incident response plan. An incident response plan is intended to provide an organized approach for responding to potential threats to the confidentiality, integrity, or availability of a company's information technology or data. The plan should be designed to enable: (1) prompt identification and containment of security incidents; (2) remediation of any identified vulnerabilities; (3) prevention of disruption of critical information systems; and (4) assessment of what occurred, notification of affected individuals and regulators as necessary, and mitigation of consequences that may arise from any unauthorized access. The plan should be sufficiently general to cover a wide range of potential incidents without containing too much detail or too many steps that might be considered too complex for a team to easily execute under pressure.

Identify external service providers. As part of developing an incident response plan, companies should identify the third parties they may need to bring onboard to assist in responding to a potential incident, including legal counsel with privacy and security experience, a forensic investigation firm, a crisis communications firm, a company to provide credit monitoring services, and a vendor who can help mail notification letters and operate a call center.

Conduct tabletop exercises. Having an incident response team and plan is a first step towards being ready for an incident, but having a plan in a binder on a shelf and a team assembled is not enough. Companies who test their plans consistently through tabletop exercises using realistic mock breach scenarios improve their plans and, equally important, train their incident response team in the process. An incident response team must learn not to act too quickly or reveal too much information to the public too soon. A thorough forensic analysis and investigation of the incident must be completed before going public, as not every cyber security incident results in a data breach. Systems may be hacked, but data might not be exfiltrated. Stolen laptops may be recovered before confidential information is accessed. Acting hastily could cause unnecessary public alarm and otherwise avoidable reputational damage. The proper training teaches the team to act in a calm, organized and careful manner.

With careful and thoughtful planning, companies can be prepared to respond to an incident in a manner that complies with the law and protects their reputation and customer relationships.

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VOICES AGAINST VIOLENCE

According to a study by the Centers for Disease Control and Prevention, one in three women and one in four men will be the victim of intimate partner violence in their lifetime. 1 According to the Kentucky Cabinet for Health and Family Services, women in Kentucky are more likely to experience intimate partner violence than the national average. 2 Since 2009, through its Voices Against Violence program, the Kentucky Bar Association’s Young Lawyers Division (YLD) has called young lawyers to action to help raise awareness about and assist those impacted by domestic violence. 3

The core focus of the program is on pro bono representation of victims in domestic violence proceedings, including those related to protective orders. 4 A 2009 study of Kentucky’s protective orders found that, for most women the orders reduce violence and save the state millions of dollars of avoided costs. 5 However, the study’s results also indicated significant and unrecognized barriers for women in accessing protective orders. 6 It was noted that domestic violence victims in Kentucky must overcome numerous factors in asking for help from the court. 7 The study concludes that, “Providing victims with more information about the process and more help with obtaining civil protective orders is critical to addressing barriers.” 8

YLD Voices Against Violence has worked with the legal aid offices in Louisville, Lexington and Covington, along with the Bluegrass Domestic Violence Program, the Kentucky Domestic Violence Association, and the Jefferson County Family Court Domestic Violence Intake Center, to match volunteer young lawyers with those in need of assistance. Prior to being placed on the Voices Against Violence volunteer list, lawyers are provided training via a free CLE program on how to prepare for and represent petitioners in such proceedings.

The importance and impact of the work performed by these volunteer young lawyers cannot be overstated. Protective orders may save lives. The Kentucky Attorney General’s Office recently conducted a study of intimate partner homicides in Kentucky and found that despite a likely history of domestic violence in the relationships nearly 75 percent of the homicides had never requested a protective order. 8

In addition to working with the legal aid societies, the YLD has assisted other organizations serving in this area, including the Kentucky Domestic Violence Association (KDVA) and the Kentucky Association of Sexual Assault Programs (KAASP), including participating and co-sponsoring the Ending Sexual Assault and Domestic Violence Conference. In 2010-2012, the YLD hosted fundraisers in Lexington and Louisville raising awareness about the program, the issues impacting victims and raising thousands of dollars total for organizations working to battle this crisis. In 2013, the Voices Against Violence signed on as a co-sponsor of the KDVA Safe and Stable Families project, including agreeing to assist with a survey to the YLD membership about domestic violence issues and assisting in trainings across the Commonwealth. In addition, Voices Against Violence is working with the KAASP to develop a roundtable discussion concerning cultural issues and potential language related barriers to access to services victims of domestic violence and sexual assault in the Commonwealth experience.

Educating the bar and members of the public about the epidemic of domestic violence is key to the Voices Against Violence program. In December of 2014, YLD Voices Against Violence partnered with the Appalachian research and Defense Fund of Kentucky (“AppalReD”) to host a CLE event focused on these issues. We have also presented to new Kentucky attorneys at the New Lawyer Program a CLE on the relevant legal issues to representation of victims in these proceedings and encouraged them to sign on as volunteers. Each year at the KBA Annual Convention, YLD Voices Against Violence has presented CLE programs bringing in nationally renowned speakers to speak to Kentucky attorneys about issues related to domestic violence. This year’s program is during the Thursday morning CLE session and will provide attendees with information on newly developed laws impacting domestic violence cases.

If you would like to be a Voices Against Violence volunteer attorney, or if you would like to become involved with the YLD’s Voices Against Violence Committee, please contact Jennifer Overmann at jovermann@dofamilylaw.com.

3 Voices Against Violence began in 2008 as the American Bar Association’s Young Lawyers Division public service project.
5 Id.
6 Id.
7 Id.
UK LAW CELEBRATES 60TH ANNIVERSARY OF FIRST AFRICAN-AMERICAN GRADUATE

This year marks the 60th anniversary of the graduation of Mr. Ollen B. Hinnant II, the first African-American graduate of the UK College of Law. On April 10th, faculty, staff, students, alumni and family of Hinnant gathered to celebrate his life and work, and launch the newly established Ollen B. Hinnant II Scholarship.

Hinnant was a trailblazer who paved the way in the legal community not only for his generation, but for many to come. During his time in law school, Hinnant had to overcome various forms of intentional discrimination in order to achieve professional success. Much of this discrimination was in the form of laws, but other forms were in the shape of “societal rules” or “university protocol.” The creation of this scholarship honors Hinnant and acknowledges the role he played in opening the door for minority students at UK Law and in the legal community. UK Law is proud to count Hinnant among its graduates.

UK LAW STUDENTS SERVE EASTERN KENTUCKY WITH PRO BONO SERVICES

Using what they have learned from their courses and the desire to make a difference in their careers, first year law students John Shearer and Nealy Williams traveled to Prestonsburg, Ky., and spent their Spring Break providing pro bono legal services to citizens there.

According to the Legal Aid Network of Kentucky, the “justice gap” in Kentucky is so severe that only 20 percent of low income Kentuckians’ legal needs are addressed.

“It [pro bono service] is especially important in areas like Eastern Kentucky where a large portion of the population is living below the poverty line. These individuals do not always have the funds to promote and sustain their constitutionally granted rights, and attorneys and other various organizations provide a means of doing so via their pro bono work,” Shearer said.

On their trip, Shearer and Williams volunteered under the direction of Eastern Kentucky lawyer Ned Pillersdorf, a partner of the law firm Pillersdorf DeRossett & Lane, who often assists low income individuals. The pair drafted a response to a motion, attended court hearings, visited a client in jail, sat in on some of the firm’s initial consultations with prospective clients, and conducted confidential due diligence.

Shearer and Williams also worked with Appalachian Regional Law (AppalReD), an organization that provides free legal representation and advice to impoverished individuals and families in eastern and south central Kentucky. In one particular case, the students had the opportunity to assist various individuals seeking a remedy for property damage and participated directly with the community at a town hall meeting to discuss the damage.

The trip not only benefited residents of Eastern Kentucky with crucial legal services, but it also provided both UK students with hands-on professional experience and the opportunity to meet many prominent members of the legal community in the area.

Even as first year law students, they were able to apply many classroom concepts to real clients and cases. “The trip was a great way to see the content I learned in my core 1L courses in practice,” Williams said. “It also helped to supplement the lessons I’ve learned by giving me an actual person to help, and it was a great way for me to focus in on what areas of my previous studies I actually enjoy doing in the real world.”

At the core of the experience though was the mission of service. “The College of Law has been working hard to provide our students with more pro bono opportunities. We are proud of students like Mr. Shearer and Ms. Williams who sacrifice their time to help citizens in need,” said Danny Murphy, UK Law assistant dean of Administration and Community Engagement.

UK LAW PROFESSOR CORTNEY LOLLAR TESTIFIES BEFORE DEPARTMENT OF DEFENSE PANEL

Professor Cortney Lollar recently testified before the Department of Defense’s Judicial Proceedings Panel in Washington, D.C. The Department of Defense established the Judicial Proceedings Panel to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice involving adult sexual assault and related offenses.

At the request of Congress, the hearing focused on compensation and restitution for sexual assault victims. Lollar spoke as part of a panel of legal scholars whose focus areas are restitution and sexual assault.

UK LAW PROFESSOR CHRISTOPHER FROST INDUCTED INTO AMERICAN COLLEGE OF BANKRUPTCY

Recognized for his contribution to the insolvency field and service to the profession and his community, Professor Christopher Frost was recently inducted into the American College of Bankruptcy at a ceremony in Washington, D.C.

The American College of Bankruptcy is an honorary and educational association of bankruptcy and insolvency professionals. Fellows are selected by invitation only, based on the highest standard of professionalism, ethics, character, integrity, professional expertise and leadership in contributing to the enhancement of bankruptcy and insolvency processes. Among other things, Frost has been working hard to promote the recognition of bankruptcy and insolvency professionals through his work with the College of Bankruptcy.

“UK is a diverse and dynamic School of Law that is home to a broad spectrum of students, including first year law students like Mr. Shearer and Ms. Williams who sacrifice their time to help citizens in need,” said Danny Murphy, UK Law assistant dean of administration and community engagement. “I am proud to count Ollen B. Hinnant among its graduates.”

The College of Bankruptcy is actively involved in the improvement of the bankruptcy system through their pro bono and educational activities. I am excited to have an opportunity to work with this group of outstanding professionals,” Frost said.
LAW + INFORMATICS SYMPOSIUM ON DIGITAL EVIDENCE

The Northern Kentucky Law Review and NKU Chase Law + Informatics Institute hosted their annual spring symposium, “The Law + Informatics Symposium on Digital Evidence,” on Friday, Feb. 27, 2015. The event was held in the Northern Kentucky University George and Ellen Rieveschl Digitorium and was co-sponsored by the Center for Excellence in Advocacy.

The all-day symposium provided an interdisciplinary exploration of digital evidence. Discussion topics included individual autonomy and government security, digital privacy concerns, drone-obtained evidence, and medical reimbursement fraud. Speakers from across the country participated in the conference and in a final round-table discussion of various current issues and topics in digital evidence.

Speakers included:

**Professor Michael Losavio**, University of Louisville, “A World Information Order - Privacy and Security in a Hyper-networked World of Data and Analysis”


**Professor Timothy Ravich**, University of Central Florida, “All Arise! Courts in the Drone Age”


**Mr. Neil Issar**, Vanderbilt Law School, “Admissibility of Statistical Proof Derived from Predictive Methods of Detecting Medical Reimbursement Fraud”

The symposium included a student scholarship showcase luncheon. Three law review editors, Kathleen Watson, Casey Taylor, and Lauren Martin, presented on the right to confront technology, warrantless cell phone searches, and computer source code copyright, respectively.

On Thursday, Feb. 26, 2015, as a prelude to the academic symposium, NKU Chase hosted a special screening of *The Decade of Discovery*, a documentary film about a government attorney on a quest to find a better way to search White House email, and a teacher who takes a stand for civil justice on the electronic frontier. After the viewing, the audience discussed the film with Joe Looby, filmmaker; Jason R. Baron, former government attorney featured in the film; Erin Corken, e-discovery adjunct professor and Ricoh Legal regional review manager; and Joseph Callow, partner and leader of the Keating Muething & Klekamp E-Discovery Litigation Support Group.

To view the webinar without CLE credit, visit bit.ly/watchlawandinformatics

Special thanks to Ricoh Legal and Keating Muething & Klekamp PLL for sponsoring the film screening.

**THE NEW ERA IN GAMING LAW SYMPOSIUM**


The symposium explored emerging regulatory and legalization issues regarding sports betting, fantasy sports, and online gaming. It included a student scholarship showcase where Jay Wampler ‘15 and Jonah Ottley ‘16 presented their student notes on gaming and sports law issues.
Speakers included:

**Professor Walter T. Champion**, George Foreman Professor of Law, Thurgood Marshall School of Law, Texas Southern University

**Professor Marc Edelman**, Baruch College, Zicklin School of Business, City University of New York

**Attorney Kate Lowenhar-Fisher**, Dickinson Wright PLLC, Las Vegas, Nev.

**Dr. Ryan Rodenberg**, The Florida State University, Tallahassee, Fla.

**Professor I. Nelson Rose**, Whittier Law School, Costa Mesa, Calif.

**Dean Jeffrey A. Standen**, Northern Kentucky University Salmon P. Chase College of Law

**Attorney Daniel L. Wallach**, Becker & Poliakoff, Fort Lauderdale, Fla.

To view the webinar without CLE credit, visit bit.ly/watchlawandinforatics

**NEW PROFESSOR JOINS CHASE FACULTY**

**Professor Tokson** has also served as a visiting assistant professor at the University of Chicago, where he taught intellectual property law, privacy law, and criminal procedure. His scholarship has been published in the *William & Mary Law Review* and the *Iowa Law Review*. Professor Tokson’s forthcoming article, “Judicial Resistance and Legal Change,” will be published in the *University of Chicago Law Review* in 2015.

At Chase, Professor Tokson will teach intellectual property courses, among other subjects.

**A COMPREHENSIVE TRADEMARK SEMINAR – REGISTER NOW!**

The NKU Chase Law + Informatics Institute and NKU Steely Library Intellectual Property Awareness Center, a designated Patent and Trademark Resource Center by the USPTO, will present a Comprehensive Trademark Seminar on Friday, June 5, 2015 in Highland Heights, Kentucky. The seminar is presented in cooperation with the World Intellectual Property Organization and the United States Patent and Trademark Office.

The seminar includes two tracks: (1) an introductory track for businesses, business law attorneys, and business students; and (2) an advanced track for attorneys and paralegals in trademark practice.

**Featured Speakers:**


**Craig Morris**, managing attorney for Trademark Outreach at the USPTO. Prior to assuming his current position, for 14 years he was the managing attorney for the Trademark Electronic Application System (TEAS), focusing on making the Trademark Operation a total e-government environment. He was also the head of the eGovernment Task Force, whose goal is to increase the percentage of applications processed electronically from submission through registration.

Register now! bit.ly/TM-WIPO

Special thanks to WIPO and the USPTO for their cooperation.

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BRANDEIS PROFESSORS EXAMINE PRIVACY’S INTERSECTION WITH TECHNOLOGY

According to Robert Denney Associates’ “What’s Hot and What’s Not in the Legal Profession” outlook from December, cybersecurity is becoming the No. 1 concern of law firms.

“As it should be,” the report said, pointing to the topic’s placement in the spotlight at the October Futures Conference of the College of Law Practice Management.

Cybersecurity has also been the subject of a recent Wall Street Journal article and KPMG report, as well as an initiative of global banks. J.P. Morgan Chase and UBS, for example, are actively recruiting cybersecurity experts.

A confluence of factors has made the topic timely, according to Professor Russ Weaver, including Edward Snowden, the Cybersecurity Information Sharing Act of 2015 and the acceleration of technology.

Justice Louis D. Brandeis was one of the architects of U.S. privacy law. In keeping with his legacy, Brandeis School of Law has a number of faculty members exploring the cybersecurity topic – and similar topics related to emerging technologies and privacy – in depth, and presenting their research all over the world.

PROFESSOR RUSSELL WEAVER

Professor Russ Weaver was a speaker at Washington and Lee University’s 2015 Lara D. Gass Symposium, held in late January in Lexington, Va. This year’s symposium topic was “Cybersurveillance in the Post-Snowden Age.”

In March, he participated in a symposium in Paris, France, on the topic of government transparency. He was also involved in a symposium on April 1 on cybersurveillance at the Université Aix-Marseille, in Southern France.

Professor Weaver participated in another panel in April called “What is (should be) the scope and limitation of police power to track suspects?” as part of Texas Tech’s 9th annual Criminal Law Symposium. The event featured distinguished legal scholars discussing the application of the Fourth Amendment in today’s digital world.

His schedule remains full through June and July, with discussion fora in Paris (which he arranged); a privacy discussion in Sorbonne, France; discussion fora on administrative law in Luxembourg; a speech in Mainz, Germany, on free speech issues; and a presentation on the freedom of expression in Boca Raton, Fla.

He said the specific area of cybersurveillance has changed radically in just the past five years because of the advancement of technology. Professor Weaver said it’s important to expand his angle on the topic globally to keep up with these changes and anticipate societies’ adaptations.

He brings these diverse cultural interpretations back to his classroom. Such travel and participation, he said, informs his teaching and is professionally enlightening.

PROFESSOR LUKE MILLIGAN

Professor Luke Milligan’s research on the privacy-centric Fourth Amendment was included in an amicus brief filed with the U.S. Supreme Court in the case of Los Angeles v. Patel, on behalf of the Electronic Frontier Foundation – a leading nonprofit organization defending civil liberties in the digital world.

Los Angeles v. Patel addresses the constitutionality of a municipal ordinance requiring hotel operators to maintain guest registry information, and to make such information available to police officers on request without consent, a warrant, or other legal process. Owners and operators of hotels in Los Angeles filed suit, claiming the ordinance violated the Fourth Amendment of the U.S. Constitution. Last year, the U.S. Ninth Circuit, sitting en banc, held the ordinance was unconstitutional.

The amicus brief states, in part:

“[T]he Fourth Amendment is not merely a “right” against unreasonable searches, it is also a “right ... to be secure” against unreasonable searches. See U.S. Const., amend. IV (emphasis added). The inclusion of this phrase—“to be secure”—demonstrates the Founders’ intent for the Amendment to prevent, not merely redress, violations. Indeed, “[i]f the framers sought only to safeguard a right to be ‘spared,’ they could have omitted the phrase ‘to be secure’ and drafted the Amendment to provide for a ‘right against unreasonable searches and seizures.’” Luke Milligan, The Forgotten Right To Be Secure, 65 HASTINGS L. J. 713, 745 – 46 (2014) (noting that “[i]nterpreting ‘secure’ to mean [merely] ‘spared’” raises the structural issue of “linguistic excess”).

Indeed, the warrant clause expressly regulates the issuance of warrants, not their execution. The founding-era discourse concerning searches and seizures—“which regularly emphasized the harms attributable to the potentiality of unreasonable searches and seizures”—further supports that the Founders intended the Fourth Amendment to have prophylactic effect. Id. at 718 (emphasis in original). The very text and history of the Amendment thus calls for a protective buffer against unreasonable governmental intrusion to ensure that constitutional violations are prevented—not merely dealt with after the fact.

In addition, Professor Milligan also presented his interpretation of the Fourth Amendment at the University of Michigan Law School’s symposium on “Privacy, Technology, and the Law” in February. He will also be speaking on these issues at the Cato Institute as part of its Supreme Court Review on “Constitution Day” in September.
**PROFESSOR MARK ROTHSTEIN**

Professor Mark A. Rothstein’s, “Privacy and Technology in the Twenty-First Century” was published in the *University of Louisville Law Review* in January.

In it, he examines the balance between society’s increasing dependence on technology and its value on privacy.

“Is it possible to have both technology and privacy — to realize the benefits of technology without compromising privacy? This is a difficult question and, to start, we need to define what we mean by privacy,” Professor Rothstein writes.

In 2013, he received the Louis D. Brandeis award from Patient Privacy Rights, an organization that advocates for the privacy of health information.

Rothstein has also focused on privacy issues as they relate to the emergence of health and fitness tracking devices. He was quoted in a December *Washington Post* article titled “Fitness trackers chase after the corporate market,” as saying:

“It’s a really slippery slope … It’s so tempting to go from steps to heart rate to blood pressure to sleep. Where are we going to be a year from now? Two years from now?”

Even if there are benefits to using the devices, Rothstein wonders: “Are the intangible costs in terms of privacy and employee morale worth it? I’m a public health person and I certainly want to encourage people to get healthy, but I don’t think that’s the role for employers.”

**PROFESSOR TIM HALL**

Professor Tim Hall has also focused his latest research on fitness data trackers and was chosen and participated in the 3rd Annual Conference on Governance of Emerging Technologies: Law, Policy, and Ethics, May 26-28 in Scottsdale, Ariz.

Professor Hall’s presentation focused on the burgeoning market in health and fitness data trackers and their technical capabilities, which enable the collection, aggregation and mining of vast amounts of individual, identifiable health data.

Professor Hall discussed how the law is not keeping pace with this technological innovation. Because these data are being collected outside of a traditional physician/patient relationship, they are not governed by HIPAA privacy regulations. As others have discussed, however, data collected outside of HIPAA-regulated relationships may significantly overlap data from regulated sources, creating serious risks of disclosure or discovery of sensitive personal health information.

His objective with this research is to gain an understanding of the role and potential limits of private contract law as a channel for regulation of personal health and fitness data; development of a set of “best practices” recommendations for contracts governing the relationship between device and app manufacturers and users; and/or recommendations for legislative or administrative action to replace or set limits on the scope of such private contracts.
Effective writing is organized writing

By: Melissa N. Henke
University of Kentucky College of Law

Effective legal writers organize their analysis with the reader in mind. This article focuses on two common techniques used in creating organized writing—strong topic sentences and appropriate transitions. Let’s put these techniques in context. Paragraphs are the “building blocks” of legal analysis. Topic sentences and transitions are necessary to put those building blocks together in a way that is easy for the reader to follow and understand. Indeed, as Judge John Rogers of the United States Court of Appeals for the Sixth Circuit stated in a 2006 Bench & Bar article, good transitions and topic sentences help ensure that the reader is “never [ ] in doubt about how your arguments relate to each other.”

STRONG TOPIC OR THESIS SENTENCES

Whether you call them topic sentences or thesis sentences, it is important to lead off each paragraph with a sentence that tells the reader what to expect in that paragraph. For legal writing, especially persuasive writing, a topic sentence should introduce the topic of the sentence and also assert something about the topic. That is why some legal writing texts refer to such sentences as thesis sentences, because the goal is to “assert a position on the topic of the paragraph” more so than just state what the topic is. Simply put, the first sentence of a paragraph should convey the conclusion you want the reader to come away with after reading the paragraph.

To illustrate, compare the following two examples to discern the difference between a sentence that states a topic and one that states an assertion about a topic. A topic sentence that does little more than identify a topic (here, a case), would read something like this: “Another case that discussed actual malice is Rosenbloom v. Metromedia, Inc., 403 U.S. 29 (1971).” Compare that with the following topic sentence that goes further to provide an assertion about the topic (or a thesis): “The court extended these protections in Rosenbloom, holding that plaintiffs in a defamation action would have to prove actual malice if the published statements were of public or general interest. Rosenbloom v. Metromedia, 403 U.S. 29 (1971).” The second topic sentence is superior to the first because it introduces the point the paragraph will prove in regard to the case, rather than just introducing the case.

Using strong topic sentences is helpful to the reader in understanding what to expect from each paragraph, as well as from the paper overall. That is because when a reader skims just the topic sentences in a document, she should be able to get a general understanding of the argument’s organizational structure and its main points. Thus, topic sentences are a benefit to the reader because they guide her through the organization and substance of the entire argument.

Topic sentences likewise benefit the writer in drafting the substance of the argument in each paragraph. First, the writer should limit the content of a paragraph to information about the thesis or position asserted in the topic sentence. This is often called paragraph cohesion or unity. A writer can read a topic sentence in a draft and then check that the focus of the information written in the paragraph to follow serves to “prove” the asserted thesis or position conveyed in the topic sentence, and can further check that the information only focuses on that specific thesis or assertion. If it does not, then the writer can revise as needed to fill gaps in support or reasoning or to create paragraph cohesion.

APPROPRIATE TRANSITIONS

A related technique that effective writers also employ is use of appropriate transitions. As Bryan Garner explains, the use of a transition word or phrase in a topic sentence “clearly tells the audience whether the paragraph expands on the paragraph before, contrasts with it, or takes a completely different direction.” In other words, transitions serve as a bridge from one idea to the next so the reader understands how the parts of the argument (or building blocks of legal analysis) connect and relate to each other.

Different transitions signal different relationships, so it is important to use an appropriate one to signal the correct relationship between what the reader has read and what she is about to read. For example, some words and phrases signal a transition for contrast (however), for comparison (likewise), for concession (granted), and for conclusion (therefore). Other transitions introduce new or supplemental material (moreover), point out differences or inconsistencies (in contrast), or explain time relationships (next). Still other examples of transitions can be found in most of the paragraphs in this very column (can you find them?). Lists of commonly used transitions are readily available online and in legal writing texts or style guides. Once you have a good sense of the order and content of your argument, then it is a good time to pull out such a list. You’ll want to decide which transitions are needed in your analysis and where they should be added.

Some words or phrases work better than others, so give thought to which is most appropriate in light of the connection (or bridge) you wish to signal. That connection may be between paragraphs or even between sentences in a paragraph.
The Board of Governors met on Friday, Jan. 16, 2015. Officers and Bar Governors in attendance were, President B. Johnson; President-Elect D. Farnsley; Vice President M. Sullivan; Immediate Past President T. Rouse and Young Lawyers Division Chair B. Sayles. Bar Governors 1st District – M. Pitman, F. Schrock; Bar Governors 2nd District – T. Kerrick, J. Meyer; 3rd District – M. Dalton, H. Mann; 4th District – A. Cubbage; B. Simpson; 5th District – W. Garmer, E. O’Brien; 6th District – S. Smith, G. Sergent; and 7th District – M. McGuire, J. Vincent. Incoming YLD Chair J. Tanner Watkins.

In Executive Session, the Board considered eight (8) default disciplinary cases, involving two attorneys. Brenda Hart of Louisville, Dottie Moore of Elizabethtown and Judy Campbell of Frankfort non-lawyer members serving on the Board pursuant to SCR 3.375, participated in the deliberations.

In Regular Session, the Board conducted the following business:

- **Heard status reports from the 2015 Annual Convention Planning Committee, 2015-2016 Budget & Finance Committee, Legislative Outreach and Rules Committee.**
- **Approved Ethics Opinion E-438 as a formal opinion regarding lawyer-mediator and representation after a domestic relations mediation.**
- **President-Elect Douglass Farnsley reported that the Diversity & Inclusion Summit will be held on April 10, 2015, at the Galt House Hotel in Louisville with a pipeline service project held the prior day at the Louis D. Brandeis School of Law.** Farnsley reported that the Advisory Board held its inaugural meeting and determined to conserve the funds, which currently total $26,800, to make sure the KLEO Program remains funded beyond the two-year funding recently approved by the General Assembly. The Advisory Board also approved allocating $1,000 each to UK College of Law, UL Brandeis College of Law and NKU Chase College of Law to be used by them for worthy diversity projects in the promotion of diversity in the profession.

- **Young Lawyers Division Chair (YLD) Bradley Sayles reported on the following activities of the Division:** Legal Aid Project, New Lawyers Program, KLU and Annual Convention programs, Outstanding Awards, March issue of the Bench & Bar, Road Less Traveled Program, Magna Carta, U@18 and Bully-Proof Project.
- **Approved Judge Philip Shepherd, Franklin Circuit Court, for the 2015 Distinguished Judge Award to be presented at the Annual Banquet on Thursday, June 18, in conjunction with the KBA Annual Convention.**
- **Accepted the Fiscal Year ending June 30, 2014, Audit Report presented by David Neuhaus and Alex Weidner with Rudler Professional Service Corporation, Certified Public Accountants.**
- **Approved the Member Services Committee’s recommendation to approve the transfer by National Insurance Agency of the KBA’s life and disability insurance programs from New York Life to Metlife.**
- **President William E. Johnson asked the Board for recommendations of members to serve on the Task Force on Lawyer Malpractice Insurance.**
- **Approved tickets for Board members to attend the Louisville Bar Association Bench & Bar event on Jan. 22, 2015, at the Muhammad Ali Center.**
- **President Johnson reported on the Local Bar Outreach President’s Receptions held in conjunction with the KLU programs.** There was discussion to change the format of this event due to the low participation and cost of the food and beverage.
- **Approved the administrative suspensions for dues non-payment and CLE non-compliance.**
- **Approved the creation of a KYLAP Foundation, pursuant to SCR 3.910(8).**
- **Approved hiring Hubbuch & Company as the primary designer for the Board Room renovations.**
- **Executive Director John D. Meyers reported that the process has begun to establish a Search Committee for Executive Director of the Kentucky Bar Foundation/IOLTA.**
- **Meyers reported that the IT update is progressing with the exception of the CLE database and the website is 90 percent complete. Due to the complexity of the CLE database, the Your Membership package does not have the capability to handle this data and other options are being reviewed. The Office of Bar Counsel is moving forward and are approximately a month out from finalizing their conversion to a new case management system.**
- **Meyers advised that the Magna Carta Project is the ABA traveling exhibit commemorating the Magna Carta. He advised that the KBA, with the assistance of the Louisville Bar Association, the Young Lawyers Division and the Small Firm Practice Section, has contracted with the ABA to bring the exhibit to the 2015 Kentucky State Fair in August. Meyers reported that this project cannot be funded directly through the KBA and therefore we are reaching out to other groups that might have interest to contribute funds in order to add some enhancements to the exhibit.**
- **Meyers advised that Kentucky ABA Delegate Roula Allouch would be serving on the National Caucus of State Bar Associations.**
- **Approved a Resolution naming the courthouse in Paducah, Ky., after deceased Judge Edward Huggins Johnstone.**

**To KBA Members**

Do you have a matter to discuss with the KBA’s Board of Governors?

Board meetings are scheduled on:

- **June 16, 2015**
- **July 17-18, 2015**

To schedule a time on the Board’s agenda at one of these meetings, please contact John Meyers or Melissa Blackwell at (502) 564-3795.
The Kentucky Bar Association (KBA) is proud to announce the rollout of its new website, which launched, Wednesday, April 1st. The website has many additional features. Some of those include the ability to add your professional image and professional website to your profile page displayed in the Lawyer Locator search. In addition, you can now update your member record and view your KBA transactions online.

Other features are highlighted below in a quick “how to” guide for accessing the new site based on our most frequently asked questions. Additional features will be added to the updated site over the course of the summer and into the fall. We are hopeful these new features will be a benefit to our members, as you utilize www.kybar.org for all of your membership needs.

DID YOU KNOW...
At any time you can return to the homepage with just one click on the KBA seal.

Select to view CLE information.

A convenient link to log in to your account.

View upcoming and past events by selecting “more.”

Your username is your email address on file with the KBA.
Your password will either be kybar (MemberID), for example: kybar00000.
To change your password, please see “Edit Bio.”
Forgot your password? Don’t worry, this link will help you with that!

Top image is a screen shot taken from www.kybar.org.
Left image is a screen shot taken from www.kybar.org/?page=CLE.

You are now able to change your username. You are encouraged to change your password after your first log in.
To change your password, add a professional website, and/or update your profile information, click here.

Please note: Part of your Bio information can be seen in the Member Directory; however, you control what’s visible to both nonmembers and other KBA members. You may hide certain data fields (e.g., email address, professional address, and phone number). You may change the privacy settings by clicking on the “lock” icon left of the data field and select the desired privacy level. Administrative fields are automatically locked and aren’t visible to the public or other KBA members.

To add a profile picture, click “My Profile” and hover your cursor over the profile picture. Select the “Add Photo” icon that appears. Select the image you want to upload and click “Submit” when finished. The ideal image size is 100px wide by 117px high and your image can’t exceed 30MB.

If you have any questions or comments regarding the website, its features, or for help with the log in process, please contact Machell Smith at msmith@kybar.org or at (502) 564-3795 ext. 291.

Top image is a screen shot taken from www.kybar.org/events/event_list.asp.

Bottom image is a screen shot taken from www.kybar.site-ym.com/members/manage_profile.asp.
### JULY 2015 KENTUCKY BAR APPLICANTS

Following is a list of applicants who have applied to take the July 28 & 29, 2015 Kentucky Bar Examination.

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**NOTE:** This list is current as of March 30, 2015. Any applications filed after this date will not be included on this list.
The Kentucky Bar Association, the Louisville Bar Association and the Louis D. Brandeis School of Law at the University of Louisville hosted a Diversity and Inclusion Summit on Friday, April 10, at the Galt House Hotel in Louisville.

The summit provided practical resources and ideas for legal employers to implement their own diversity and inclusion programs; assist management and other administrators with handling diversity issues; and emphasize ways to empower attorneys from diverse backgrounds to work through these same issues to become successful contributors in their places of employment.

Speakers included Sharon E. Jones, a Harvard Law School graduate and president and founder of the Chicago-based Jones Diversity Group; Judge Bernice B. Donald, the first African-American woman to serve on the U.S. Court of Appeals for the 6th District in Cincinnati; Judge Amul Thapar of the U.S. District Court for the Eastern District of Kentucky, the first South Asian Article III judge; Kentucky Court of Appeals Judge Denise Clayton, the first African-American woman to serve on the Commonwealth’s Court of Appeals; as well as Judge Ernesto M. Scorsone, circuit court judge for the 22nd Circuit Court in Fayette County; Judge Brandi H. Rogers, family court judge for the 5th Circuit Court in Crittenden, Union and Webster counties; and Judge C. Derek Reed, district court judge for the 10th District Court in Hart and LaRue counties.

Renee Shaw, producer and host of KET’s legislative coverage and host of “Connections with Renee Shaw” — the state’s first statewide minority affairs program — served as moderator for two of the summit’s panel discussions.

In conjunction with the event, on Thursday, April 9, 25 attorneys participated with 25 law students, 25 undergraduate students and 25 high school students in a pipeline service project coordinated by the law school and the Legal Aid Society to rally the involvement of attorneys in mentoring diverse students from the high school level through college and law school.

The overwhelming response to the program has been extremely gratifying. We would like to extend our sincerest thanks to the speakers and attendees for their participation in this historic event and for helping to ensure the success of the Kentucky Bar Association’s inaugural Diversity and Inclusion Summit. The evaluations and numerous comments received indicate this was an outstanding experience for all involved!
COMMONWEALTH OF KENTUCKY

JUDICIAL CONDUCT COMMISSION

ORDER OF PRIVATE REPRIMAND

The Commission issues this order of private reprimand to a judge for violation of the Code of Judicial Conduct, SCR 4.300, Canons 2D and 5(A)(1)(c).

The judge “liked” the Facebook pages of lawyers and law firms in violation of Canon 2D which prohibits judges from conveying the impression that others are in a special position to influence the judge. The judge also “liked” the Facebook pages of candidates for elected office in violation of Canon 5(A)(1)(c) which prohibits a judge from publicly endorsing a candidate for public office.

The judge informed the Commission that the public “likes” of the Facebook pages in question were made prior to taking judicial office and that the judge was unaware of how to edit the Facebook page. The judge has certified that the judge will obtain assistance in removing the improper material from Facebook and will refrain from such conduct in the future.

The Commission appreciates the judge’s candor and willingness to take immediate corrective action. However, all judges must be sensitive when utilizing social media so as to not violate the Code of Judicial Conduct. Based upon the foregoing conduct, the judge is hereby privately reprimanded.

In issuing this private reprimand, the Commission duly considered that the judge fully cooperated in the investigation and had no prior infractions.

Date: April 2, 2015

_________________________/s/________________________
Stephen D. Wolnitzek, Chair
ETHICS OPINION KBA E-438

Issued: January 16, 2015

The Rules of Professional Conduct are amended periodically. Lawyers should consult the current version of the rule and comments, SCR 3.130 (available at http://www.kybar.org/opinsethics), before relying on this opinion.

THE LAWYER-MEDIATOR AND REPRESENTATION AFTER A DOMESTIC RELATIONS MEDIATION

Question 1
Upon the conclusion of a domestic relations mediation in which the parties to the mediation are not represented by counsel, may the lawyer who served as mediator in the matter assist the parties to the mediation in the preparation of the agreement reached during the mediation conference?

Answer
Yes.

Question 2
After the conclusion of a domestic relations mediation in which the parties to the mediation are not represented by counsel, may the lawyer who served as mediator in the matter assist one or both of the parties in the preparation of ancillary documents?1

Answer
No.

Question 3
Upon the conclusion of a domestic relations mediation in which the parties to the mediation are not represented by counsel, may the lawyer who served as mediator in the matter assist one or both of the parties to the mediation in the preparation of ancillary documents but with the understanding that the lawyer-mediator does not represent anyone regarding the document preparation?

Answer
No.

DISCUSSION

Mediation is an accepted and regular practice in domestic relations matters. As in other subject areas, lawyers often serve as mediators in domestic relations matters. Unfortunately, significant uncertainty surrounds the assistance a lawyer-mediator may render unrepresented parties to a domestic relations mediation at the conclusion of the mediation in the form of document preparation. This opinion seeks to clarify the lawyer-mediator’s role regarding post-mediation document preparation with regard to the Kentucky Rules of Professional Conduct.

Note that lawyers who wish to be approved mediators on the Court of Justice’s “roster” of approved mediators must agree to adhere to the Mediation Guidelines for Court of Justice Mediators, Administrative Procedures, AP XII, §3 (the “Guidelines”). This opinion expresses no opinion about the requirements of the Guidelines, but notes that the Guidelines may require action other than or beyond what the Kentucky Rules of Professional Conduct require.

Question 1: Preparation of the Agreement Reached During the Mediation Conference

There is no dispute that a lawyer in private practice may also be a mediator. See KBA E-361 (1993). Kentucky Supreme Court Rule (SCR) 3.130(2.4) confirms this. Rule 2.4 states:

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer’s role in the matter, the lawyer shall explain the difference between the lawyer’s role as a third-party neutral and a lawyer’s role as one who represents a client.


The preparation of the agreement reached during the mediation conference is a part of the mediation process and thus may be done by a mediator in that role whether or not the mediator is a lawyer. The Kentucky Supreme Court’s Model Mediation Rules provide in Rule 11 that an agreement reached in a mediation conference must be reduced to writing. Rule 11 continues, “The parties shall be responsible for the drafting of the agreement, although the mediator may assist in the drafting of the agreement with the consent of the parties.” Likewise, the Guidelines Section 3(15) states: “The parties are responsible for the drafting of the agreement, although the mediator may assist in the drafting of the agreement with the consent of the parties.”

The Model Standards of Practice for Family and Divorce Mediation (2000), approved by the ABA, the Association of Family and Conciliation Courts, and the Association for Conflict Resolution, state in Standard VI.E.:

With the agreement of the participants, the mediator may document the participants’ resolution of their dispute. The mediator should inform the participants that any agreement should be reviewed by an independent attorney before it is signed.

Thus, a lawyer-mediator may assist the parties to the mediation in the preparation of the agreement reached during the mediation.

Question 2: Assisting in Ancillary Document Preparation at the Conclusion of the Mediation

A lawyer-mediator may not assist the parties in the preparation of ancillary documents at the conclusion of a domestic relations mediation.

The preparation of ancillary documents is the practice of law under SCR 3.020, which defines the practice of law as follows:

The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services. But nothing herein shall prevent any natural person not holding himself out as a practicing attorney from drawing any instrument to which he is a party without consideration unto himself therefor. An appearance in the small claims division of the district court by a person who is an officer of or who is regularly employed in a managerial capacity by a corporation or partnership which is a party to the litigation in which the appearance is made shall not be considered as unauthorized practice of law.

Other ethics bodies have agreed that preparation of ancillary documents is the practice of law. See Mich. Eth. Op. RI-351 (2011)(drafting documents necessary to effectuate the divorce is providing legal service); Ohio Eth. Op. 2009-4(2009)(“A domestic relations lawyer-mediator who goes beyond preparing the mediation report, …, into the preparation of necessary legal documents for filing by or on behalf of the parties to a domestic relations proceeding is engaging in a legal representation subsequent to the mediation.”); Tex. Eth. Op. 583 (2008) (“the preparation of documents to implement an agreement for divorce reached in a mediation clearly involves the provision of legal services by the lawyer/mediator).

The Rules of Professional Conduct would in theory allow a circumscribed representation such as the preparation of ancillary documents presents. SCR 3.130(1.2(c)) provides: “A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.” Thus, a lawyer-mediator, theoretically, could agree to limit the representation of the parties to preparing the ancillary documents and the advice the lawyer-mediator renders regarding that activity. The lawyer would not represent the parties with regard to any other aspect of the matter. As to those aspects, the parties would be unrepresented. Of course, such an arrangement may not be reasonable in a particular situation as SCR 3.130(1.2(c)) requires, and so such a representation may not be possible.

In providing limited representation with regard to ancillary document preparation, the lawyer-mediator would owe all professional responsibility duties to the parties. For example, Comment 7 to SCR 3.130(1.2) emphasizes that the lawyer must provide competent representation as required by SCR 3.130(1.1). While such a limited representation is possible in general, and may be ethical in certain other situations, a lawyer who plans to serve, is serving, or has served as a mediator in a domestic relations matter cannot undertake any post-mediation representation of unrepresented parties to the mediation with regard to the mediated matter.

A lawyer-mediator cannot negotiate with unrepresented parties before or during a domestic relations mediation to be a mediator for purposes of the mediation and a lawyer for purposes of preparation of ancillary documents after the mediation. SCR 3.130(1.12(b)) provides in part:

A lawyer shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, or as an arbitrator, mediator or other third-party neutral. This rule does not prohibit an arbitrator, mediator, or third-part neutral from negotiating future cases.

The Professional Ethics Committee for the State Bar of Texas, in Opinion 583 (2008), concluded that a similar version of Rule 1.12(b) prohibited a lawyer-mediator from entering into an engagement agreement that provided for both mediation services and the preparation of ancillary documents. See Tex. Eth. Op. 583 (2008). The Texas view is the wise one. Rule 1.12(b) exists to prohibit a situation in which the lawyer-mediator might have incentive to be less than ...
completely unbiased. Consistent with this notion, Rule 1.12(b) prohibits a lawyer-mediator from negotiating for future employment with the parties of the mediation before or during the mediation since the danger of bias creation is present in either scenario.

Upon the conclusion of a domestic relations mediation, the unrepresented parties to the mediation may desire that the lawyer-mediator assist them in the preparation of ancillary documents. Because the preparation of ancillary documents is the provision of a legal service, as established above, the lawyer-mediator would be providing a legal service in preparing ancillary documents.

Even if the lawyer-mediator does not discuss legal representation with the unrepresented parties to the domestic relations mediation until the mediation has concluded, the lawyer-mediator cannot represent either or both of the parties by assisting with the preparation of ancillary documents. SCR 3.130(1.12(a)) states:

> Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

The exception in paragraph (d) to which SCR 3.130(1.12(a)) refers, relates to partisan arbitrators and thus is irrelevant here. “Informed consent” requires the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

SCR 3.130(1.0(e)). SCR 3.130(1.0(b)) explains the requirement that the informed consent be “confirmed in writing” as follows:

> “Confirmed in writing” when used in reference to the informed consent of a person denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of an informed consent. If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

Thus, SCR 3.130(1.12(a)) generally allows a lawyer who “participated personally and substantially” as a mediator in a matter to later represent a party “in connection with” that matter if all parties give informed consent confirmed in writing. Yet, when the matter of the mediation and the document preparation is a domestic relations matter and the parties are unrepresented in the mediation and otherwise, the appropriate disclosures and explanation to obtain informed consent are simply not possible in light of the complex nature of a domestic relations mediation and the confidentiality obligations involved in these mediations. See Comments 6 and 7 to SCR 3.130(1.0). If the lawyer seeks to represent both parties, there would be a conflict of interest under SCR 3.130(1.7) and, again, consent would not be possible under the consentability standard of SCR 3.130(1.7(b(1) and (4))). See also Comments 14 and 15 to SCR 3.130(1.7).

**Question 3: Preparation of Ancillary Documents with an Agreement that the Lawyer-Mediator Represents No One**

As established in the discussion accompanying Question 2, preparation of ancillary documents at the conclusion of mediation is an activity within the definition of the practice of law. The question arises as to whether a lawyer-mediator may represent the parties’ agreement that the lawyer-mediator does not represent either party in preparing the ancillary documents. By so doing, the lawyer-mediator seeks to avoid all duties owed to a client and all conflict implications arising from client representation.

A lawyer-mediator may not do this. Comment 7 to SCR 3.130(1.2) emphasizes that the lawyer must provide competent representation as required by SCR 3.130(1.1) in the context of the limited representation. A lawyer may provide a limited representation but that representation carries with it all the professional responsibilities, such as the lawyer owes to any client. A lawyer-mediator preparing ancillary documents at the conclusion of a mediation owes all the professional responsibility duties regarding the preparation of those documents and the advice rendered surrounding them.

By seeking the agreement of the mediation parties that the lawyer-mediator will prepare documents ancillary to the mediation but represent no one, the lawyer-mediator seeks to negate all professional responsibility duties owed to clients. SCR 3.130(1.8(h)) provides in part:

> A lawyer shall not:
> (1) make an agreement prospectively limiting the lawyer’s liability to a client for malpractice unless the client is independently represented in making the agreement;....

The proposed arrangement violates SCR 3.130(1.8(h(1))) because the lawyer-mediator seek a prospective limit of liability though the mediation party or parties are not independently represented with regard to the engagement agreement. Accord Mich. Eth. Op. RI-351 (2011) (“Under these circumstances, seeking to abrogate the responsibilities of a lawyer to a client through a prospective agreement that either asserts the lawyer does not represent either party or requires the parties to acknowledge that the lawyer represents neither party violates MRPC 1.8(h)(1) by constructively seeking to prospectively limit the lawyer’s liability for malpractice.”).

**NOTE TO READER**

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530. This Rule provides that formal opinions are advisory only.

**REFERENCES**


1 For purposes of this opinion, ancillary documents are documents necessary for the complete resolution of the matter other than the agreement reached during the mediation conference.
Pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure and Rule 57 of the Federal Rules of Criminal Procedure, the United States District Courts for the Eastern and Western Districts of Kentucky hereby give public notice of the following:

The Joint Local Rules Commission for the Eastern and Western Districts of Kentucky has recommended, and the District Court has authorized for release for a period of public comment through June 30, 2015, the revision of certain Joint Local Rules of Civil Practice and Joint Local Rules of Criminal Practice. Unless otherwise indicated, as seen in this Notice, underlined text is added and struck text is deleted. The proposed revisions are as follows:

A. Subparagraph (b) of LR 83.3 – Attorney Discipline – will be amended as follows:

(b) Discipline By Admitting or Licensing Authority; Procedure.

(1) Attorney's Duty to Notify. An attorney practicing before the Court who is publicly reprimanded, suspended or disbarred by any admitting or licensing authority must promptly inform the Clerk in writing of the public reprimand, suspension or disbarment within ten (10) days after the effective date of any such public reprimand, suspension or disbarment.

(2) Notice to the Attorney. Upon receipt of documentation demonstrating an attorney has been suspended or disbarred by any admitting or licensing authority, the Court will immediately issue a notice to the attorney containing the following:

(A) a copy of the documentation evidencing suspension or disbarment; and
(B) an order to show cause — within thirty (30) days after service of that order — why the attorney should not be disqualified from practicing before the Court. The challenge to the Court's disqualification of the attorney must be based on one of the grounds contained in section (3). The attorney may respond to the show cause order personally or by mail.

(2) Automatic Reciprocal Discipline; Discretion to Enhance Discipline. Unless otherwise ordered by the Court, any such attorney who has been suspended or disbarred by any admitting or licensing authority, whether by suspension, revocation, or disbarment, shall automatically forfeit his or her right to practice law before this Court during the same period that such attorney has been prohibited from practicing law by such other licensing authority, or, under the Court's discretion, for a greater period of time. The Clerk of Court shall send a written notice to the attorney, together with a copy of this section of the Local Rules, informing the attorney of the forfeiture of his or her right to practice law before this court. Any failure or delay with regard to the sending of such notice shall not affect the automatic forfeiture provisions of this section.

(3) Discipline Imposed; Grounds for Challenge. Thirty (30) days after service of the notice provided in (b)(2) above, the Court will disqualify the attorney from practicing before it unless the Court concludes that the entry of some other order is appropriate. Within thirty (30) days after the effective date of any suspension or disbarment by any admitting or licensing authority, the attorney may file a written challenge to the reciprocal discipline imposed under section (2). To conclude that the entry of some other order is appropriate, the Court must find that the record underlying the attorney's suspension or disbarment clearly indicates that:

(A) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
(B) the proof establishing the misconduct was so infirm that the Court could not — consistent with its duty — accept the conclusion of the admitting or licensing authority as final;
(C) the Court's disqualification of the attorney would result in grave injustice; or
(D) the Court concludes that the misconduct underlying the attorney's suspension or disbarment warrants substantially different discipline.

(4) Finality of the Action of the Admitting or Licensing Authority. Unless the Court determines that one of the grounds contained in (3) above exists, the admitting or licensing authority's final adjudication of attorney misconduct conclusively establishes the misconduct for purposes of this Court's discipline. If the attorney's suspension or disbarment is stayed or is not yet final, this Court's disqualification of the attorney is deferred until the stay expires or the decision becomes final.

(5) Reinstatement. Upon reinstatement of an attorney by any admitting or licensing authority, the attorney shall provide to the Clerk of Court written notice from the admitting or licensing authority confirming the reinstatement. The Clerk of Court shall then transmit the confirmation to the Chief Judge who shall determine whether the attorney may be reinstated to practice before the Court.
B. **Subparagraph (b) of LCrR 57.3 – Attorney Discipline** – will be amended as follows:

(1) **Attorney’s Duty to Notify.** An attorney practicing before the Court who is publicly reprimanded, suspended or disbarred by any admitting or licensing authority must promptly inform the Clerk in writing of the public reprimand, suspension or disbarment within ten (10) days after the effective date of any such public reprimand, suspension or disbarment.

(2) **Notice to the Attorney.** Upon receipt of documentation demonstrating an attorney has been suspended or disbarred by any admitting or licensing authority, the Court will immediately issue a notice to the attorney containing the following:

   - (A) a copy of the documentation evidencing suspension or disbarment; and
   - (B) an order to show cause — within thirty (30) days after service of that order — why the attorney should not be disqualified from practicing before the Court. The challenge to the Court’s disqualification of the attorney must be based on one of the grounds contained in section (3). The attorney may respond to the show cause order personally or by mail.

(2) **Automatic Reciprocal Discipline; Discretion to Enhance Discipline.** Unless otherwise ordered by the Court, any such attorney who has been suspended or disbarred by any admitting or licensing authority, whether by suspension, revocation, or disbarment, shall automatically forfeit his or her right to practice law before this Court during the same period that such attorney has been prohibited from practicing law by such other licensing authority, or, under the Court’s discretion, for a greater period of time. The Clerk of Court shall send a written notice to the attorney, together with a copy of this section of the Local Rules, informing the attorney of the forfeiture of his or her right to practice law before this court. Any failure or delay with regard to the sending of such notice shall not affect the automatic forfeiture provisions of this section.

(3) **Discipline Imposed; Grounds for Challenge.** Thirty (30) days after service of the notice provided in (b)(2) above, the Court will disqualify the attorney from practicing before it unless the Court concludes that the entry of some other order is appropriate. Within thirty (30) days after the effective date of any suspension or disbarment by any admitting or licensing authority, the attorney may file a written challenge to the reciprocal discipline imposed under section (2). To conclude that the entry of some other order is appropriate, the Court must find that the record underlying the attorney’s suspension or disbarment clearly indicates that:

   - (A) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
   - (B) the proof establishing the misconduct was so infirm that the Court could not — consistent with its duty — accept the conclusion of the admitting or licensing authority as final;
   - (C) the Court’s disqualification of the attorney would result in grave injustice; or
   - (D) the Court concludes that the misconduct underlying the attorney’s suspension or disbarment warrants substantially different discipline.

(4) **Finality of the Action of the Admitting or Licensing Authority.** Unless the Court determines that one of the grounds contained in (3) above exists, the admitting or licensing authority’s final adjudication of attorney misconduct conclusively establishes the misconduct for purposes of this Court’s discipline. If the attorney’s suspension or disbarment is stayed or is not yet final, this Court’s disqualification of the attorney is deferred until the stay expires or the decision becomes final.

(5) **Reinstatement.** Upon reinstatement of an attorney by any admitting or licensing authority, the attorney shall provide to the Clerk of Court written notice from the admitting or licensing authority confirming the reinstatement. The Clerk of Court shall then transmit the confirmation to the Chief Judge who shall determine whether the attorney may be reinstated to practice before the Court.

Comments concerning the proposed rule amendments are welcome. Comments must be submitted in writing or via email on or before June 30, 2015 and should be sent to:

Brian F. Haara  
Chair, Joint Local Rules Commission  
Tachau Meek PLC  
101 South Fifth Street, Suite 3600  
Louisville, Kentucky 40202  
bhaara@tachaulaw.com
These proposals have been submitted by practitioners for consideration by the Justices of the Supreme Court of Kentucky.

I. SCR 2.018 Application [packets] Process
The proposed amendments to the title of SCR 2.018:

II. SCR 2.113 Military Spouse Provisional Admission.
The proposed new rule SCR 2.113 would read:

1. Requirements. A person who meets all requirements of sub-paragraphs (a) through (m) of paragraph 2 of this Rule may, upon motion, be provisionally admitted to the practice of law in Kentucky.

2. Required Evidence. The applicant for provisional admission shall submit evidence satisfactory to the Kentucky Board of Bar Examiners that he or she:

(a) has been admitted by examination to practice law before the court of last resort of any state or territory of the United States or of the District of Columbia;

(b) holds a Juris Doctor degree from a law school accredited by the American Bar Association at the time of such applicant’s graduation;

(c) has achieved a passing score on the Multistate Professional Responsibility Examination as it is established in Kentucky at the time of application;

(d) is currently an active member in good standing in at least one state or territory of the United States, or the District of Columbia, where the applicant is admitted to the unrestricted practice of law, and is a member in good standing in all jurisdictions where the applicant has been admitted;

(e) is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(f) possesses the good character and fitness to practice law in Kentucky;

(g) is the dependent spouse of an active duty service member of the United States Uniformed Services as defined by the Department of Defense (or, for the Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security) and that the service member is on military orders stationed in the Commonwealth of Kentucky;

(h) is physically residing in Kentucky;

(i) has submitted all requested character investigation information, in a manner and to the extent established by the Board of Bar Examiners, including all required supporting documents;
(j) has never failed the Kentucky Bar Examination;

(k) has completed twelve (12) hours of instruction approved by the Kentucky Continuing Legal Education Board on Kentucky substantive and/or procedural law, including four (4) hours of ethics, within the six-month period immediately preceding or following the filing of the applicant’s application;

(l) certifies that he or she has read and is familiar with the Kentucky Rules of Professional Conduct; and

(m) has paid such fees as may be set by the Board of Bar Examiners to cover the costs of the character and fitness investigation and the processing of the application.

3. Issuance, Duration and Renewal.

(a) The Board of Bar Examiners having certified that all prerequisites have been complied with, the applicant for provisional admission shall, upon payment of applicable dues and completion of the other membership obligations, become an active member of the Kentucky Bar Association. An attorney provisionally admitted pursuant to this Rule shall be subject to the same membership obligations as other active members of the Kentucky Bar Association, and all legal services provided in Kentucky by a lawyer admitted pursuant to this Rule shall be deemed the practice of law and shall subject the attorney to all rules governing the practice of law in Kentucky, including the Kentucky Rules of Professional Conduct.

(b) A provisional admission may be renewed by July 31 of each year, upon filing with the Kentucky Bar Association (i) a written request for renewal, (ii) an affidavit by supervising Local Counsel, who certifies to the provisionally admitted attorney’s continuing employment by or association with Local Counsel and to Local Counsel’s adherence to the supervision requirements as provided under this Rule, and (iii) compliance with the membership obligations of the Rules of the Supreme Court of Kentucky applicable to active members of the Kentucky Bar Association.

(c) When the active duty service member is assigned to an unaccompanied or remote follow-on assignment and the attorney continues to physically reside in Kentucky, the provisional admission may be renewed until that unaccompanied or remote assignment ends, provided that the attorney complies with the other requirements for renewal.

4. Supervision of Local Counsel. A person provisionally admitted to practice under this Rule may engage in the practice of law in this jurisdiction only under the supervision and direction of Local Counsel.

(a) As used in this Rule, Local Counsel means an active member in good standing of the Kentucky Bar Association, whose office is in Kentucky.

(b) Local Counsel must provide to the Kentucky Bar Association his or her Kentucky Bar number, physical office address, mailing address, email address, telephone number, and written consent to serve as Local Counsel, on the form provided by the Board of Bar Examiners.

(c) Unless specifically excused from attendance by the trial judge, Local Counsel shall personally appear with the provisionally admitted attorney on all matters before the court.

(d) Local Counsel will be responsible to the courts, the Kentucky Bar Association, the Supreme Court of Kentucky, and the client for all services provided by the provisionally admitted attorney pursuant to this Rule.

(e) Local Counsel is obligated to notify the Executive Director of the Kentucky Bar Association when the supervising relationship between the provisionally admitted attorney and Local Counsel is terminated.

5. Events of Termination. An attorney’s provisional admission to practice law pursuant to this Rule shall immediately terminate and the attorney shall immediately cease all activities under this Rule upon the occurrence of any of the following:

(a) The spouse’s discharge, separation or retirement from active duty in the United States Uniformed Services, or the spouse’s no longer being on military orders stationed in the Commonwealth of Kentucky, except as provided in section 3(c) of this Rule;

(b) Failure to meet the annual licensing requirements of an active member of the Kentucky Bar Association;

(c) The absence of supervision by Local Counsel;

(d) The attorney no longer physically residing within the Commonwealth of Kentucky;

(e) The attorney ceasing to be a dependent as defined by the Department of Defense (or, for the Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security) on the spouse’s official military orders;

(f) The attorney being admitted to practice law in this Commonwealth under an admissions rule other than that of Provisional Admission;

(g) The attorney receiving a failing score on the Kentucky Bar Examination;

(h) The attorney being suspended from the practice of law in Kentucky; or

(i) Request by the attorney.


(a) An attorney provisionally admitted under this Rule shall provide written notice to the Kentucky Bar Association of any Event of Termination within thirty (30) days of the occurrence thereof.

(b) Within thirty (30) days of the occurrence of any Event of Termination, the attorney shall:

(i) provide written notice to all his or her clients that he or she can no longer represent such clients and furnish proof to the Executive Director of the Kentucky Bar Association within sixty (60) days of such notification, and

(ii) file in each matter pending before any court or tribunal in this Commonwealth a notice that the attorney will no longer be involved in the matter, which shall include the substitution of the Local Counsel, or such other attorney licensed to practice law in Kentucky selected by the client, as counsel in the place of the provisionally admitted attorney.

7. Benefits and Responsibilities. An attorney provisionally admitted under this Rule shall be entitled to the benefits and be subject to all responsibilities and obligations of active members of the Kentucky Bar Association, and shall be subject to the jurisdiction of the
III. SCR 2.300(2), (3) and (4) Reinstatement of persons to practice law

The proposed amendments to sections (2), (3) and (4) of SCR 2.300 are:

Scope and Purpose of Reinstatement Guidelines.

(2) Investigative Process:

Upon receipt of a fully complete application the Character and Fitness Committee will immediately begin the necessary investigatory process, which may or may not involve the use of independent investigators. During this initial investigative period the applicant will be notified that he/she has sixty (60) days to obtain and submit any additional evidence he/she wants considered. The initial sixty (60) day period may be extended upon proper justification being submitted to the Committee in a written request by the applicant. The investigatory process shall be concluded within 180 days after the date the application was filed unless waived by the applicant. Between 90 and 120 days after the application is filed, [After ninety (90) days] the Character and Fitness Committee shall provide a status report(s) to the applicant and Bar Counsel.

(3) Informal Hearings:

During [At the conclusion of] the investigative period a member of the Character and Fitness Committee, or a designee appointed by the Committee, may elect to conduct an informal hearing in an effort to clarify or narrow issues. The informal hearing proceeding shall not be stenographically reported and sworn testimony shall not be taken. The applicant shall be given written notice of the date, time and place of any informal hearing. Notice shall be given no less than fourteen days before the hearing. Failure of the Applicant to fully cooperate with and participate in the informal hearing process shall be a basis for an unfavorable recommendation regarding the application for readmission.

(4) Formal Hearings:

(a) Within thirty days [At the conclusion of the conclusion of the investigatory period, and following the informal hearing, if one is held,] the Character and Fitness Committee shall provide a formal investigative report to the applicant and Bar Counsel. Within 14 days of the receipt of the formal investigative report, [The] the applicant and [Kentucky] Bar [Association] Counsel [will be given a right to] may request a formal hearing before the Committee pursuant to SCR 3.505(3). If a formal hearing is not requested, the Committee may elect to hold a hearing or act upon the evidence of record and issue a decision within sixty (60) days of the day the parties decline a formal hearing.

IV. SCR 2.540(b), (c) and (d) Limited student practice

The proposed amendments to sections (b), (c) and (d) of SCR 2.540 are:

(b) Such student makes application to the Character and Fitness Committee of the Kentucky Office of Bar Admissions, on a form approved by the Committee and accompanied by a $25.00 processing fee to cover costs. The Committee reviews and approves applications for students who appear to be qualified to perform legal services as interns and certifies this to the Supreme Court.

(c) The Chief Justice of the Supreme Court of Kentucky, the dean of the student’s law school, and the director of the law school program in which such student is participating, have filed written approval of such student with the clerk of the Supreme Court, the clerk of the courts before which the student is to appear, and the clerk of the circuit court in the county wherein the student’s law school is located.

(d) A member in good standing of the bar of this state personally supervises all activities of the student in each case, with the exception that the student may consult with the client or potential clients, but may not advise, negotiate or appear alone in administrative proceedings or in the courts of this state in civil or criminal matters without personal appearance and supervision by a member in good standing of the bar of this state, and as otherwise provided in this Rule.

V. SCR 3.030(2), (4), and (5)(a) Membership, practice by non members and classes of membership

The proposed amendments to sections (2), (4) and subsection (a) of section (5) to SCR 3.030 are:

(2) A person admitted to practice in another state, but not in this state, shall be permitted to practice a case in this state only if that attorney subjects himself or herself to the jurisdiction and rules of the Supreme Court of Kentucky, pays a one-time per case fee of two hundred seventy dollars ($270.00) equal to the annual dues paid by those members who have been admitted to practice law for five years or more to the Kentucky Bar Association and engages a member of the association as co-counsel, whose presence shall be necessary at all trials and at other times when required by the court. No motion for permission to practice in any state court in this jurisdiction shall be granted without submission to the admitting court of a certification from the Kentucky Bar Association of receipt of this fee.

(4) A class of membership is established to be known as “Senior Retired Inactive Member.” Any member who reaches the age of 70 years and no longer is actively practicing law and who has met the necessary CLE requirements for inactive status pursuant to SCR 3.65(2), shall upon notification to the Executive Director be classified as Senior Retired Inactive and shall not be required to pay annual dues. Any member who has been classified as Senior Retired Inactive may donate legal services through a duly organized legal aid program offering pro bono representation, or a local bar association legal aid program initiative.

(5)(a) A class of membership is established to be known as “Disabled Inactive Member.” An attorney admitted to practice in this state who has been, because of a mental or physical condition, judicially declared to be a person under a legal disability, or for whom probable cause exists to believe that the attorney has a mental or physical condition that substantially impairs his or her ability to practice law shall provide to the Court Director of the Kentucky Bar Association a detailed written report from a licensed qualified health care provider who has examined the attorney setting out the findings of the health care provider, including the results of all tests made, diagnoses and conclusions. The Court Director shall present the matter to the Board who may enter an order transferring the attorney to Disability Inactive Status. An attorney classified under this subsection is not required to pay dues or obtain the annual CLE requirement pursuant to SCR 3.645. This status shall be reflected on the attorney’s membership record. No attorney classified under this status may engage in the practice of law in this state until restored to active status by the Court. Any disciplinary proceedings against the attorney shall be stayed while he/she is on disability inactive status. Any report and supporting records from a health care provider regarding the treatment of the attorney shall be confidential and sealed.
VI. SCR 3.130(4.5) Solicitation of clients
The proposed new rule SCR 3.130 (4.5) would read:

(1) No lawyer shall directly or through another person by in person, live telephone, or real-time electronic means, solicit professional employment when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain, unless:

(a) the person contacted is a lawyer,

(b) the person contacted has an immediate family, or prior attorney-client relationship with the lawyer, or person contacted; or

(c) the lawyer is advocating a public interest issue and is not significantly motivated by the lawyer’s pecuniary gain.

This Rule shall not prohibit response to inquiries initiated by persons who may become prospective clients at the time of any other incidental contact not designed or intended by the lawyer to solicit employment.

(2) No lawyer shall solicit professional employment by written, recorded, or electronic communication or by in-person, live telephone, or real-time electronic contact even when not otherwise prohibited by paragraph (1) if:

(a) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(b) the solicitation involves coercion, duress or harassment,

(3) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (1)(a) or (1)(b).

(4) Except as provided in paragraph (1), no communication shall be sent to those individuals and related targets of solicitation who have been involved in a disaster as defined in SCR 3.130(7.60) until thirty (30) days have elapsed from the occurrence of the disaster.

(5) Notwithstanding the prohibitions in paragraph (1), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular manner covered by the plan.

VII. SCR 3.130(4.6) Waiver and forfeiture of fees for prohibited solicitation
The proposed new rule SCR 3.130(4.6) would read:

If a lawyer illegally or unethically solicited a client for which compensation is paid or payable, all fees arising from such transaction shall be deemed waived and forfeited and shall be returned to the client. A civil action for recovery of such fees may be brought in a court of competent jurisdiction. Violations may be addressed by the Inquiry Commission as a disciplinary matter.

VIII. SCR 3.130(5.4)(d)(4) Professional independence of a lawyer
The proposed new subsection (4) of section (d) of SCR 3.130(5.4) would read:

(d)(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

IX. SCR 3.130(5.7) Employment of Suspended Lawyers
The proposed new rule SCR 3.130(5.7) would read:

A lawyer may employ former members suspended from the practice of law in any jurisdiction including those suspended for failure to pay Bar dues as provided by SCR 3.050 or for failure to comply with their continuing legal education requirements as provided by SCR 3.675 to perform the following services during the suspension, provided none of the services are performed for the benefit of any clients or former clients of the suspended lawyer or his former firm or associates:

1. Clerical, copying, word processing or editing work of others;
2. Administrative, distributing and/or coordinating work, maintaining client files, and/or scheduling events/appearances;
3. Information technology support, maintaining computer systems, data organization, data entry, software support, and data retrieval;
4. Legal research to be reviewed by a lawyer;
5. Review and preparation of summaries of deposition transcripts and/or medical and business records;
6. Title searches, and
7. Functions which are permitted by federal law.

COMMENTARY

(1) For purposes of this Rule, the term “employ” shall mean engaging the suspended lawyer’s services for pay as an employee, independent contractor, or volunteer, or accepting any service from the suspended lawyer. “Employer” includes all attorneys in the employing firm.

(2) In all employment permitted by this rule a suspended lawyer is prohibited from any interaction with the public from which it might reasonably appear that the suspended lawyer is a lawyer in good standing. This includes, but is not limited to, communication with any clients of the employing attorney, or communications with any attorneys other than the employing attorney. The suspended lawyer shall not receive, disburse, or otherwise handle any client, or escrow funds. The suspended lawyer shall not appear on behalf of the employer or client in any courtroom. The suspended lawyer may be present on behalf of the employer or client only in such other portions of a courthouse, justice center or court of justice as are required for the limited purpose of performing those functions in (6) above. Such suspended lawyer shall not appear on behalf of the employer or client at any deposition, hearing, meeting, or conference, wherever held. Whenever a lawyer employs a suspended lawyer, the employing lawyer shall immediately notify KBA Bar Counsel in writing of that fact, and upon termination of the employment, shall notify KBA Bar Counsel of the date of termination and shall verify compliance with this Rule.
X. **[SCR 3.130(7) Applicability]**

Proposed deletion of Rule 7 and all of its subsections and replacement with new Rule 7 as listed below.

A. **SCR 3.130(7.01) Definitions**

The proposed new SCR 3.130(7.01) would read:

For the purposes of Rule 7, the following definitions shall apply:

(1) “Advertise” or “advertisement” means to furnish any information or communication containing a lawyer’s name or other identifying information, and an “advertisement” is any information containing a lawyer’s name or other identifying information, except the following:

(a) a professional card of a lawyer;

(b) a public service announcement identifying the sponsor as a lawyer or law firm, by name, address(es), telephone number(s), but no other information;

(c) a sign on or near the law office and in the building directory identifying the law office.

(2) “Legal Services” means the practice of law as defined in SCR 3.020.

(3) “Commission” when used in SCR 3.130(7) means Attorneys’ Advertising Commission.

B. **SCR 3.130(7.02) Attorneys’ Advertising Commission**

The proposed new SCR 3.130(7.02) would read:

(1) There shall be created an Attorneys’ Advertising Commission which shall perform such functions in regulating lawyer advertising as prescribed in these Rules.

(2) The Commission shall consist of up to (9) persons appointed by the President and approved by the Board. Each Commission member shall be appointed for a term of three years, with terms so established that the terms of the Commission members shall be staggered. Vacancies for unexpired terms shall be filled in the same manner as original appointees, but the appointees shall hold office only to the end of the unexpired term. No member may serve more than two (2) terms in succession, and may be removed at any time by a majority vote of the Board.

(3) Each Commission member shall be a citizen of the United States and licensed to practice law in the Courts of the Commonwealth.

(4) The Board shall appoint a Chair from among the Commission members. The term shall be one (1) year, however, the Chair may serve more than one (1) term.

(5) The Commission shall be provided with sufficient administrative assistance from the Director as from time to time may be required.

(6) The Commission shall have general responsibilities for the implementation of this Rule. In discharging its responsibilities the Commission shall have authority to:

(a) Subject to prior approval by the Board, issue and promulgate regulations and such forms as may be necessary. Each member of the Kentucky Bar Association shall be given at least sixty (60) days advance notice of any proposed regulations and an opportunity to comment thereon. Notice may be given by publication in the journal of the Kentucky Bar Association.

(b) Report to the Board at its last meeting preceding the Annual Convention of the Kentucky Bar Association, and otherwise as required, on the status of advertising with such recommendations or forms as advisable.

(c) Delegate to an employee of the Kentucky Bar Association, designated by the Director of the Kentucky Bar Association, the authority to review advertisements on its behalf.

(d) Issue advisory opinions concerning the compliance of an advertisement with the Advertising Rules and Regulations.

(7) The Commission shall prepare a budget for the succeeding year and shall submit same to the Board of Governors for inclusion with the budget of the Kentucky Bar Association.

(8) Nothing in these rules shall be construed as creating any cause of action for any party or right of suit against any member of the Commission. The Kentucky Bar Association, the Board of Governors, the Attorneys’ Advertising Commission, the Executive Director of the Kentucky Bar Association, the Office of Bar Counsel, all of their officers, members, employees or agents shall be immune from civil liability for all acts in the course of their official duties in regulating lawyer advertising.

C. **SCR 3.130(7.03) Advisory opinions**

The proposed new SCR 3.130(7.03) would read:

(1) A lawyer may request an advisory opinion by the Commission. Such request shall be in writing and shall be accompanied by a filing fee of $75.00. Within 30 days after such request is received, the Commission shall issue its advisory opinion as to the compliance of the advertisement with the Advertising Rules and Advertising Regulations. If the Commission finds that the advertisement does not comply with the requirements of the Advertising Rules or the Advertising Regulations, the Commission, or its designee, shall issue an advisory letter forthwith setting forth the factual and legal basis for the opinion. The lawyer may submit a corrected advertisement that conforms to the advice in the advisory letter with no additional fee required.

(2) For any advertisement submitted pursuant to SCR 3.130(7.03)(1), the lawyer shall mail or deliver to the Commission, c/o the Director of the Kentucky Bar Association, three (3) copies of the advertisement. If the advertisement is to be published by broadcast media, including radio or television, a fair and accurate representation of the advertisement plus three (3) copies of a typed transcript of the words spoken shall be submitted. Website advertisements that do not qualify for submission without a fee must be submitted in electronic format on a data disc in PDF (Portable Document Format), or other such data storage media as the Commission may designate by regulation. Three (3) copies of the data disc should be mailed or delivered to the Commission, c/o the Director of the Kentucky Bar Association. A filing fee of $75.00 for each advertisement filed under this subsection shall accompany each submission. Additionally, advertisements of more than 100 pages, or longer than 10 minutes of video or audio, will require a supplemental fee of one hundred dollars ($100.00). The fair and accurate representation of a broadcast media advertisement shall include three (3) copies of a video cassette (VHS), digital video disc (DVD), or audio cassette plus three (3) copies of a typed transcript of the advertisement.

(3) If a lawyer has received an advisory opinion that an advertisement complies with the Advertising Rules and Advertising Regulations, that lawyer shall not be disciplined for any use of that advertisement, unless an advertisement is false, misleading or deceptive, or information provided to the Commission in connection with the submission is false, misleading or deceptive after the Commission has issued its advisory opinion.
D. SCR 3.130(7.04) Records of the commission

The proposed new SCR 3.130(7.04) would read:

All advertisements and the records of all actions taken by the Commission on submitted advertisements shall be available for inspection and copying at the offices of the Kentucky Bar Association at reasonable times and upon reasonable notice. Any expense incurred shall be borne by the requesting party.

E. SCR 3.130(7.10) Communications concerning a lawyer’s service

The proposed new SCR 3.130(7.10) would read:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s service. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

F. SCR 3.130(7.15) Advertising of fees

The proposed new SCR 3.130(7.15) would read:

A lawyer who advertises a fee for routine services and accepts the employment must perform such services for the amount advertised. Upon request, a detailed description of what services are included in the “routine services” must be supplied to the Commission and to each prospective client.

G. SCR 3.130(7.20) Advertising

The proposed new SCR 3.130(7.20) would read:

(1) Subject to the requirements of Rules 4.5 and 7.10, a lawyer may advertise legal services through written, recorded or electronic communications, including public media.

(2) A lawyer shall not give anything of value to a non-lawyer for recommending the lawyer’s services except that a lawyer may:

(a) Pay the reasonable cost of advertising or communication permitted by this Rule;

(b) Pay the usual charges of a legal service plan or a not-for-profit qualified lawyer referral service. A qualified referral service is a lawyer referral service that has been approved by the Advertising Commission;

(c) Pay for a law practice in accordance with Rule 1.17; and

(d) Refer clients to another lawyer or a non-lawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) The reciprocal referral agreement is not exclusive, and

(ii) The client is informed of the existence and nature of the agreement.

(3) Any communication made pursuant to these Rules shall include the name and office address of at least one (1) lawyer or the name of a law firm. The lawyer or lawyers in Kentucky shall be responsible for the content of the advertisement.

(4) Communication by a lawyer with a person or entity with whom that lawyer has an immediate family or current attorney-client relationship, or a communication in response to an inquiry from any person or entity seeking information, shall be exempt from the provisions of the Advertising Rules and the Advertising Regulations, with the exception of SCR 3.130(7.15).

(5) If a lawyer or a law firm advertises legal services and a lawyer’s name or image is used to present the advertisement, the lawyer must be the lawyer who will actually perform the service advertised unless the advertisement prominently discloses that the service may be performed by other lawyers. If the lawyer whose name or image is used is not licensed to perform the services in Kentucky, such fact shall be disclosed in the advertisement. If the advertising lawyer or firm is advertising for clients for the purpose of referring the client to another lawyer or firm, that fact must be disclosed prominently in the advertisement.

(6) The lawyer shall retain a copy or recording of all advertisements utilized by the lawyer, as well as a record of when and where it was used, for two (2) years after its last dissemination. Electronic retention is permitted if in PDF format, or such other formats as the Commission may designate by regulation. In the event of the pendency of any disciplinary action before the Inquiry Commission, Board of Governors or Court, the lawyer shall continue to retain a copy until the termination of that proceeding.

H. SCR 3.130(7.40) Communication of fields of practice

The proposed new SCR 3.130(7.40) would read:

(1) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(2) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation “Patent Lawyer” or a substantially similar designation.

(3) A lawyer engaged in admiralty practice may use the designation “Admiralty”, “Proctor in Admiralty”, or substantially similar designation.

(4) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(a) the lawyer has been certified as a specialist by an organization which has been approved by an appropriate state authority or that has been accredited by the American Bar Association;

(b) the name of the certifying organization is clearly identified in the communication; and

(c) the communication occurs only for as long as the lawyer remains so certified and in good standing.

I. SCR 3.130(7.50) Firm names and letterheads

The proposed new SCR 3.130(7.50) would read:

(1) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.10.

(2) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(3) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any period in which the lawyer is not actively and regularly practicing with the firm.
(4) Lawyers may state or imply that they practice in a legal entity only if that is the fact.

(5) The name of a lawyer who is suspended by the Supreme Court from the practice of law may not be used by the law firm in any manner until the lawyer is reinstated. A lawyer who has been permanently disbarred shall not be included in a firm name, letterhead, or any other professional designation, or advertisement.

J. SCR 3.130(7.60) Kentucky Bar Association Disaster Response Plan

The proposed new SCR 3.130(7.60) would read:

(1) It is the purpose of the Kentucky Disaster Response Plan to:

(a) address the problems that occur when lawyers and non-lawyers, who are not subject to the disciplinary jurisdiction of the Kentucky Bar Association and the Kentucky Supreme Court, engage in the provision of legal services, legal advice, and outright solicitation of persons and their families affected by a Disaster;

(b) provide information to the public regarding the availability of legal services, as well as information regarding the legal rights available to persons affected by disasters;

(c) monitor the conduct of all attorneys, both members and non-members of the Kentucky Bar Association, and thereby deter violations of the rules of ethical conduct and the rules of the Kentucky Bar Association;

(d) inform the public of the levels of conduct required of members of the Kentucky Bar Association and notify the public that it is improper for attorneys to solicit employment either in person or through runners, agents, solicitors, or others in such a manner as to create direct contact between the attorney seeking such employment and the potential claimant.

(2) It is the policy of the Kentucky Bar Association to encourage and promote the highest ethical standards among attorneys practicing within its borders. Realizing the emotional distress and grief that are inevitable immediately following a Disaster, the Kentucky Bar Association Disaster Response Plan (hereafter Plan) is established to facilitate the handling of these situations in a manner that best protects the interests of the persons involved as well as the legal community.

(3) For purposes of the Plan, a “Disaster” shall mean the type of emergency or disaster that draws persons to solicit clients. This includes, but is not limited to, air crash, major fire, explosion, sea disaster, hazardous material contamination, flood, landslide, major rail or traffic accident, earthquake, or other circumstances resulting in substantial loss of life, substantial personal injury, or substantial property damage.

(4) It shall be the responsibility of the Immediate Past President of the Kentucky Bar Association (hereafter Past President) or if the Past President is absent from the state or physically or mentally unable to act, the Director of the Kentucky Bar Association, or their designee, to identify a Disaster.

(5) The Kentucky Mass Disaster Task Force, (hereafter “Task Force”) is hereby created from the Kentucky Bar Association membership in a sufficient number of “units” at the discretion of the Board to provide Disaster services. A unit of the Task Force shall consist of at least one member of the Board, one member of the Court of Justice, and one or more additional designees to each unit as appointed by the Past President.

(6) The Task Force shall meet promptly upon learning of an identified Disaster and shall establish a “legal service information center.”

(7) The Task Force shall be provided with printed literature identifying the purpose of the Task Force, a press release identifying the unit of the Task Force, and any additional materials and equipment that the Past President, the Director, or the unit members themselves believe necessary to accomplish their purpose.

(8) The units of the Task Force shall be prepared to inform affected persons that:

(a) decisions regarding most legal matters and legal claims (other than those requiring immediate attention for the preservation of life or health of a person) are generally decisions that are better made after reasonable and thoughtful consideration and after consultation with the appropriate professionals, including attorneys;

(b) legal services are available to persons affected by Disasters;

(c) persons and entities who sustain damage by reason of the wrongful conduct of another may be entitled to recover damages;

(d) “Statutes of Limitations” exist which apply to various causes of action within the Commonwealth of Kentucky and, in certain circumstances, to Federal causes of action;

(e) any person or entity believing he or she has been damaged by the wrongful acts of another should seek legal advice to determine the applicable statute of limitations;

(f) only those persons who have been admitted to practice law in the Commonwealth of Kentucky and those persons who are lawfully associated with them in practice may appear and present claims within the Courts of the Commonwealth of Kentucky;

(g) no person affected by a Disaster is obligated by law to furnish information regarding the occurrence to any representative of the media, or to investigators, insurance agents and adjusters (other than as required by the persons own insurers), attorneys, or other members of the public, except that a person who has observed conduct that may be identified as “criminal activity” is obligated to furnish information pertaining to criminal activity to lawfully constituted legal authorities;

(h) the affected persons should make a diligent effort to observe all conditions pertaining to the Disaster, and to make such appropriate records or notations as necessary in the circumstances to memorialize their recollections of the Disaster;

(i) if there are witnesses to the Disaster, it may be important to obtain the names, addresses, and telephone numbers of those witnesses, and to retain them for future reference;

(j) that Kentucky law does not certify specialties and that the members of the unit and their partners, associates, members of their firms, and other lawyers associated with them are not permitted to accept employment for the provision of legal services regarding the Disaster;

(k) the services provided by the unit are for informational purposes only, and

(l) each person or entity interested in legal services should seek the advice of private counsel selected by that person or entity.

(9) The Task Force shall investigate if runners, attorneys, or others have been soliciting or attempting to solicit victims, relatives of victims, or others as clients for matters related to the Disaster. The Task Force shall designate from its members a person to receive any
XI. SCR 3.160(1) and (3)(C) Initiation of disciplinary cases

The proposed amendments to section (1) and subsection (C) to section (3) of SCR 3.160 are:

(1) After review by Bar Counsel pursuant to subparagraph (3) of this Rule, any sworn written statement of complaint against an attorney for unprofessional conduct shall be filed with the Office of Bar Counsel (Disciplinary Clerk) who shall promptly notify the attorney by certified mail, sent to the address maintained by the Director pursuant to SCR 3.175, or other means consistent with the Supreme Court Rules and Civil Rules, of the complaint, and that he/she has twenty (20) days to respond to the complaint. Upon completion of the investigation by the Office of Bar Counsel the matter shall be assigned to an Inquiry Commission panel by rotation.

(3)(C) After review and such preliminary investigation as may reasonably be necessary, the Office of Bar Counsel may attempt informal resolution and subsequently close the Complaint. If the acts or course of conduct complained of merit referral under 3A(ii)-(vi), and do not warrant a greater degree of discipline, the Office of Bar Counsel may issue a warning letter, which will be maintained in the investigative file of the Office of Bar Counsel but not be considered as discipline, or it may recommend remedial ethics, related legal or management education programs, fee arbitration, or KYLAP; completion of which would result in the complaint being dismissed. The attorney who receives the warning letter may, within thirty (30) days from the date of the letter, reject the letter and request that it be considered by the Inquiry Commission.

XII. SCR 3.175(1)(b) Efficient enforcement; notice of attorney’s address

The proposed amendments to subsection (b) to section (1) of SCR 3.175 are:

(1)(b) maintain with the Director a valid email address and shall upon change of that address notify the Director within thirty days of the new address, except however, that “Senior Retired Inactive” members, [and] “Disabled Inactive” members and those “Honorary” members who no longer actively practice law or maintain an office shall not be required to maintain an email address.

XIII. SCR 3.181(1) Assistance to other lawyer disciplinary jurisdictions

The proposed amendments to section (1) of SCR 3.181 are:

(1) Upon receipt by the Director of a subpoena certified to be duly issued under the rules or laws of another lawyer disciplinary jurisdiction, or by a clients’ security fund of any jurisdiction, the Inquiry Commission may authorize the Director or Disciplinary Clerk to issue a subpoena directing a person domiciled or found within the Commonwealth of Kentucky to give testimony and/or produce documents or other things for use in the other lawyer disciplinary or clients’ security fund proceedings as directed in the subpoena of the other jurisdiction.

XIV. SCR 3.185(1) and (2) Informal admonition procedure

The proposed amendments to sections (1) and (2) of SCR 3.185 are:

(1) After a complaint against an attorney for unprofessional conduct is investigated and a response filed, the Inquiry Commission may direct a private admonition, with or without conditions, to the attorney if the acts or course of conduct complained of are shown not to warrant a greater degree of discipline. The attorney so admonished may, within twenty (20) days from the date of the admonition, reject such admonition and request that a charge be issued and filed as is provided by Rule 3.190; whereupon, the issues shall be processed under the applicable rules.

(2) The Inquiry Commission may also issue a warning or a conditional dismissal letter including, but not limited to, conditions such as referral to KYLAP, or attendance at a remedial ethics program or related classes as directed by the Office of Bar Counsel. The attorney who receives the warning letter may, within thirty (30) days from the date of the letter, respond to the letter and request that it be reconsidered by the Inquiry Commission.

XV. SCR 3.200 Notice of filing charges; time to answer

The proposed amendments to SCR 3.200 are:

Upon the filing of a charge, the Disciplinary Clerk shall furnish the Respondent with a copy, by certified mail return receipt requested to the Respondent’s bar roster address, or by service on the Director as set forth in SCR 3.175, and notify the Respondent that within twenty (20) days after receipt of the notice, he/she must file an answer and three (3) copies with the Disciplinary Clerk for transmittal to the Inquiry Commission, and attached hereto a copy of the respondents succession documents required by SCR 3.396(2). The Inquiry Commission may rule on motions to file late answers for good cause shown as set forth in CR 6.02.

complaints or inquiries concerning suspected improper solicitation. As soon as is reasonably practicable, such designee shall furnish such in- formation to the Director of the Kentucky Bar Association or his designee.

(10) The Task Force shall be subject to the following restrictions:

(a) no member of the Task Force shall offer specific legal advice to anyone regarding the Disaster, nor shall he refer a person to a particular lawyer or law firm. Upon inquiry and to the extent necessary to respond, a member of the Task Force may refer a person to other agencies or groups for information or assistance.

(b) no member of the unit assigned to a particular Disaster, nor any of his partners, members of his firm, associates, or other lawyers associated with the member shall be permitted to accept any employment relating to any matter arising out of that Disaster.

(c) the Task Force shall not issue any news releases or make any public statements on behalf of the Kentucky Bar Association without the specific prior approval of the Director.

(11) The reasonable expenses incurred by each unit member of the Task Force in training and providing services as contemplated herein, as well as the cost of the equipment and supplies necessary to provide the service shall be paid from the General Fund of the Kentucky Bar Association unless the same expenses shall be provided from IOLTA funds of the Kentucky Bar Association, funds obtained from private sources, grants or donations, or from funds otherwise appropriated by the Kentucky General Assembly, including discretionary funds of the Governor of Kentucky or other elected officials. Each unit of the Task Force shall be authorized to obtain when necessary such secretarial and clerical assistance as appropriate in the circumstances of the particular Disaster.

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XVI. SCR 3.210(3) Processing cases of default, admissions of violations or answers raising only issues of law

The proposed amendments to section (3) to SCR 3.210 are:

(3) If the parties agree that the answer raises only issues of law, or the Respondent admits the violation, the case shall be submitted (directly) to the Board upon Motion by either party. Bar Counsel may file a brief within (twenty) 20 days after the order granting the Motion is entered, and the Respondent may file a brief within (twenty) 20 days thereafter. After briefs are filed, or the time within which briefs may be filed has expired, the record and briefs shall be forwarded to the President for assignment to a member of the Board for a report.

XVII. SCR 3.300 Rights of respondent against whom a charge has been filed

The proposed amendments to SCR 3.300 are:

The Respondent against whom a charge has been filed shall have the right to be represented by counsel. The Respondent shall have all the rights secured to a party by the Rules of Civil Procedure and Kentucky Rules of Evidence with respect to the introduction of evidence. The Respondent shall have the right to compel the attendance of witnesses and the production of books, papers and documents or other writings, except those contained in the investigative file of Bar Counsel, to the hearing or to such depositions as are permitted under SCR 3.340. The Respondent shall have the right to an oral argument or to file a brief before the Trial Commissioner. The Respondent shall be afforded a full opportunity to defend himself/herself by the introduction of evidence, and to cross-examine witnesses. If the facts in the charge would give rise to a criminal proceeding, respondent shall not be compelled to give evidence against himself or herself. If the Respondent is unable to employ counsel, the Chair, or Chair’s lawyer designee, upon written request accompanied by an in forma pauperis affidavit, made within twenty (20) days after service of the charge, shall appoint counsel for the Respondent.

XVIII. SCR 3.360(4) Trial Commissioner to file report with Disciplinary Clerk

The proposed amendments to section (4) of SCR 3.360 are:

(4) Within thirty (30) days after the filing with the Disciplinary Clerk of: (a) the report, (b) an order ruling on a motion under SCR 3.360(3), or (c) an amended report, whichever is later, either party may file a notice of appeal with the Disciplinary Clerk. If no notice of appeal is timely filed, the entire record shall be forwarded to the Court for entry of a final order pursuant to SCR 3.370(109).

XIX. SCR 3.370(10) and (11) Procedure before the Board and the Court

The proposed amendments to sections (10) and (11) of SCR 3.370 are:

(10) When the Respondent is proceeded against by warning order, the notice in paragraph (2) and paragraph eight (8) of this rule shall be deemed to have been served thirty (30) days after the date of the making of the warning order.

(11) In each case to be presented to the Trial Commissioner, there shall be supplied with the Disciplinary Clerk’s file a sealed envelope containing a statement of the Respondent’s years of membership in the Association, all orders of unprofessional conduct, and all withdrawals from the association and reasons therefore. The envelope will be opened only if the Trial Commissioner makes a finding of a violation and may be considered in deciding what discipline to impose. Such statement will become part of the record of the case and be transmitted with the rest of the file to the Disciplinary Clerk, Board and/or Supreme Court. Before submission of a case to the Trial Commissioner or the Board a copy of said statement shall be sent to the Respondent, who may review documents relative to it at the Bar Center, and may comment to the Trial Commissioner or the Board upon the statement and point out errors contained in it.

XX. SCR 3.395(1), (4), (5) and (6) Appointment of special commissioner to protect clients’ interests

The proposed amendments to sections (1), (4), (5) and (6) of SCR 3.395 are:

(1) When it comes to the attention of the Director that: (a) an attorney has been temporarily suspended pursuant to SCR 3.165 and has failed to notify his/her clients of the suspension as required by Court order; or (b) an attorney has been suspended or disbarred pursuant to SCR 3.370 and has failed to notify his/her clients of his/her suspension or disbarment pursuant to SCR 3.390; or (c) an attorney has resigned pursuant to SCR 3.480 and has failed to notify his/her clients of his/her resignation as required by Court order; or (d) an attorney dies; or (e) an attorney has been declared incompetent; or (f) an attorney abandons his/her practice or his/her whereabouts are unknown, and no law partner, personal representative of the deceased attorney’s estate, or other responsible person capable of conducting the attorney’s business affairs is known to exist, the Director may petition the Court, and the Court for good cause may order the Chief Circuit Judge of the Judicial Circuit for the attorney’s last known address to order the appointment of one or more members of the Association to serve as Special Commissioners of the Court.

The Director shall give notice to the attorney by mailing a copy of the petition to the attorney’s last known address, except where the attorney is deceased. If the attorney is deceased, the notice shall be sent to the attorney’s personal representative, if known. Within twenty (20) days after the date on which the Director files the petition with the Court, the attorney may file a response to the petition with the Court. The Clerk of the Court shall mail a copy of the Court’s order ruling on the petition to the attorney’s last known address, to the Director and to the Chief Circuit Judge. [Special Commissioner. The Director in his/her petition may suggest to the Court the names of one or more members of the Association to serve as a Special Commissioner.]

(4) The Special Commissioner shall file a written report within six (6) months, with the Court containing a summary and explanation of the actions taken by the Special Commissioner to fulfill the duties assigned to the Special Commissioner by the Court. This time frame may be extended for good cause shown. The Special Commissioner shall mail a copy of the report to the Director and to the attorney’s last known address.

(5) If the Special Commissioner takes possession of files of an attorney and the Special Commissioner is unable after a diligent effort to deliver the files to the clients or to new attorneys representing the clients, the Special Commissioner may request the Court to enter an order providing for the storage and safekeeping or destruction, as appropriate, of such files.

(6) The Special Commissioner shall be entitled to reasonable compensation with the amount to be determined by the Court and to also be reimbursed for necessary expenses actually incurred. In order to receive such compensation or reimbursement of expenses, the Special Commissioner shall file with the Court a motion containing an itemized list of the
time spent on the case, the work performed, and receipts for the expenses incurred. The Special Commissioner’s compensation and expenses which are approved by the Court shall be paid by the Association, but any amounts disbursed by the Association to the Special Commissioner shall be assessed as costs against the attorney pursuant to SCR 3.450 if the appointment of the Special Commissioner arose out of, (a) disciplinary proceeding, resignation or an abandonment of the practice or, (b) if the appointment arose out of a mental illness or disease and a guardian has been appointed for the attorney, the cost shall be presented to the attorney’s guardian or, (c) if the appointment arose from the death of the attorney, from the estate of the decedent by presenting the fiduciary of the estate the costs and, when possible, to file a proof of claim with the appropriate district court clerk.

XXI. SCR 3.396 Succession Plan

The proposed new rule SCR 3.396 would read:

Section 1

Definitions:

(1) Assisting Attorney – is defined as an attorney who is licensed to practice law in this Commonwealth pursuant to SCR 3.020 who has agreed to serve for the Member to make arrangements for closing the Member’s practice, or, managing the same while the Member is incapacitated or otherwise unable to manage the Member’s law practice in the event of the Member’s death, disability, impairment, incapacity or any other condition or situation referenced in SCR 3.395(1). If two (2) or more Assisting Attorneys have been appointed by the affected attorney, at least one of the Assisting Attorneys shall be licensed to practice law in this Commonwealth, with all unlicensed Assisting Attorney(s) to perform any and all duties other than engaging in the practice of law as defined by the Rules.

(2) Affected Attorney – is defined as an attorney, licensed to practice law in this Commonwealth, who has made arrangements to safeguard the Affected Attorney’s interests in the event of the Affected Attorney’s death, disability, impairment, incapacity or any other condition or situation referenced in SCR 3.395(1) by appointing an Assisting Attorney(ies).

(3) Succession Plan – is defined as a plan, pursuant to SCR 3.396, that will provide for a Member’s law practice in the event of death, disability, impairment, incapacity or any other condition or situation referenced in SCR 3.395(1), which appoints an Assisting Attorney(s) for closing the Member’s practice or managing the same while the Member is incapacitated or otherwise unable to manage the Member’s law practice.

Section 2

Every Member licensed to practice law in this Commonwealth shall adopt a succession plan that includes the appointment of at least one Assisting Attorney in the event the Member is suspended, disbarred, becomes disabled or otherwise mentally or physically incapacitated so as to be unable to practice law; dies, resigns, or abandons the practice of law as contemplated by SCR 3.395(1).

Section 3

In order for a Member to be in compliance with Section 2 above, the Member shall execute a power of attorney and succession agreement naming at least one assisting attorney, licensed to practice law in this Commonwealth, which makes arrangements for closing the Member’s practice or managing the same while the Member is incapacitated or otherwise unable to manage the Member’s law practice as referenced in Section 2. A power of attorney and succession agreement shall be sufficient to comply with this rule, if the Member includes, at a minimum, the recommended language the Director makes available for these documents.

Section 4

Every Member shall verify compliance with Section 2 above in accordance with Section 7.

Section 5

Upon a Member’s inability to practice law as described in Section 2, the Assisting Attorney shall comply with the terms of the succession agreement or power of attorney, to assist the Member no longer practicing law, by taking the following actions, preferably in the order listed below, to wit:

1. Gain access or entry to the Affected Attorney’s office(s);

2. Notify the KBA in the case of death of a Member by sending the Director an email or letter;

3. Inventory the Affected Attorney’s personal property located at the Affected Attorney’s office or otherwise associated with the practice of law;

4. Identify the Affected Attorney’s bank account(s) used exclusively for the Affected Attorney’s law practice, including IOLTA accounts;

5. Cooperate with the Affected Attorney’s fiduciary, if any, whether the same is an executor/administrator, guardian, trustee, etc. in an effort to exchange information, obtain financing for the closing of the Affected Attorney’s practice or make distribution to the fiduciary the fees and assets belonging to the Affected Attorney;

6. Inventory the Affected Attorney’s case files, whether traditional paper files or electronic files, before opening the files to understand the contents so that a conflicts of interest check can be completed;

7. Complete a conflict of interest check by using the inventory created by, or at the request of the Assisting Attorney, however, in the event that the Assisting Attorney is not able to check systematically for conflicts of interest, by virtue of the disorganized state of the Affected Attorney's practice, the Assisting Attorney will not be required to perform a conflict of interest check to identify potential conflicts of interest identified by Rules 1.7 or 1.9 and will be disqualified from serving as an Assisting Attorney only if the Assisting Attorney knows that the representation presents a conflict of interest for the Assisting Attorney, and only if the Assisting Attorney knows that another lawyer in the Assisting Attorney's firm is disqualified by Rules 1.7 or 1.9(a).

8. Identify whether the Assisting Attorney needs to take specific action to protect the interests of the Affected Attorney's client; and, when necessary, take the appropriate action to notify the Affected Attorney’s client of the need to take action;

9. Identify Affected Attorney’s clients who are entitled to refunds of fees or monies held in the Affected Attorney’s IOLTA bank account, if any, and make distribution of the same only when appropriate;

10. Identify the fees and costs due the Affected Attorney or Affected Attorney’s estate;

11. File the necessary liens to protect the Affected Attorney’s fees and costs;

12. Notify the Affected Attorney’s clients that the Affected Attorney is no longer practicing law and extend an opportunity to the client to ob-
tain their file and any other personal property entrusted to the Affected Attorney; and,

13. In the case of death or permanent mental incompetency of the Affected Attorney, the Assisting Attorney shall perform any and all other acts necessary to close or sell, the law practice of the Affected Attorney in accordance with the succession agreement entered into by the Assisting Attorney and Affected Attorney and make final distribution to the Affected Attorney's fiduciary or, in the case of suspension, disbarment, resignation or abandonment, to communicate with the Affected Attorney and ascertain the wishes of the Affected Attorney if possible, if not, the Assisting Attorney shall perform any and all other acts necessary to strictly adhere to the succession agreement executed by the Affected Attorney and Assisting Attorney.

Section 6

The Director shall compile a manual that provides information on succession planning for the benefits of its Members, including, but not limited to, the following, to wit:

1. A checklist for the Member to consider when drafting the succession documents referred to in Section 3;

2. A checklist for the Assisting Attorney when the Assisting Attorney assumes the duties and powers contained in the power of attorney or succession agreement, upon the occurrence of any event which renders the Member unable to practice law as referenced in SCR 3.395(1) or otherwise described by the succession documents;

3. A recommended power of attorney which complies with SCR 3.396(2);

4. A recommended succession agreement which complies with SCR 3.396(2). The Director shall publish the manual on the KBA's official website for its Members to access, in Word format, or provide a copy to the Member at the Member's request. The Director may charge the Member the cost of complying with the request.

Section 7

Every Member shall sign a certification of compliance with section 2 above, on an approved form provided by KBA, annually, to be submitted with the Member's dues, within the deadline for the payment of dues as prescribed by SCR 3.040, and shall choose one of the following selections by placing a check on the blank line preceding the sentence which correctly applies to the Member and signing the line that appears at the end of the selections, to wit:

1. I hereby certify that I am EXEMPT pursuant to SCR 3.396 (11) and am not required to comply with Section 2 of SCR 3.396.

2. I hereby certify that I am a solo practitioner and have complied with Section 2 of SCR 3.396, and have executed a power of attorney and succession agreement as required by the rule.

3. I hereby certify that I am a Member of a law firm whose members have executed an operating agreement that complies with Section 2 of SCR 3.396.

Signature of Member

Section 8

If a Member fails to comply with section 7 above, the Director of the KBA shall notify the Member of the noncompliance by sending the Member an email or letter notifying the Member of the noncompliance. The letter shall be sent to the email address or mailing address for the Member as listed on the Director's official roster of Members (SCR 3.175). The email or letter from the Director shall provide that the Member must respond, in writing, to the Director within 30 days from the date of the email or letter. The written response by the Member shall state that the Member is in compliance with section 2 and shall include an executed certification of compliance as required by Section 7, or, that the Member has not complied and needs additional time to comply with Sections 2 and 7, accompanied by the Member's explanation for the noncompliance and the basis for requesting additional time. The Director shall have discretion to grant the Member's request for a reasonable extension of time, for good cause shown. The Director shall not deny the Member's request for an extension of time, unless the Member appears to have acted in bad faith or is requesting an unreasonable amount of time to comply with SCR 3.396(2).

Section 9

If a Member fails to comply with section 7 and further fails to respond to the Director's email or letter notifying the Member of noncompliance referenced in Section 8, the Director shall require the Member to attend a CLE program approved by the KBA (SCR 3.645) within 120 days following the date of the original email or letter notifying the Member of the noncompliance. This notice shall be sent by the Director in the same manner as required by Section 8. On or before the expiration of the 120 days, the Member shall file a written response to the Director stating that the Member is, in compliance with section 2 and the Member shall include the certification of compliance required by Section 7, or, stating that the Member has not complied and needs additional time to comply with Sections 2 and 7. This notice shall be given in the same manner as prescribed by Section 8 and the Director shall have the same discretion to grant or deny the request as prescribed by Section 8.

Section 10

If a Member fails to comply with section 7 herein and further fails to respond to the Director's email or letter notifying the Member of noncompliance referenced in Section 8 and further fails to respond or comply with the Director's second letter giving notice of the Member's obligation to attend the CLE seminar referenced in section 9, the Director shall assess a reasonable fine, or, shall file a complaint and refer the Member to the disciplinary commission, requesting that the Member receive a public reprimand.

Section 11

The requirement as set forth in Section 2 shall not apply to the following Members, who shall be exempted to wit:

1. An employee of a private corporation, a United States government agency or department, or state, county or municipal government agency, a legal aid society, or a corporation organized to provide public defender services (but if for a private corporation, may render professional services in that employment only for the employing corporation and its subsidiaries and not the general public, except pro bono or legal aid);

2. An instructor or professor of law in a law school located in Kentucky; and,

3. A judge of the Court of Justice, a federal court or as an administrative law judge in federal or state government.
XXII. SCR 3.510(2) Reinstatement in case of disciplinary suspension

The proposed amendments to section (2) of SCR 3.510 are:

(2) If the period of suspension has prevailed for 180 days or less, the suspension shall expire by its own terms upon the filing with the Clerk, (and) Bar Counsel, and the Registrar of an affidavit of compliance with the terms of the suspension, which must include a certification from the CLE Commission that the Applicant has complied with SCR 3.685. The Registrar of the Association will make an appropriate entry in the records of the Association reflecting that the member has been reinstated, provided, however, that such suspension shall not expire by its own terms if, not later than 10 days preceding the time the suspension would expire, Bar Counsel files with the Registrar an opposition to the termination of suspension wherein Bar Counsel details such information as may exist to indicate that the member does not, at that time, possess sufficient professional capabilities and qualifications properly to serve the public as an active practitioner or is not of good moral character. A copy of such objection shall be provided to the Character and Fitness Committee, and to the member concerned, and (to the Registrar) if such an objection has been filed by Bar Counsel, and is not withdrawn within 30 days, the Character and Fitness Committee shall conduct proceedings under SCR 2.300. In cases where a suspension has prevailed for 180 days or less and the reinstatement application is referred to the Character and Fitness Committee, a fee of $1500.00 shall be made payable to the Kentucky Office of Bar Admissions. An additional fee of $250.00 shall be made payable to the Kentucky Bar Association.

XXIII. SCR 3.640(8) New Lawyer Program Requirement

The proposed amendments to section (8) of SCR 3.640(8) are:

(8) The time for completion and certification set forth in paragraphs 1 and 6 of this Rule may, upon written application to and approval by the Commission or its designee, be extended. Written application for an extension under this paragraph must be received by the Commission no later than 30 days after the member’s deadline to complete the Program as set forth in paragraph (1) of this Rule. [AH] All applications must be signed by the member. The Commission may approve extensions for completing the Program under the following circumstances:

XXIV. SCR 3.645(1) and (2)(c) Continuing legal education requirements: compliance and certification

The proposed amendments to section (1) and subsection (c) of section (2) to SCR 3.645(1) are:

(1) Each educational year, as defined by SCR 3.600(7), every person licensed to practice law in this Commonwealth, not specifically exempted pursuant to the provisions of SCR 3.665, shall complete and certify a minimum of 12 credit hours in continuing legal education activities approved by the Commission, including a minimum of 2 credit hours devoted to “ethics, professional responsibility and professionalism” as defined by SCR 3.600(8). [All] All continuing legal education activities must be completed by June 30 of each educational year.

(2)(c) Sponsors submitting certifications to the Director for CLE shall comply with all requirements set forth in SCR 3.660(6)(G)(5).

XXV. SCR 4.020 Jurisdiction

The proposed amendments to SCR 4.020 are:

(1) Commission shall have authority:

(a) (i) After notice and hearing, [T]o order a temporary or permanent retirement of any judge whom it finds to be suffering from a mental or physical disability that seriously interferes with the performance of his duties, [i] and (ii) to suspend temporarily from the performance of his duties, without affecting his [pay status] compensation any judge (ii) against whom there is pending in any court of the United States an indictment or information charging him with a crime punishable as a felony, or (iii) after notice and an opportunity to be heard, and upon a finding that it will be in the best interest of justice that he be suspended from acting in his official capacity as a judge until final adjudication of the complaint, any judge [against] as to whom [formal proceedings have] a preliminary investigation has been initiated under Rule [4.180] 4.170.

(b) To impose the sanctions, separately or collectively of (1) admonition, private reprimand or public reprimand or censure; (2) suspension without pay, or removal or retirement from judicial office, upon any judge of the Court of Justice or lawyer while a candidate for judicial office, who, after notice and hearing, the Commission finds guilty of any one or more of the following:

(i) Misconduct in office.
(ii) Persistent failure to perform his duties.
(iii) Incompetence.
(iv) Habitual intemperance.
(v) Violation of The Code of Judicial Conduct, Rule 4.300.
(vi) Any willful refusal or persistent failure to conform to official policies and directives adopted by the Supreme Court and issued by the Chief Justice in his constitutional capacity as Chief Executive Officer of the Court of Justice.
(vii) Conviction of a crime punishable as a felony.

(c) After notice and hearing, to remove a judge whom it finds to lack the constitutional and statutory qualifications for the judgeship in question.

(d) To refer any judge of the Court of Justice or lawyer while a candidate for judicial office, after notice and hearing found by the Commission to be guilty of misconduct, to the Kentucky Bar Association for possible suspension or disbarment from the practice of law.

(2) Any erroneous decision made in good faith shall not be subject to the jurisdiction of the Commission.

XXVI. SCR 4.025 Authority of commission in certain situations

The proposed amendments to SCR 4.025 are:

(1) The Commission shall have the authority set out in SCR 4.020 without regard to separation of a judge from office or defeat of a candidate in an election, except as specifically limited in SCR 4.000 to SCR 4.300.

(2) For any violation related to campaign conduct in a primary or general election, the authority of the Commission to take action shall be barred unless notice of preliminary investigation pursuant to SCR 4.170 has been issued by the Commission within 180 days of the date of the general election following the campaign as to which the conduct relates.

(3) For any violation other than a campaign violation, the authority of the Commission to take action against a judge who has left office shall be barred unless notice of preliminary investigation pursuant to SCR 4.170 has been issued within 180 days after the date the judge leaves office.
(4) Nothing in SCR 4.000 to 4.300 shall bar proceedings against sitting judges who have left judicial office after a prior term of office concerning conduct not previously adjudicated by the Commission, including conduct which occurred during a prior term or terms of office.

XXVII. SCR 4.075 Alternate members

The proposed amendments to SCR 4.075 are:

At the time and in the same manner as the Court of Appeals, circuit court and district court members are elected, an alternate member for each shall be elected. At the time and in the same manner as the bar association member is appointed an alternate member shall be appointed. The alternate member may participate in all meetings, hearings, and deliberations of the commission, but shall be entitled to vote on a matter coming before the commission only in the event the member disqualifies, is absent, is otherwise unable to vote or a vacancy exists.

XXVIII. SCR 4.090 Disqualification

The proposed amendments to SCR 4.090 are:

(1) Grounds. A member or alternate member shall disqualify from participation as a member in all matters in which the member has an interest, relationship or bias that would disqualify a judge in a judicial proceeding.

(2) Procedure.

(a) A party seeking disqualification of a member or alternate member shall file a verified motion with the executive secretary who shall forthwith transmit the motion to the challenged member.

(b) The challenged member shall promptly file with the Executive Secretary a written response stating whether the member recuses. The response may include explanation of the member’s position.

(c) If a member refuses to recuse, the recusal issue shall be decided by majority vote of the other members of the Commission by written findings not later than the meeting next following the filing of the member’s response to the motion to recuse.

(d) Upon disqualification of a member, the disqualified member’s alternate shall serve. If there be no alternate for the disqualified member, the matter shall be determined by the remaining members of the Commission.

(e) A member disqualified in a matter shall not participate in its consideration and shall be excused from that portion of any meeting at which the matter is discussed.

XXIX. SCR 4.095 Term of office (transitional provisions)

The proposed amendments to SCR 4.095 are:

(1) The 4-year terms of office of all members and alternate members of the commission shall be deemed as having commenced on the first Monday in January of 1976 except for the district court member and alternate member, whose terms shall commence on the first Monday in January of 1978. Selection or appointment of the initial member shall be for the unexpired portions of the respective terms of office.

(2) Except for the district court member the commission shall be fully constituted by election or appointment of its members as soon as practicable after initial appointment of the members of the Court of Appeals. The initial district court member and alternate member and the initial Court of Appeals, circuit court and bar association alternate members shall be selected as soon as practicable after the first Monday in January of 1978.

(3) Pending selection of the initial district court member the commission shall exercise the powers and authorities conferred upon it by section 121 of the Constitution and by these rules, except that beginning on the first Monday in January of 1978 the district court membership, though temporarily vacant, shall be counted in determining what is a majority vote of the commission under KRS 34.340 and Rule 4.120.

XXX. SCR 4.110 Counsel

The proposed amendments to SCR 4.110 are:

The commission may [request the attorney general] designate or employ any member of the Kentucky bar to gather and present evidence before the commission and before the Supreme Court upon judicial review; or it may designate or employ any member of the Kentucky bar for that purpose.

XXXI. SCR 4.120 Quorum

The proposed amendments to SCR 4.120 are:

A quorum shall be four members. The commission may act by majority vote of members present; however, the affirmative vote of at least four members shall be required for the suspension, removal or retirement (censure) of a judge for good cause [when it must act by a majority of the full commission]. Absence of a member or a vacancy upon the commission shall not invalidate its action. If because of disqualification or other inability of members and alternates to serve, a quorum cannot be achieved, the chairperson shall certify that fact to the respective appointing authorities for selection of sufficient special members to bring the commission to full membership in the matter. In such matter, the time periods of SCR 4.170(5) and 4.260(3) shall be tolled, and the full period shall not begin to run until the special members are selected.

XXXII. SCR 4.130 Confidentiality

The proposed amendments to SCR 4.130 are:

All papers and information obtained by or on behalf of the Commission shall be confidential except as provided in this rule or by order of the Supreme Court.

(1) [Following the procedure set forth in SCR 4.170, upon filing of an answer to a notice of formal proceedings, or expiration of time for filing an answer, the notice and all subsequent pleadings filed with the Commission shall not be confidential, except that the Commission’s internal papers such as investigative reports and staff memoranda, and similar matters, shall remain confidential and shall not be a part of the formal file.

(a) The Commission may direct that an order suspending a judge pursuant to SCR 4.020(1)(a) shall not be confidential. Following the procedure set forth in SCR 4.170, upon filing of an answer to a notice of formal proceedings, or expiration of time for filing an answer, the notice and all subsequent pleadings filed with the Commission shall not be confidential, except that the Commission’s internal papers such as investigative reports and staff memoranda, and similar matters, shall remain confidential and shall not be a part of the formal file.

(b) (2) The Commission may reveal information to appropriate law enforcement authorities or to the judge under investigation that it believes is reasonably necessary in order to protect the public or the administration of justice.

(2) (3) Hearings in formal proceedings shall be public, except that the Commission shall deliberate in executive session in reaching any decision involved in such hearings.
XXXV. SCR 4.210 Procedural rights of judge

The proposed amendments to SCR 4.210 are:

(1) In proceedings involving his [censure,] removal or retirement, a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. He shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter.

(2) When a transcript of the testimony has been prepared at the expense of the judge and his counsel in connection with the proceedings. The judge shall have the right, without any order or approval, to have all or any part of the testimony in the proceedings transcribed at the expense of the commission. (3) Except as herein otherwise provided, whenever these rules provide for giving notice or sending any matter to the judge, such notice or matter shall be sent to the judge at his residence unless he requests otherwise in writing, and a copy thereof shall be mailed to his counsel of record.

[44(3) If the judge is adjudged insane or incompetent, or if it appears to the commission at any time during the proceedings that he is not competent to act for himself, it shall appoint a guardian ad litem unless the judge has a committee who will represent him. In the appointment of such guardian ad litem, preference shall be given, whenever possible, to members of the judge's immediate family. The committee or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, such notice or matter shall be served, given, or sent to the committee or guardian ad litem.

XXXVI. SCR 4.220 Hearing

The proposed amendments to SCR 4.220 are:

(1) At the time and place set for hearing, the commission shall proceed with the hearing whether or not the judge has filed an answer or appears at the hearing. Counsel shall present the case in support of the charges.

(2) The failure of the judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for [censure,] suspension, removal or retirement. The failure of the judge to testify in his own behalf or to submit to a medical examination requested by the commission may be considered, unless it appears that such failure was occasioned by circumstances beyond his control.

(3) In a hearing before the commission, not less than five members shall be present when the evidence is produced.

XXXVII. SCR 4.230 [Reporter; transcript] Recording of hearings in formal proceedings

The proposed amendments to SCR 4.230 are:

[The proceedings shall be reported by a qualified court reporter or by mechanical means, but shall not be transcribed unless so directed by the commission or requested by the judge as provided in Rule 4.210(2).] All hearings in formal proceedings shall be video recorded. Upon request, the judge shall be provided a copy of the recording at the expense of the commission.

XXXVIII. SCR 4.240 Evidence

The proposed amendments to SCR 4.240 are:

At a hearing before the commission [legal evidence] only evidence admissible under the Kentucky Rules of Evidence shall be received [., and oral evidence shall be taken only on oath or affirmation]. The Chairperson shall rule on all evidentiary matters.
XXXIX. SCR 4.260 Commission findings; order

The proposed amendments to SCR 4.260 are:

(1) The commission shall make written findings of fact and conclusions of law which shall be filed with the record in the case.

(2) A certified copy of the commission's findings of fact, conclusions of law and final order shall be served on the judge or counsel immediately after entry.

(3) The Commission shall make final disposition in formal proceedings as provided in this section within 180 days of notice of such proceedings, except that within such period or extension thereof the Commission may for good cause extend such period for a period or periods not exceeding an additional 180 days. The judge shall be informed of such extensions.

XL. SCR 4.270 Commission orders

The proposed amendments to SCR 4.270 are:

Commission orders shall become effective ten days after service on the judge unless he appeals therefrom within that time. Upon its effective date, a certified copy of an order of [public censure,] suspension, removal or retirement shall be given to appropriate persons such as the Chief Justice, the executive department for finance and administration and the judicial retirement board. Notice of a private reprimand shall not be given to any person other than the judge, except that a private reprimand may be publicized on the Commission website and in other publications without any information that would identify the recipient.

A judge who is retired for a permanent disability shall thereupon become eligible for retirement benefits under KRS 21.345 to KRS 21.455.

A judge who is placed on temporary retirement shall continue to draw full compensation the same as if he were on active duty, and for retirement purposes shall be considered as continuing in active service.

XLI. SCR 4.280 Certification of commission order, permanent file

The proposed amendments to SCR 4.280 are:

Upon making a determination ordering [the] a [censure,] suspension, removal or retirement of a judge, the commission shall promptly file a copy of the order certified by the chairman or secretary of the commission, together with the findings and conclusions and the record of the proceedings, in a permanent file.

XLII. SCR 4.290 Judicial review

The proposed amendments to SCR 4.290 are:

(1) To the extent applicable and not inconsistent with SCR 4, the Rules of Civil Procedure (CR) applicable to other types of proceedings shall apply to the judicial review of commission orders by the Supreme Court.

(2) A notice of appeal of the commission's final order shall be filed with the clerk of the Supreme Court within ten days after service of notice of the order upon the judge. A copy of the notice of appeal shall be served on the commission.

(3) The commission shall thereupon promptly transmit to the court the entire original record upon which the order is based, unless by stipulation of the commission and the judge an abbreviated or substitute record is agreed upon. (A transcript of testimony shall not be included in the record unless designated by the commission or the judge, but may be ordered by the Supreme Court at any time.)

(4) The judge shall file his brief within 20 days after the record is filed and the commission shall file its brief within 20 days thereafter. The time for filing of briefs may be extended by the court upon motion of either party.

(5) The court shall have power to affirm, modify or set aside in whole or in part the order of the commission, or to remand the action to the commission for further proceedings.
In 2014 the Kentucky Supreme Court convened a Juvenile Court Rules of Procedure and Practice Advisory Committee with the charge of reviewing Senate Bill 200 on Juvenile Justice Reform. This Advisory Committee was a multi-disciplinary committee comprised of Court of Justice representatives, interested state and private agencies and the Bar which made recommendations relating to the development of new Juvenile Court Rules of Procedure and Practice (JCRPP) for status offender and public offender cases. During that review, numerous comments and recommendations by judges, the Bar, and state and federal agencies were made and considered by a Juvenile Court Rules Drafting Committee and a new Supreme Court Standing Committee on Juvenile Court Rules of Procedure and Practice.

The proposed Juvenile Court Rules will be available for review on the KCOJ web site. Attorneys should check the home page of the Kentucky Court of Justice website at www.courts.ky.gov for the link to Juvenile Court Rules prior to the KBA Convention.

The Juvenile Court Rules of Procedure and Practice will be presented at the Supreme Court Rules Hearing at the KBA Convention on Wednesday, June 17 from 8:30 a.m. – 10:30 a.m., at which time comments or questions relating to the new Rules will be heard. Comments will also be taken on the proposed Juvenile Court Rules until July 15, 2015. Comments may be submitted via email at juvenilerules@kycourts.net.
Supreme Court of Kentucky

IN RE:
ORDER AMENDING
RULES OF THE SUPREME COURT (SCR)

2015-08

The Court hereby orders that the following new rule SCR 1.070, Retired justices and judges shall become effective June 24, 2015.

SCR 1.070 Retired justices and judges

In addition to the compensation or retirement allowance he or she would otherwise be entitled to receive by law, any retired justice or judge temporarily assigned to active judicial service shall be paid his or her actual expenses, plus compensation of $400.00 for each full day of active judicial service or $200.00 for each half-day of active judicial service. A half-day of active judicial service is defined as any day in which the retired justice or judge works four hours or less, inclusive of travel.

All sitting. All concur.

ENTERED: May 6, 2015.

[Signature]
CHIEF JUSTICE
Supreme Court of Kentucky

IN RE:
EMERGENCY ORDER AMENDING
RULES OF THE SUPREME COURT (SCR)

2015-09

Pursuant to CR 87(2), the Court hereby orders that the following rule amendment to SCR 4.300, Canon 5(B)(2) shall become effective upon entry of this order.

SCR 4.300 Kentucky Code of Judicial Conduct

CANON 5: A judge or judicial candidate shall refrain from inappropriate political activity

B. Campaign Conduct.

(2) A judge or a candidate for judicial office shall not personally solicit campaign funds, but may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support for the candidacy. A candidate’s committees may not solicit funds for the campaign earlier than 180 days before a primary election. A candidate’s committees may not solicit funds after a general election. (See KRS 121.150). A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or a member of the candidate’s family.

Commentary

This rule has been revised in accordance with Williams-Yulee v. The Florida Bar, No. 13-1499, 575 U.S. ___ (2015).

Section 5B(2) permits a candidate to establish campaign committees to solicit and accept political support and reasonable financial contributions. At the start of the campaign, the candidate should instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. The candidate should instruct his or her campaign committees as to the requirements of Canon 5 of this Code. The candidate is responsible for the actions of his or her campaign committees.

All sitting. All concur.

ENTERED: May 6, 2015.

[Signature]
CHIEF JUSTICE
Justice David A. Barber was formally sworn in as a justice of the Supreme Court of Kentucky on March 23 by Chief Justice John D. Minton, Jr. Justice Barber was joined by his wife, children and grandchildren at the investiture service. The event took place in the Supreme Court Courtroom at the state Capitol in Frankfort.

Chief Justice Minton, other Supreme Court justices and House Speaker Greg Stumbo were among those who provided remarks during the service.

Gov. Steve Beshear appointed Justice Barber on March 4 to serve as the justice from the 7th Supreme Court District. Justice Barber was a Court of Appeals judge from 2000 to 2007 and has been an attorney in private practice and public service for more than 33 years.

Chief Justice Minton and Justice Barber served together as Court of Appeals judges.

Justice Barber comes to the Supreme Court from his post as a policy and legal adviser to Speaker Stumbo. He served in a similar role as general counsel for the House of Representatives from 1990-1992. During this period, he was appointed by then-Gov. Brereton Jones as an administrative law judge. He presided in workers’ compensation cases for the Kentucky Department of Workers’ Claims.

While in private practice, Justice Barber was most recently a partner in the law firm of Richardson, Barber & Williamson in Owensville. He was a founding partner of Stumbo, Bowling & Barber, which grew into the largest firm handling personal injury cases in Eastern Kentucky. Justice Barber previously practiced law in Prestonsburg with Woodrow Burchett while teaching history at night at Prestonsburg Community College.

Justice Barber has been in public service since earning his juris doctor from the University of Louisville Louis D. Brandeis School of Law. He was the attorney for the city of Martin and the Floyd County School Board in the five years after law school and then was elected as Floyd County attorney.

He has served as a member of the Judicial Nominating Commission, the Legislative Ethics Commission and the Kentucky Bar Association’s Legislative Outreach Committee. He did post-graduate judicial studies at Harvard University while serving as a Court of Appeals judge.
As of Jan. 1, 2014, KBA members are required to maintain a valid email address with the director, following a change to SCR 3.175, and notify the KBA Executive Director within 30 days of changing that email address, with the exception of members who have been designated as Senior Retired Inactive and Disabled Inactive.

Keeping an accurate email on file will also be important for receiving CLE reminders, which are now emailed in May and mid-July. As a courtesy, KBA members who have not yet met their minimum annual CLE requirement will be e-mailed in early May of each year as a reminder of the upcoming end of the educational year and again in mid-July regarding the August 10 reporting deadline for credits timely earned by June 30. These reminders are no longer mailed through the U.S. Mail. Therefore, it is important for KBA members to ensure that their email address is correct. To ensure your correct email address is on file, please log in to the KBA website at www.kybar.org and verify that your email is correct. You may access online address change information under Members then Members Request to change online or get copy to return by mail.

As of Jan. 1, 2014, KBA members are required to maintain a valid email address with the director, following a change to SCR 3.175, and notify the KBA Executive Director within 30 days of changing that email address, with the exception of members who have been designated as Senior Retired Inactive and Disabled Inactive.

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I’ll never forget the first time I tried cocaine.

It was a Saturday afternoon in early fall during my third year of law school at the University of Kentucky, sufficiently early in the semester such that the pressure of final exams was not yet on the horizon and those of us so inclined could feel free to “let loose.” A classmate was having a pre-game party before a big UK football game and it was one of those picturesque autumn days in Lexington where the temperature was just right, the colors of the season simply magnificent. Despite the day’s beauty, I have a distinct memory of feeling sad. There was a heaviness about my heart – the sort of weight recognized only in hindsight as the kind attributable to a deeply-aggrieved soul.

I can’t remember how exactly I found my way into that clandestine back room – the one where I found a handful of party-goers hunched over a shiny mirror covered in a snow-like substance that I immediately recognized to be cocaine. In hindsight, I can understand that I was looking for that room. Although I had never before used a “hard” drug, I had seen enough to know that such recreational drugs were always just around the corner from every booze-fueled party. And on that particular Saturday, the booze just wasn’t getting the job done. With the benefit of 15 years of hindsight, I can look back now and recognize that it was an inner anguish – a deep, spiritual malady, incomprehensible at the time – that guided me to where I then stood. And it was that same spiritual malady that motivated me to put a straw to my nose and do my first “line.”

Such was my introduction to cocaine. It was an introduction that would rock my world. I was hooked the moment the substance entered my body, and over the course of the next year or so my relationship with the drug would come to take over my life. Slowly but surely, my uncontrollable desire for that ever-diminishing period of synthetic numbness led me to push everything good in my life further and farther away. Friends, family, hopes, dreams – one by one, these things slipped away. Over time, my existence was reduced to a chemical romance that would end, as it always does, with the benefit of 15 years of hindsight, I can look back now and recognize that it was an inner anguish – a deep, spiritual malady, incomprehensible at the time – that guided me to where I then stood. And it was that same spiritual malady that motivated me to put a straw to my nose and do my first “line.”

Like many alcoholics and addicts, however, my fragile state and substance abuse was hidden by my outward “success.” To the untroubled soul, I was the consummate achiever. In the top 10 percent of my class and editor-in-chief of the law review, my drinking (and later, my drugging) did not bring academic consequences. I was popular enough. I had a girlfriend. I was on my way to professional success, a federal clerkship position waiting for me upon graduation. Problems? How could I have problems when I was so clearly a “success”?

So long as I enjoyed such outward “success,” it was easy to look past the increasingly-more-serious consequences of my substance abuse. (The DUI in my 2L year was explained away as “bad luck.” When my closest law school friends suddenly wanted nothing to do with me, they were to blame.) But such “success” served only to perpetuate the lie. While slowly dying inside, I didn’t dare get honest. The thought of living without booze or cocaine was at that point downright scary. (As I would later say to the doctor to whom my parents dragged me after becoming concerned: “You don’t understand. The alcohol isn’t a problem. It’s my solution.”) It would be many years before I would appreciate the fantastic irony of this “denial.”

Mercifully, in the end my “bottom” did come. But it hardly seemed “merciful” at the time.

For me, “bottom” came in the form of my bar exam results. I failed. Not only that, I failed in humiliating fashion. I was the first editor-in-chief in the history of the University of Kentucky College of Law to fail the bar exam. (To my knowledge, I still hold this “distinction.”) The correspondence informing me of my failure arrived on letterhead bearing the name of my father, who happened to be at the time a member of the Board of Bar Examiners. I was working for a federal judge.

The veneer of “success” suddenly stripped away, I was confronted for the first time with the harsh reality: I had a problem. I had spent the summer drinking and drugging (and not studying), and for the first time there was a serious, tangible consequence. Yes, I had a drinking and drugging problem, and I could deny it no more.
With that simple act of surrender, my road to recovery was begun. In my case (as with many others), recovery was not an event. It was, rather, a process. That process was at first marked by fits and starts, half-measures and hedging. After months of outpatient treatment, sustained sobriety still eluded my grasp. I would get a couple months, only to relapse. Though I had taken step one – admitting I had a problem – I was still having trouble buying into the solution. I still couldn’t get it. Wouldn’t, rather.

Enter Kentucky Lawyer Assistance Program (KYLAP). At the time operating as “Lawyers Helping Lawyers,” the organization and I had an involuntary introduction when I reapplied for the bar. Having been honest in my re-application about my drinking and drugging issues, my application predictably was pulled from the pile. The Character and Fitness Committee gave me a “choice”: agree to a 2-year term of supervision by KYLAP (assuming I passed the bar exam) or be deemed unfit. Not much of a choice.

If only I knew then how lucky I was. Blessed rather, as anyone in recovery would be sure to correct me. Under the watchful eye of a score of Kentucky lawyers who had once “been where I’d been” – and under the particularly watchful eyes of my designated KYLAP monitor – I was forcibly immersed in recovery. Four AA meetings a week, a check-in call with my monitor, a monthly face-to-face – these requirements attached me to recovery long enough for me to come to understand the miracle and gift that it is. As it was, I came to this understanding rather quickly. It was no time at all before I came to realize that I wanted with all my heart what those folks “in the rooms” had – and I wanted it damn bad. Serenity, peace, happiness. The very things that had eluded me for so long, and ironically the very things that I had destructively and artificially sought in the form of drink and drug.

It wasn’t easy. I had to do things (the 12 steps) – take “suggestions,” as the old-timers would call them – that weren’t always easy to do. Like “making amends,” believing in a God of my understanding (a “higher power”), taking a daily “inventory” of my actions, promptly admitting when I was wrong, and – above all – being rigorously honest. I had to get a “sponsor” and take direction. I had to, quite simply, change everything. (Only in time would I come to understand that that was precisely the point.)

It wasn’t long before I started seeing changes in me – changes I could be proud of. I started to like myself, and be myself. Not drinking wasn’t the half of it, I came to learn. Sobriety was a way of life. It was a way of living – a creed. I started too to see changes in my life. I had friends again. People seemed to enjoy being around me more. I enjoyed being around me more. I found my footing in the profession. I found myself contributing. In short, I found myself ... happy.

And so it should come as no surprise that I barely noticed when my two-year term of supervision expired. By that point, I was all in. Recovery had long since become not something I needed but something I wanted. It had become my most prized possession. The thought of going back to the way it had been only served to propel me forward. I felt as though I had won some lottery and the Big Man Upstairs had seen fit to reach down and give me – undeserving, hapless me – the “secret to life.” There was simply no going back – thank the Lord.

As it is, I have not gone back. Not for 12 years, 9 months, and 30 days. I have the grace of God, KYLAP, and the fellowship of Alcoholics Anonymous to thank for that string of continuous sobriety. That, my friends, is a miracle. And my existence during this time has been no less miraculous. To say that I have been blessed simply does not do it justice. The truth is, my life today is silly, stupid awesome. Recovery has given me the love of my life and three precious children. Recovery has given me the opportunity to do what I love to do – be a lawyer – and make a living doing it. Recovery has given me the privilege of representing the United States of America (as a federal prosecutor for five years), the experience of being a partner at a large national law firm, and now the thrill of starting and managing my own firm. Most of all, though, recovery has given me the joy of giving – the truest form of happiness, as I have come to find out.

My story, like all of those in recovery, has no ending. It continues to be written. By design, we take it “one day at a time.”

But this story must have an ending, and it is only fitting – given the audience – that it read like this: KYLAP and AA saved my life. I am but an ordinary miracle whose journey from despair to hope was infinitely assisted by this small but growing band of Kentucky lawyers who have dedicated themselves so selflessly to the mission of recovery and who every day give of themselves quietly and nobly in support of the greater good. It is without question my greatest professional honor to be associated with them. I will be forever indebted to KYLAP for introducing me to recovery’s greatest gift: hope.

Ben Dusing is managing partner at The Law Offices of Benjamin G. Dusing, a seven-lawyer firm he founded in 2013, and managing member of BGD Legal Outsourcing, a document review and compliance outsourcing company, both headquartered in Covington, Ky. Dusing concentrates his legal practice in the areas of commercial litigation and white collar criminal defense. His representations have included several high-profile matters including the successful defense of Cincinnati real estate developer Matt Daniels (acquitted on all counts after federal criminal trial) and representation of renowned deep-ocean treasure-hunter and archeologist Tommy Thompson in connection with litigation arising from his historic discovery of the SS Central America, a merchant ship that sank off the coast of South Carolina in 1857 carrying approximately 1/3 of the nation’s gold reserves. Prior to opening his own firm, he was a partner at a large national law firm and was a federal prosecutor in Ohio and Kentucky. He received his undergraduate degree from Georgetown University in Washington, D.C., and his law degree from the University of Kentucky College of Law, where he was editor-in-chief of the law review and graduated Order of the Coif. Dusing has been involved with KYLAP for over a decade and presently serves on its commission.
MEETING NOTICES

LMICK AND KYLAP SPONSOR ANNUAL CONVENTION PROGRAM, “THE MOVEMENT OF GRACE”

Jennifer Angier, NCAC II, executive director, Foundations Recovery Network Atlanta, will present, “The Movement of Grace” at the 2015 KBA Annual Convention on Wednesday, June 17th from 3:35-4:35 p.m. in Thoroughbred 4 at the Lexington Convention Center. The presentation will provide lawyers and judges with tools they can utilize to recognize the signs, symptoms and progression of addiction and impairment and how to assist the lawyer in distress to find help and how to enhance the process. Participating attorneys will be challenged to recognize the intimate qualities of the absence, the emergence and the living experience of grace in their fellow attorneys and judges struggling with their addictions, whether it be substances (drugs and alcohol) or processes (e.g., workaholism, internet addiction, gambling).

KYLAP Offers Open Recovery Meetings During Annual Convention in Lexington

Open Recovery Meetings will be on Wednesday, June 17, at 4:45 p.m. and on Thursday, June 18, at 5:00 p.m., during the Kentucky Bar Association’s Annual Convention. Meetings will be held each day in the Henry Clay room at the Hyatt Regency Hotel. All meetings are open to law students, lawyers and judges who are already involved or who are interested in a 12-step program of recovery, including but not limited to Alcoholics Anonymous, Narcotics Anonymous, Overeaters Anonymous, Gamblers Anonymous and Al-Anon. Come meet other attorneys in recovery from around the state. All meetings and contacts are confidential. SCR 3.990. For additional information, please visit www.kylap.org, call (502) 564-3795, ext. 266, or email abeitz@kylap.org.

KYLAP Offers Mindfulness Meditation Meetings During Annual Convention in Lexington

The 2015 KBA Annual Convention will be held June 17-19 at the Lexington Convention Center in downtown Lexington. The convention offers many exciting activities for members to attend throughout the three day event. A new experience offered by the Kentucky Lawyer Assistance Program Foundation will be guided mindfulness meditation meetings on Wednesday, Thursday and Friday mornings before the convention CLE programming begins. The mindfulness sessions will be held in the Henry Clay Room from 7:00 a.m. to approximately 8:00 a.m. The sessions are business-attire friendly and will be conducted in a private room with chairs (not in the floor). The sessions will be guided by Dr. Paul Geiger, a former research study coordinator at Duke University Medical Center, and currently an instructor and psychoneuroimmunology researcher in the University of Kentucky Department of Psychology. Dr. Geiger is a former winner of the Duke University Medical Center’s prestigious Clark M. Rivinoja Award. He will give a brief lecture explaining the process of mindfulness meditation and its benefits, followed by a guided session. Please come join us and learn how to experience these benefits of “mindfulness” (decreased feelings of stress; decreased production of cortisol; increased focus; improved cognitive functioning; and more restful sleep.)

Quintairos, Prieto, Wood & Boyer, P.A.
Attorneys at Law

A multi-office law firm is seeking ATTORNEYS for its Louisville and Lexington office. Must have experience in civil trial and/or insurance defense litigation. Portable book of business is a plus.

E-mail resume to resume@qpwblaw.com
The Kentucky Bar Foundation (KBF) Fellows Program recognizes those members of the Kentucky Bar who through their success in the practice of law and their generosity in contributing to the KBF have shown support for its mission. The program is designed to build an endowment fund, which will be the cornerstone for funding KBF’s grants in future years. Accordingly, 75 percent of Fellows receipts are placed directly into the board designated KBF Endowment Fund while the remaining amount of the payment supports KBF’s annual law-related grants.

KBA members in good standing may become a Life Fellow through a one-time, lump-sum contribution of $1,250. Members may also become a Fellow through an initial contribution of $300 and a pledge to contribute an additional $300 per year over the next four years. Upon completion of their pledges, such Fellows will attain the status of Life Fellow. To commemorate their contributions, all new Fellows and Life Fellows are recognized in the fiscal year of their enrollment at the KBF luncheon held during the KBA annual convention. Please consider supporting your Kentucky Bar Foundation and its continuing good works by enrolling as a Fellow. Questions? Please call KBF at 1-800-874-6582.

Enroll Now!

YES...I wish to invest in the future of the Kentucky Bar Foundation! I am a member in good standing of the Kentucky Bar Association and:

_____ Enclosed is my check for $1,250 representing full payment of my Life Fellow Membership contribution.

_____ Enclosed is my check for $300 representing my down payment for a Fellow Membership. Additionally, I hereby pledge to pay the Kentucky Bar Foundation $300 annually during the next four (4) years, for a total contribution of $1,500.

Please type or print:

Name ____________________________________________

Firm ____________________________________________

Mailing Address __________________________________

City, State, Zip __________________________________

Telephone ___________________________ E-mail ___________________________

Signature _______________________________________

NOTE: Fellow Memberships are sincerely appreciated. KBF is an IRC Section 501(c)(3) organization and contributions are tax-deductible to the full extent of the law.

PROVIDING HELP TODAY AND HOPE FOR TOMORROW
DON’T FORGET...

The deadline to complete your annual CLE requirement for the 2014-2015 educational year is JUNE 30, 2015.

You must have a total of 12.0 CLE credits including 2.0 ethics credits to meet the annual requirement.

Check your CLE record online at www.kybar.org.

Note: The deadline to report your CLE credits is AUGUST 10, 2015 for the 2014-2015 educational year.

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**KBA Teleseminars**

As the end of the educational year draws near, don’t miss the opportunity to earn “live” CLE credits - learning about timely topics through the KBA Teleseminar program! Every month the Kentucky Bar Association brings you a new series of Live Teleseminars, straight to your office or home phone.

To see a complete program listing, visit http://ky.webcredenza.com.

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**2015 KBA VIDEO REPLAY**

Dates: Thursday, June 25 or Friday, June 26

Time: 8:30 a.m. - 4:00 p.m.

Location: Kentucky Bar Center

Frankfort, Kentucky

- Pre-registration is required
- Visit www.kybar.org for details

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**Get Your CLE Credits Online!**

The KBA offers seminars online, eliminating the hassle and expense of travel. All you need is a web browser and an Internet connection.


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**2014-15 KBA DVD Program Catalog**

Check out the latest video recordings available in the KBA DVD Catalog. These DVDs are a great way to get those remaining CLE credits needed before the end of the educational year.

Visit http://www.kybar.org/?accreditedprograms for details and ordering information.

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*Pre-recorded seminars, available on DVDs and through the online catalog, are classified as technological programs. A maximum of six (6.0) technological CLE credits may be applied to your record for any given educational year.
The KBA Continuing Legal Education Commission held its final meeting of the 2014-2015 educational year on May 15, 2015. Unfortunately, this was our last meeting with two Commissioners who have worked diligently, volunteering their time to help improve their chosen profession. The CLE Commission is responsible for the administration and regulation of all continuing legal education activities and programs for the Kentucky Bar Association. The Kentucky Supreme Court appoints one commissioner from each Supreme Court District to represent that region’s Kentucky Bar Association members.

First, we said goodbye to Deborah B. Simon, the commissioner serving the First Supreme Court District. Simon attended DePauw University and the University of Kentucky College of Law. She was admitted to the practice of law in Kentucky in 1979. She was employed by Morgan & Pottinger (Louisville); the Federal Land Bank (Louisville); Lloyd & McDaniel (Louisville); the commonwealth attorney for McCracken County; and self-employed since 1999. She was appointed by the Office of the U.S. Trustee to Chapter 7 panel of bankruptcy trustees for the Western District of Kentucky on Jan. 1, 2002, and still currently serves as a panel trustee in the U.S. Bankruptcy Court for the Western District of Kentucky, Paducah Division. She is a member of the Kentucky Bar Association, McCracken County Bar Association, National Association of Bankruptcy Trustees, American Bankruptcy Institute, and the Rotary Club of Paducah. Deborah has served one term on the Commission. Her calm, reasonable and on point contributions will be greatly missed.

Second, we bid farewell to long-time, two-term Commissioner Shane C. Sidebottom, the commissioner serving the Sixth Supreme Court District for the last six years. Sidebottom is a member of Ziegler & Schneider, PSC, located in Northern Kentucky. He handles a wide range of litigation including matters involving employment law, the Kentucky Whistleblower Act, and business contract disputes. He was the past chair of the CLE Programming Committee for the 2014 Annual Convention in Covington, which was a resounding success, with over 65 distinct CLE offerings. Shane has been an invaluable member of the Commission, attending most if not all meetings, often sitting as chair, and always ready and willing to help.

KBA staff and the CLE Commission wish these outgoing commissioners well and thank them for their outstanding service. The lawyers of Kentucky are lucky to have benefitted from the service of these two exceptional commissioners. The new commissioner appointments for the First and Sixth Districts will be made prior to the next regularly scheduled meeting of the CLE Commission on July 17, 2015.

Mary Beth Cutter is the director for Continuing Legal Education of the Kentucky Bar Association. Cutter received her B.A. with distinction from Centre College, and her Juris Doctorate from the University of Kentucky College of Law. Following her admission to the Kentucky Bar, Cutter was engaged in private practice, focusing primarily in the areas of health care, civil litigation, employment, real estate, and domestic law. She has been with the Kentucky Bar Association since November of 2008.
Looking for Upcoming KBA Accredited CLE Events?

Look no further... Check out cle.kybar.org/580

This easy to use search engine contains up to date information on CLE events that have been accredited by the Kentucky Bar Association Continuing Legal Education Commission.

Users can search by program date, name or sponsor for information about future and past events. Program listings include sponsor contact information, approved CLE and ethics credits, and KBA activity codes for filling out the certificate of attendance (Form #3).

Programs are approved and added in the order in which they are received. It may take up to two weeks for processing of accreditation applications. If an upcoming or past event is not listed in the database, check with the program sponsor regarding the status of the accreditation application.

“Within twelve (12) months following the date of admission as set forth on the certificate of admission, each person admitted to membership to the Kentucky Bar Association shall complete the New Lawyer Program.”

SCR 3.640 New Lawyer Program

Kentucky Bar Association

2015 New Lawyer Program

June 17-18, 2015
Lexington Convention Center
Lexington, KY

Visit Kybar.org/?NLPDatesandlocations for more information

Mark your calendars now! The final dates and locations for the KBA’s 2015 Kentucky Law Update (KLU) are confirmed. The KLU program series is an exceptional benefit of KBA membership and Kentucky is the only mandatory CLE state that provides its members a way of meeting the annual CLE requirement at no additional cost. Registration will be available in late June. In the meantime please visit Kybar.org/?KLUDatesandlocations for more information.

KENTUCKY LAW UPDATE

2015

ADVANCING THE PROFESSION THROUGH EDUCATION

SEPTEMBER 2-3
OWENSBORO
OWENSBORO CONVENTION CENTER

SEPTEMBER 10-11
BOWLING GREEN
HOLIDAY INN & SLOAN CONVENTION CENTER

SEPTEMBER 24-25
COVINGTON
NORTHERN KENTUCKY CONVENTION CENTER

OCTOBER 1-2
RUSSELL (ASHLAND)
BELLEFONTE PAVILION

OCTOBER 7-8
LOUISVILLE
KENTUCKY INTERNATIONAL CONVENTION CENTER

OCTOBER 28-29
PADUCAH
JULIAN CARROLL CONVENTION CENTER

NOVEMBER 12-13
PRESTONSBURG
JENNY WILEY STATE RESORT PARK

NOVEMBER 18-19
LONDON
LONDON COMMUNITY CENTER

DECEMBER 3-4
LEXINGTON
LEXINGTON CONVENTION CENTER
2015 Kentucky
Legal Training for Dependency, Neglect and Abuse Cases

Two Convenient Locations
Earn Continuing Education Credits
Only $25 Per Person

Sponsored by the
Kentucky Administrative Office of the Courts
with Federal Court Improvement Program funds

HOW TO REGISTER
There is a registration fee of $25 per person. Make check or money order payable to Kentucky State Treasurer and write “DNA Training” in the memo section of your check. Include full name, mailing address, email address, phone number and KBA number with payment and mail to:

Attn: Legal Training
Department of Family and Juvenile Services
Administrative Office of the Courts
1001 Vandalay Dr.
Frankfort, Ky. 40601

FOR MORE INFORMATION
Attn: Legal Training
Department of Family and Juvenile Services
Administrative Office of the Courts
1001 Vandalay Dr.
Frankfort, Ky. 40601
Phone 800-928-2350, x50519  •  Fax 502-782-8705
DNATraining@kycourts.net

The Administrative Office of the Courts is pleased to oversee the Legal Training for Dependency, Neglect and Abuse Cases (formerly the Guardian ad Litem Training Program). Since 1999, the AOC has been responsible for preparing attorneys to provide legal representation to dependent, neglected and abused children throughout Kentucky.

The goal of the program is to produce highly qualified guardians ad litem by offering training sessions, providing educational materials and serving as a comprehensive resource.

The curriculum gives counsel for children an overview of Kentucky statutory and case law while also meeting the federal requirements set forth in CAPTA (Child Abuse Prevention and Treatment Act) and ASFA (Adoption and Safe Families Act).

CJE Credits. Judges will receive 6.25 continuing judicial education credits for the basic program. The registration fee is waived for Kentucky judges.

CLE Credits. An application for CLE accreditation in Kentucky will be submitted which requests 6.25 credit hours of continuing legal education, which includes 1 credit hour of ethics.

CEU Credits. The AOC has been approved for 6.0 continuing education units from the Kentucky Board of Social Work.

Trainings offered at 2 locations in Kentucky

June 5, 2015
Basic Curriculum
Pike County Hall of Justice
Appellate Courtroom, 3rd Floor
175 Main Street
Pikeville, KY

June 26, 2015
Basic Curriculum
Pulaski County Court of Justice
2nd Division Courtroom, 3rd Floor
50 Public Square
Somerset, KY
Frank Jenkins Law Office (FJLO) welcomes James “Jim” B. Compton and Stephanie Trantham, where they will work on a diverse caseload of litigation matters. Compton is listed as one of the top attorneys in Kentucky, by peer selection, by the Kentucky Super Lawyers. A recent graduate of the University of Kentucky College of Law, Trantham gained extensive exposure to litigation matters prior to joining FJLO through her work with Kentucky Courts. Compton and Trantham’s practice will focus on injury law, with an emphasis on auto accidents, workers’ compensation, and Social Security Disability.

Middleton Reutlinger announces that Scott Stonebruner has joined the firm’s intellectual property practice group. Stonebruner is a registered patent attorney and has practiced for more than 20 years. He focuses his practice in patent, trademark, and copyright counseling, procurement, licensing and protection, with particular emphasis in Internet/computer software, computer architectures, digital electronics, e-commerce and business processes. Stonebruner received his B.S. in electrical engineering, cum laude, from Washington University and his J.D. cum laude, from the University of Minnesota law School.

Cordell & Cordell recently hired associate attorney John Bundy in its Louisville office (10200 Forest Green Blvd., Suite 407, Louisville, KY 40223). Cordell & Cordell has more than 170 attorneys working in more than 100 offices across the United States.

Dinsmore & Shohl welcomes Eric Lycan to the firm’s Lexington office. Lycan will practice out of the corporate department with the government relations group. Lycan comes to Dinsmore from Steptoe & Johnson and focuses his practice on complex litigation, government relations and regulatory, campaign finance and election law issues. Lycan served as counsel for Senator Mitch McConnell’s re-election campaign in 2014 and advised on Election Day operations, Election Integrity and efforts to get voters to the polls. He was the chairman of lawyers for Team Mitch, a group of attorneys supporting and volunteering for McConnell. Lycan also represented a Congressional campaign in a recanvass of the 2010 election and has served as administrative law judge for the Kentucky Parole Board. He is a member of the board of governors of the Republican National Lawyers Association. Lycan earned his J.D. from the University of Kentucky College of Law and received his B.A. from Centre College.

Scruton has joined the firm’s Louisville office. He is a member of the corporate and transactional practice group. Scruton’s practice includes trademark, patent, copyright and trade secrets, licensing and intellectual property litigation. Scruton graduated from Yale University in 1981 with a B.A. in history. He earned his J.D. from the UCLA School of Law in 1986, graduating fifth in his class. He was a John M. Olin Fellow for the Study of Law and Economics and a member of the Order of Coif. In addition, he is on the board of the Louisville Leopard Percussionists, Teach Kentucky and Yale in Kentucky.

Kline has joined their firm. Kline practiced for three years at Cravath, Swaine & Moore LLP in New York and then spent four years at Stoll Keenon Ogden PLLC before joining SMSM. He is a 2007 graduate of the University of Kentucky College of Law where he served on the Kentucky Law Journal, graduated magna cum laude and was elected to Order of the Coif. Prior to attending law school, he served as an intelligence officer in the United State Air Force.

Have an item for WHO, WHAT, WHEN & WHERE? The Bench & Bar welcomes brief announcements about member placements, promotions, relocations and honors. Notices are printed at no cost and must be submitted in writing to: Managing Editor, Bench & Bar, 514 West Main Street, Frankfort, KY 40601 or by email to sroberts@kybar.org. Digital photos must be a minimum of 300 dpi and two (2) inches tall from top of head to shoulders. There is a $10 fee per photograph appearing with announcements. Paid professional announcements are also available. Please make checks payable to the Kentucky Bar Association.
with personal injury, products liability, liability claims for hospitals, physicians, medical malpractice and professional negligence in the area of litigation, including office. Edwards has concentrated his 38 years of active practice almost exclusively in the area of litigation, including medical malpractice and professional liability claims for hospitals, physicians and health care practitioners, along with personal injury, products liability, premises liability, commercial contract, and banking disputes.

The law firm of Bradley, Freed & Grumley, P.S.C., welcomes Ben E. Stewart as a new associate. Stewart completed his post-graduate education at the University of Kentucky in 2011, receiving a J.D. from the College of Law, where he was a member of the Order of the Coif. Stewart was a member of the Kentucky Law Journal from 2009-2011. He is a 2008 magna cum laude graduate (valedictorian) of Centre College, where he received a B.A. in government with a minor in history. His practice will concentrate on the defense of healthcare providers, railroads, and other industries.

Bumgarner joined the firm after a three-year clerkship with the Honorable David L. Bunning of the United States District Court for the Eastern District of Kentucky. He earned his J.D. from Chase College of Law, graduating first in his class. While in law school, he served as managing editor for the Northern Kentucky Law Review and was awarded the Bratton-Wirthlin Trial Advocacy Award for outstanding performance in trial advocacy. He focuses his practice on commercial litigation and healthcare matters.

Smith received his J.D. from the Loyola University Chicago School of Law and his M.B.A. from the Loyola University Chicago Quinlan School of Business. During law school, Smith served as an elected representative of the Student Bar Association, a member of the International Law Review, and as a student clinician in the Business Law Clinic. He was also a member of the Business School’s Strategic Consulting Group. He focuses his practice primarily on business and real estate transactions, including commercial agreements and leasing, finance, and contract law.

Miller Wells, PLLC welcomes Carl D. Edwards, Jr., as partner in their firm’s Lexington office. Edwards has concentrated his 38 years of active practice almost exclusively in the area of litigation, including medical malpractice and professional liability claims for hospitals, physicians and health care practitioners, along with personal injury, products liability, premises liability, commercial construction, and banking disputes.

White, Getgey, & Meyer announces that Carl Stich has rejoined the firm as of counsel after serving as a judge on the Hamilton County Court of Common Pleas. He will be focusing his practice on mediation and arbitration. During his time on the bench, in private practice, and as a prosecutor, Stich has handled a wide array of cases at the state and federal levels. He has been recognized in the Best Lawyers in America for Bet-the-Company Litigation, Commercial Litigation, and Insurance Law; Ohio Super Lawyers (top 100 Ohio, top 50 Cincinnati); and as AV® Preeminent™ Peer Review Rated in Martindale-Hubbell.

Tom Wine, Commonwealth’s Attorney for the 30th Judicial Circuit, announces the addition of four new attorneys to his staff. The new assistant Commonwealth’s attorneys are Philip Bronson, Emily Cecil, Critt Cunningham and Joshua Porter. Bronson will be a prosecutor in the office’s Narcotics Unit. He received his J.D. from the University of Cincinnati College of Law in 2014.

Cecil will be a prosecutor in the office’s general trial division. She earned her J.D. from the University of Louisville Louis D. Brandeis School of Law in 2014.

Cunningham will be a prosecutor in the office’s general trial division. He received his J.D. from the University of Kentucky College of Law in 2003.

Porter will be a prosecutor in the office’s Narcotics Unit. He received his J.D. from the University of Louisville Louis D. Brandeis School of Law in 2012. He has been made a staff attorney in the office’s Appellate Division. He earned his J.D. from the Vanderbilt University Law School. He had previously served as a prosecutor in the office’s Economic Crime Division.

Reminger Co., LPA, announces that attorney Christopher Piekarski has joined their Louisville office. Piekarski focuses his practice on the defense of physicians and long-term care facilities in medical negligence and personal injury litigation. He received his Juris Doctor, cum laude, from the University of Louisville Louis D. Brandeis School of Law. While in law school, he served as an editor of the Law Review, a member of the Moot Court Board and as a research assistant for a law school faculty member. Piekarski has been recognized as a Rising Star by Kentucky Super Lawyers Magazine in 2013 and 2014. He is a member of the Kentucky and Florida Bar associations.

Bingham Greenebaum Doll LLP announces that three attorneys have been elected to the partnership within the firm. Jason T. Ams, William Scott Croft and Steven R. Wilson.

Jason T. Ams (Litigation) focuses his practice on the representation of private and public clients in a wide range of complex litigation cases. Ams is also a member of the firm’s class action defense team, electronic discovery and information management team and white collar criminal defense team. He practices out of the firm’s Lexington office. Ams is an active member of the Kentucky Bar Association and has served on the Lexington Children’s Theatre Board of Directors since 2012.
William Scott Croft (Litigation) concentrates his practice in diverse areas of complex litigation at both the trial and appellate levels. Croft has defended corporate clients in product liability cases, contract disputes, insurance matters and other complex commercial litigation. He has also built significant experience in securities litigation and government enforcement defense, including conducting internal corporate investigations. Scott practices from the firm's Louisville office. He is an active member of the Louisville and Kentucky Bar associations, the Federalist Society Louisville Lawyers Chapter and Leadership Louisville, a nonprofit, member-oriented resource dedicated to developing a diverse group of leaders who serve as catalysts for a stronger community. Scott also serves on the Board of Elders of Third Avenue Baptist Church.

Steven R. Wilson (Estate Planning) focuses his practice in the area of trusts and estates, including planning, administration and dispute resolution. He also has experience in business succession planning, commercial real estate transactions and litigation. Wilson practices out of the firm's Louisville and Cincinnati offices. He is an active member of the Louisville, Kentucky, Ohio and American Bar associations. Wilson has served on the board of directors of the Louisville Visual Art Association since 2012 and has served on its executive committee since 2014. Lawrence & Associates announces the addition of Katy Lawrence as an associate attorney, and the addition of Social Security to the firm’s areas of practice. Lawrence will head the firm's Social Security practice in addition to joining the firm's civil litigation department. In both roles, Lawrence will help injured plaintiffs seek compensation or benefits for disabling injuries.

The firm of Buckman & Farris, PSC, founded by former Kentucky attorney general J.D. Buckman and Eric Farris, announces Amber L. Jones as its newest associate, practicing divorce and family law in the greater Louisville area. A graduate of the Louis D. Brandeis School of Law, Jones is also a former clerk for the County Attorney in Bullitt County, where the firm is located. She and senior associate, Joe M. Mills, will continue practicing regional criminal and civil litigation, personal injury, insurance defense, real estate, decedents' estates and business development law. The firm's website is www.buckmanfarrislaw.com.

Stites & Harbison, PLLC, welcomes attorney Adam Smith to the Lexington office. Smith joins the firm as an attorney in the construction service group, and his practice will concentrate on representing owners, contractors and subcontractors in construction disputes. Smith has extensive experience in complex commercial litigation in federal and state trial and appellate courts, as well as in arbitration proceedings. He earned his J.D., cum laude, from Cornell Law School, Ithaca, NY, in 2007. While in law school, he was editor of Cornell Law Review. He earned his B.A. in English from Rice University, Houston, in 1999. Smith is admitted to practice in Kentucky and New York.


McBrayer is pleased to announce that Angela C. Evans and Jacob C. Walbourn have joined the firm’s Lexington office.

Walbourn joins McBrayer from the Office of the Attorney General. As an assistant attorney general, Walbourn served in the Office of Civil and Environmental Law, focusing on litigation. Primary practice areas included automobile negligence/insurance defense, civil rights defense, and Constitutional challenges. Walbourn received his J.D. in 2010 from the University of Tennessee College of Law. Walbourn will focus his practice on planning and zoning.

Buckman & Farris, PSC announces that litigator Christopher M. Corless has joined the firm as of counsel. Corless received her B.S. from University of Central Arkansas and her J.D. in 2003 from Vanderbilt University Law School. She was the Vanderbilt Trial Advocacy Society president and a Dean’s Scholar. Corless will be practicing in the fields of medical malpractice and product liability defense.

Thompson Miller & Simpson PLC announces that Catherine M. Corless has joined the firm as an associate. Corless was admitted to practice in the state of Ohio; Commonwealth of Kentucky; U.S. District Court, Southern and Northern Districts of Ohio; U.S. District Court, Eastern and Western Districts of Kentucky; and the U.S. Court of Appeals for the Sixth Circuit. She obtained her undergraduate degree in journalism from the University of Kentucky, and her law degree from Northern Kentucky University’s Salmon P. Chase College of Law, magna cum laude. While attending law school, she served as the Kentucky survey editor for the Northern Kentucky Law Review. She serves on the board of the Welcome House of Northern Kentucky and is involved in the Fort Thomas Business Association, the Tri-State Association for Corporate Renewal, and is a member of the Honorable Order of Kentucky Colonels.

Russell Coleman, senior advisor and legal counsel to U.S. Senate Majority Leader Mitch McConnell, will join Frost Brown Todd LLC (FBT) and its government relations subsidiary, CivicPoint LLC. Coleman will hold dual roles as a member of FBT and as a principal in CivicPoint, a government relations consulting firm guiding clients through state and local government affairs matters in mid-America since 2013. Coleman, a Kentucky native, former Department of Justice staffer and FBI special agent, served the Majority Leader for the past five years in a variety of senior staff roles.

Lewis D. Kuhl has been named the director of Regulatory Compliance and Legal Counsel for GSFSGroup. GSFSGroup is a nationwide provider and administrator of F&I products for the automotive industry and is based in Houston, Texas. In addition, he also serves as an adjunct faculty member at Northwood University in the Automotive Marketing and Management department where he teaches dealership legal issues. He’s a named partner of the firm. Representing corporate entities and individual clients in all manners of commercial disputes, Markus is admitted to practice in the state of Ohio; Commonwealth of Kentucky; U.S. District Court, Southern and Northern Districts of Ohio; U.S. District Court, Eastern and Western Districts of Kentucky; and the U.S. Court of Appeals for the Sixth Circuit. He obtained his undergraduate degree in journalism from the University of Kentucky, and his law degree from Northern Kentucky University’s Salmon P. Chase College of Law, magna cum laude. While attending law school, he served as the Kentucky survey editor for the Northern Kentucky Law Review. He serves on the board of the Welcome House of Northern Kentucky and is involved in the Fort Thomas Business Association, the Tri-State Association for Corporate Renewal, and is a member of the Honorable Order of Kentucky Colonels.
graduate of Eastern Kentucky University and Northern Kentucky University Salmon P. Chase College of Law and is a member of the Kentucky, Florida and American Bar associations, as well as the National Association of Dealer Counsel.

**Jennifer R. Dusing,** a partner in the Florence law firm of Raines, Buechel, Conley &

**Dusing, P.L.L.C.,** was recently admitted as a Fellow with the American Academy of Adoption Attorneys (AAA). The American Academy of Adoption Attorneys is a professional organization of approximately 340 attorneys throughout the U.S. and Canada who have distinguished themselves in the field of adoption law and are proficient in the complexities of adoption law and the variety of interstate and international regulations surrounding adoption. Dusing is one of only six attorneys in the Commonwealth of Kentucky to be admitted as a Fellow with the AAAA.

**Napier Gault Schupbach & Moore, PLC,** announces that that **Clay M. Stevens, Kristen H. Fowler and Sallie J. Stevens** have joined the firm.

**Clay M. Stevens** has joined the firm as a partner and will focus his practice on hospital and physician medical malpractice defense, nursing home defense, insurance defense, commercial litigation and insurance coverage disputes. Stevens is A.V. rated by Martindale-Hubbell and was recently appointed as a director of the Louisville Bar Association Board of Directors for 2015-2016. Stevens served as chair of the Litigation Section of the Louisville Bar Association in 2014, with the Litigation Section being named Co-Section of the Year. He earned his J.D. from the University of Kentucky College of Law in 1995.

**Kristen H. Fowler** has joined the firm as an associate and will concentrate on hospital and physician medical malpractice defense, medical licensure issues, nursing home defense and insurance defense. Fowler is a 2004 *summa cum laude* graduate of Hanover College and a 2007 *magna cum laude* graduate of the Indiana University Maurer School of Law. While in law school, Fowler served as a managing editor of the *Indiana Law Journal*. Fowler is currently the vice-chair of the Louisville Bar Association’s Litigation Section. She is also a 2012 graduate of the Louisville Bar Association Leadership Academy.

**Sallie J. Stevens** has joined the firm as of counsel and will concentrate her practice on hospital and physician medical malpractice defense, insurance defense and appellate practice. Stevens graduated *magna cum laude* from the University of the South in Sewanee, Tenn., in 1991, where she was a member of the Order of the Gownsmen and Phi Beta Kappa. She graduated from the University of Kentucky College of Law in 1995.

**Smith, Gambrell & Russell, LLP (SGR)** announces that **Kevin R. Ghassomian** has joined the firm as a partner in its private client services practice. Ghassomian focuses his practice on the personal legal needs of business owners, corporate executives, high-net-worth individuals, and their families. Ghassomian’s representation covers all aspects of domestic and inter-

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national estate planning with an emphasis on tax minimization, asset protection, business succession, and philanthropy. Prior to joining SGR, Ghassomian worked in the New York City headquarters of a global investment firm where he counseled a multi-national client base on complex wealth management matters including foreign and domestic trust planning and related asset allocation strategies. Ghassomian received his J.D. from Vanderbilt University Law School and an LL.M. in Taxation from the University of Miami School of Law.

Reminger Co., LPA, appointed Emily Weaver Newman as co-chair of the long term care liability practice group. Newman practices in the Louisville office. Newman began her practice in their Toledo office, focusing on professional liability and long term care defense. In 2010, she joined the Louisville office, where she continues to concentrate on defending nurses, physicians, hospitals and nursing homes. Newman has also served as an adjunct faculty member of the University of Toledo College of Law, advising its Trial Advocacy Program and assisted with the College of Law Dean's Technology Council. She has been recognized as a Rising Star in Ohio Super Lawyers Magazine in 2010 and 2011, and as a Rising Star in Kentucky Super Lawyers Magazine in 2015. She was also selected as 'Who's Who in Area Law' by the Toledo Business Journal in September 2009.

Stoll Keenon Ogden PLLC is pleased to announce that attorneys Sarah Jackson Bishop, W. Duncan Crosby III, Lauren M. McElroy, Stacy E. Miller, Matt R. Parsons and Eric M. Weihe have all been promoted to members of the firm. Bishop practices in the area of business litigation as well as trusts, estates and family law. She is a graduate of the University of Kentucky College of Law and is active in the Franklin County, Kentucky, and American Bar associations. Crosby practices in the area of utility and energy law as well as trusts, estates and family law. He is a graduate of the Harvard Law School and serves on the executive board of Junior Achievement and was past president of the Southern Chapter of the Energy Bar Association. McElroy practices law primarily in the area of mineral and environmental law. She is a graduate of the University of Kentucky College of Law and is very active in several oil & gas trade associations, bar associations, Professional Landmen Associations and is a board member and secretary of KY Friends of Coal. Miller concentrates her practice on counseling, civil litigation and administrative defense with emphasis on employee benefits, the Family and Medical Leave Act, the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Kentucky Civil Rights Act, Wrongful Termination and Noncompetition and other Employment Agreements. She is a graduate of the University of Kentucky College of Law and serves on the board of directors for The Foster Care Council of LexKY. Parsons practices law in the areas of commercial, products liability, and ERISA litigation, with an emphasis on electronic discovery and federal court practice issues. He is a graduate of the University of Kentucky College of Law and currently serves on the board of directors of the Fayette County Bar Association Young Lawyers Section and on the executive committee of the Kentucky Bar Association Young Lawyers Division. Weihe concentrates his law practice on insurance and personal injury litigation, including medical malpractice defense, and commercial litigation. He is a graduate of the University of Kentucky College of Law and has graduated from both the Leadership Louisville Center Ignite Louisville program and the Fund for the Arts Next Leadership Development Program.

Midleton Reutlinger announces that R. Gregg Hovious has joined the firm’s litigation practice group. Hovious is a civil trial lawyer and joins the firm as of counsel. Hovious began his training as a trial lawyer in insurance defense and healthcare litigation. He then gained experience in corporate and commercial litigation, focusing on the representation of banks and lender liability actions, contract disputes, corporate takeover and merger litigation and ERISA and securities fraud litigation. Hovious joins the firm from Fultz Maddox Hovious Dickens (now Fultz Maddox Dickens), a firm he co-founded. Hovious received his B.S. from the University of Alabama and his J.D. from the University of Kentucky. He serves as president of the Crescent Hill Community Counsel and serves as a member of the Friends of the Louisville Zoo.

Lee Thomason is a 1980 graduate of the University of Kentucky College of Law and is now a full-time faculty member at the Moritz College of Law at the Ohio State University. Thomason has been selected as a Fullbright Scholar to research and to be a visiting professor at the Management Center Innsbruck (MCI), Austria. The Fullbright award allows Thomason to teach intellectual property transactions to law and professional degree students at The Entrepreneurial School at MCI.

Jackson Kelly PLLC welcomes William E. Cartwright, Patrick F. Estill and Christopher F. Hoskins to the firm. The three associates will be joining the commercial law practice group. Cartwright is located in the firm’s Evansville, Ind., office. Estill and Hoskins are located in the firm’s Lexington office. Cartwright is a graduate of the University of Kentucky College of Law. While in law school, he was a member of Moot Court Board, Trial Advocacy Board, Tax Law Society and Student Bar Association. He also served as vice president of the Equine Law Society. Cartwright is a 2011 summa cum laude graduate of Murray State University. Estill received his J.D. from the University of Kentucky College of Law in May of 2014. While at the University of Kentucky, he was a member of Moot Court Board, Trial Advocacy Board, Tax Law Society and Student Bar Association. He also served as vice president of the Equine Law Society. Estill graduated from Tulane University in 2010 with a Bachelor of Arts, cum laude, in political economy and a minor in Spanish. Hoskins is a 2014 cum laude graduate of the University of Kentucky College of Law. While in law school, he was a member of the Kentucky Law Journal and Moot Court Executive Board. Estill graduated from Tulane University in 2010 with a Bachelor of Arts, cum laude, in political economy and a minor in Spanish. Hoskins is a 2014 cum laude graduate of the University of Kentucky College of Law. While in law school, he was a member of the Kentucky Law Journal and Moot Court Executive Board. Estill graduated from Tulane University in 2010 with a Bachelor of Arts, cum laude, in political economy and a minor in Spanish. Hoskins is a 2014 cum laude graduate of the University of Kentucky College of Law. While in law school, he was a member of the Kentucky Law Journal and Moot Court Executive Board. Estill graduated from Tulane University in 2010 with a Bachelor of Arts, cum laude, in political economy and a minor in Spanish. Hoskins is a 2014 cum laude graduate of the University of Kentucky College of Law. While in law school, he was a member of the Kentucky Law Journal and Moot Court Executive Board. Estill graduated from Tulane University in 2010 with a Bachelor of Arts, cum laude, in political economy and a minor in Spanish. Hoskins is a 2014 cum laude graduate of the University of Kentucky College of Law. While in law school, he was a member of the Kentucky Law Journal and Moot Court Executive Board. Estill graduated from Tulane University in 2010 with a Bachelor of Arts, cum laude, in political economy and a minor in Spanish. Hoskins is a 2014 cum laude graduate of the University of Kentucky College of Law. While in law school, he was a member of the Kentucky Law Journal and Moot Court Executive Board. Estill graduated from Tulane University in 2010 with a Bachelor of Arts, cum laude, in political economy and a minor in Spanish. Hoskins is a 2014 cum laude graduate of the University of Kentucky College of Law. While in law school, he was a member of the Kentucky Law Journal and Moot Court Executive Board. Estill graduated from Tulane University in 2010 with a Bachelor of Arts, cum laude, in political economy and a minor in Spanish. Hoskins is a 2014 cum laude graduate of the University of Kentucky College of Law. While in law school, he was a member of the Kentucky Law Journal and Moot Court Executive Board. Estill graduated from Tulane University in 2010 with a Bachelor of Arts, cum laude, in political economy and a minor in Spanish. Hoskins is a 2014 cum laude graduate of the University of Kentucky College of Law. While in law school, he was a member of the Kentucky Law Journal and Moot Court Executive Board. Estill graduated from Tulane University in 2010 with a Bachelor of Arts, cum laude, in political economy and a minor in Spanish.

Brown’s practice focuses on all areas of environmental law and includes advice and counseling on regulatory requirements, permitting and transactional issues as well as environmental litigation.

Bender’s practice involves consulting and representing clients in litigation with respect to air, solid and hazardous waste, and wastewater compliance and permitting issues. Prior to attending law school in 1984, Bender was a professional engineer in the field of mining engineering.

Cave concentrates her practice on all areas of environmental and natural resources law, including advising and counseling clients on regulatory requirements, permitting, transactional issues, and enforcement matters.
Thomerson previously worked for the Kentucky Environmental and Public Protection Cabinet supervising the Air Legal Services Branch and has experience with waste, water and air quality issues.

Larkin’s practice focuses on environmental and natural resources including SMCRA and coal-related environmental compliance and transactions.

Middleton Reutlinger is pleased to announce that Amy B. Berge and Joseph R. Dages have joined the firm’s intellectual property group. Formerly, both Berge and Dages were attorneys in the Louisville office of Bingham Greenebaum Doll. Berge provides strategic brand counseling to both small and large companies regarding worldwide intellectual property creation. She assists in obtaining and maintaining trademark and copyright registrations, negotiates agreements and litigates. Dages received his bachelor’s degree, cum laude, from Hanover College and his law degree, cum laude, from Indiana University Maurer School of Law. Dages is currently participating in the fund for the Arts – NeXt! Leadership Development Program and is a member of the American Advertising Federation – Louisville Chapter, Young Advertising Professionals. Berge received her B.S. in business from Auburn University and her J.D., magna cum laude, from the University of Louisville Louis D. Brandeis School of Law.

The law firm of Goldberg Simpson LLC is pleased to announce that Louis I. Waterman has joined the firm as a partner, and Emily A. White has joined the firm as an associate.

Waterman is a former judge of Jefferson Circuit Court, Family Division 4, and a family law attorney in Kentucky. He is a Fellow of the American Academy of Matrimonial Lawyers and is certified in family law by the National Board of Trial Advocacy. He is past president of the Kentucky Chapter of the American Academy of Matrimonial Lawyers and is a member of the Louisville, Kentucky and American Bar associations.

White has worked in the area of family law for over three years, representing clients in a wide array of complex family law litigation. White previously served as a trial attorney at the Louisville Metro Public Defender’s Office. She serves on the board of directors for the Downtown Family YMCA and is a member of the Louisville, Kentucky and American Bar associations.

Elizabeth A. Sprowl is an associate in the Louisville office of Quintairos, Prieto, Wood & Boyer, P.A. (QPWB). She focuses her practice in the areas of insurance defense, insurance coverage and bad faith litigation, product liability and premise liability claims. She has handled insurance claims and insurance litigation matters in Kentucky, West Virginia and Missouri. Sprowl received her J.D., cum laude, from the Northern Kentucky University Salmon P. Chase College of Law in 2011. She received a Master in business administration from Bellarmine University in 2000 and her B.A. from Washington University (St. Louis) in 1997. Sprowl is licensed to practice law in Kentucky, Indiana and West Virginia. She is a member of the Louisville, Kentucky, West Virginia, and American Bar associations, as well as the Indiana State Bar and the Order of the Barristers.

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Elizabeth A. Sprowl is an associate in the Louisville office of Quintairos, Prieto, Wood & Boyer, P.A. (QPWB). She focuses her practice in the areas of insurance defense, insurance coverage and bad faith litigation, product liability and premise liability claims. She has handled insurance claims and insurance litigation matters in Kentucky, West Virginia and Missouri. Sprowl received her J.D., cum laude, from the Northern Kentucky University Salmon P. Chase College of Law in 2011. She received a Master in business administration from Bellarmine University in 2000 and her B.A. from Washington University (St. Louis) in 1997. Sprowl is licensed to practice law in Kentucky, Indiana and West Virginia. She is a member of the Louisville, Kentucky, West Virginia, and American Bar associations, as well as the Indiana State Bar and the Order of the Barristers.
IN THE NEWS

R. Christion “Chris” Hutson, member (partner) of Whittle, Roberts, Houston & Straub, PLLC, in Paducah, began a two-year term Jan. 1, 2015 as chairman of the board of directors for Baptist Health, a seven-hospital system based in Louisville. He previously served as vice chair of the Baptist Health board, as chair of the audit committee, as member of the executive and governance effectiveness committees, as a director of the Baptist Health Paducah and Baptist Health Madisonville boards, and as vice chair of the Baptist Health Paducah Foundation board. Hutson received his B.S. from Murray State University, magna cum laude, and his J.D. from Vanderbilt University, where he was an associate editor of the Vanderbilt Journal of Transnational Law.

Reminger Co., LPA, announces the formation of a new practice group dedicated to elder law and special needs planning. The elder and special needs group is committed to providing compassionate and efficient legal service to elderly individuals and their families, as well as families of children with special needs and disabled individuals. Their approach in working with elderly or disabled individuals and their families involves creating a plan tailored to their client’s specific needs. Their goal is to educate clients about the many benefit programs available, and to assist with planning that incorporates asset protection and other helpful legal strategies.

Dinsmore & Shohl’s Brady Dunnigan has been named to the Kentucky Association of Children’s Advocacy Centers (KACAC) Board of Directors. KACAC provides assistance, awareness and advocacy for Kentucky’s network of child abuse prevention and response centers. Dunnigan is a partner in the Lexington office, practicing in the firm’s corporate department. He devotes his time to commercial lending and real estate matters in addition to general mergers and acquisitions, and routinely serves as outside general counsel to clients for purposes of coordinating transaction support, litigation strategy and dispute resolution.

The Litigation Counsel of America (LCA) has named Stites & Harbison, PLLC, attorney Bill Geisen as a fellow of this peer-selected and invitation-only trial lawyer honorary society. Membership in LCA is limited to 3,500 Fellows, representing less than one-half of one percent of American lawyers. Fellows in LCA represent the highest standards among American litigation and trial counsel across all segments of the bar. Geisen is a member (partner) of Stites & Harbison, PLLC, based in the Covington office. As chair of the firm’s construction service group, his practice focuses on construction law including contract negotiation, dispute resolution and litigation. He is also a fellow of the American College of Construction Lawyers.

Eddins Domine Law Group is celebrating its 10-year anniversary in 2015. Over the last decade, the firm has grown to 13 employees, including seven attorneys. Eddins Domine employs lawyers licensed to practice in every federal and state court in Kentucky and Indiana across a wide range of practice areas from business transactions and disputes, real estate transactions and estate planning to bankruptcy, collections and family law. The firm will mark its 10-year anniversary with 10 events in 10 months. The events include numerous community and charitable events.

John W. Gragg, Frost Brown Todd member in Louisville, has been named a 2015 BTI Client Service All-Star. BTI has recognized 354 attorneys throughout the world who have earned corporate counsel praise for demonstrating exceptional legal skills and client focus, delivering outstanding, high-quality service, and sharing in a commitment to achieving their clients’ business and legal objectives. Gragg is a real estate and finance lawyer and represents national and international banks, lending institutions, real estate investment trusts (REITs), private equity funds and real estate developers in various real estate transactions throughout the United States. He leads a team of 15 attorneys and legal professionals that has represented lenders in more than 300 loan transactions since 2011, including securitized loans, mezzanine loans, warehouse facilities, bridge financing and term loans.

Bingham Greenebaum Doll LLP announces Ross Cohen was named co-chair of the firm’s federal tax team. He succeed senior partner Charles J. Lavelle, who will continue to serve as a member of the tax & employee benefits practice group. Cohen is partner in the firm’s Louisville office. He focuses his practice on federal tax and tax consequences of various business transactions, including formations, mergers, acquisitions, joint ventures, internal restructurings, divestitures and angel investing. He also assists nonprofit organizations with formation and obtaining tax-exempt status, and counsels tax-exempt organizations with respect to compliance matters, including analysis of revenue streams as unrelated business taxable income. The federal tax team, as part of the firm’s tax & employee benefits practice group, counsels individual and business clients in national and international transactions and in all phases of tax planning, compliance, controversy and litigation involving federal laws and regulations.

The University of Kentucky School of Law hosted a Public Lawyer Career Program on March 25, 2015. It featured a panel of government and public sector lawyers who discussed their jobs, what it’s like to work in their office, how they obtained their positions, what they did before they became public lawyers and the advantages of working for the government. “Serving the community as a government or public sector lawyer is a highly satisfying way to advance the common good. That is broadly demonstrated through the remarkable good that has been accomplished by the dedicated public service of Kerry Harvey,” the U.S. Attorney for the Eastern District of Kentucky, former Marshall County Attorney and general counsel for the Kentucky Cabinet of Health and Family Services, Larry Roberts, Fayette County Attorney and former Commonwealth’s Attorney, Robert Johns, executive director of the Appalachian Research and Defense Fund of Kentucky, and his 18 years of civil legal aid service, and Shannon Brooks-English, directing attorney of the Lexington South Office of the Department of Public Advocacy, bringing to life the right to counsel for indigents accused of a crime,” said Ed Monahan, Kentucky Public Advocate who moderated the program and is a member of the ABA Government and Public Sector Lawyers Division Council.

Photo: From left to right, Kerry Harvey, Robert Johns, Shannon Brooks-English, Larry Roberts, Ed Monahan.
Williams was also named a Top Lawyer in Louisville Magazine’s March 2014 issue and has previously been recognized by Louisville Business First as a member of the Top Forty Under 40 Class of 2012. He serves as a member of the Lincoln Foundations Board of Trustee’s. Williams received his law degree from the University of Kentucky College of Law in 2003 and graduated with a B.A. in economics from Yale University in 2000.

Scott White, a shareholder with Morgan & Pottinger, P.S.C., has been named a Fellow of the Litigation Counsel of America (LCA), a peer-selected honorary society for trial lawyers. Less than one-half of one percent of American lawyers are chosen after being evaluated for effectiveness and accomplishment in litigation and trial work, along with ethical reputation. White is a lead trial lawyer in M&P’s civil litigation and regulatory practice, drawing on his experience in the Attorney General’s office and nearly 30 years in complex civil, commercial and criminal litigation in the courtroom. He heads the firm’s litigation practice group. White also counsels financial institutions that are victims of financial crimes, whose employees may be witnesses in criminal actions, or that need to comply with grand jury subpoenas. White served as legal counsel for the Alison Grimes for U.S. Senate Campaign during the 2014 election cycle.

The Kentucky Association of Children’s Advocacy Centers (KACAC) recently elected Stites & Harbison, PLLC, attorney Camille Yancey to its board of directors. Yancey will serve a two-year term. Based in Stites & Harbison’s Lexington office, Yancey is a member of the environmental, natural resources and energy service group. Her practice focuses on environmental counseling in business, regulatory and legislative matters. Her experience includes energy efficiency and renewable energy issues, environmental aspects of real estate transactions, site remediation and compliance with federal and state environmental regulations. KACAC seeks to lead Kentucky in promoting the best coordinated response to child abuse through the development, growth, and continuation of Children’s Advocacy Centers.

Stoll Keenon Ogden PLLC announces that attorneys Mark T. Hurst and Sharon A. Mattingly have been elected as members of the firm’s board of directors. Hurst focuses his law practice on business litigation and serves as the co-chair of the trust & estate litigation practice. His litigation experience ranges from representing Fortune 500 companies to small, locally owned businesses, and his practice has included commercial and construction disputes, estate litigation, defamation claims, personal injury law, and non-competition enforcement. Hurst served as chair of the board of directors for Zoom Group, an organization devoted to helping adults with developmental disabilities and was named to Business First’s Forty under 40 in 2010.

Mattingly focuses her law practice on the design and maintenance of qualified and nonqualified retirement plans, health and welfare plans, executive deferred compensation plans, employee benefit issues in mergers and acquisitions and the purchase and sale of businesses through employee stock ownership plans. She also has extensive experience working with the Internal Revenue Service and the Department of Labor on tax and ERISA compliance issues. Mattingly is a current member and the former president of the Louisville Employee Benefits Council and is a member of the ESOP Association and the Women Lawyers Association of Jefferson County. She currently serves on the board for the Kentucky Public Pension Oversight and has served on the executive committee and board of directors for the Kentucky Shakespeare Festival.

Gov. Steve Beshear has appointed Morgan & Pottinger attorney Ben Chandler to the State Board of Elections to serve for a term expiring Sept. 15, 2018.

Frost Brown Todd (FBT) is pleased to announce that Jason Williams, Louisville, has been chosen as a member of the 2015 Class of Fellows of the Leadership Council on Legal Diversity (LCLD). The landmark program established by the LCLD in 2011 trains and advances the next generation of leaders in the legal profession. Williams is a member at FBT and joins a select group of attorneys from diverse backgrounds, recognized as leaders in their organizations. Williams concentrates his practice in corporate law with an emphasis on franchise law and merger and acquisitions of public and private companies. He is the leader of FBT’s Franchise and Distribution Service Team and is actively involved in the American Bar Association’s Forum on Franchising.
The Litigation Counsel of America (LCA) has named Whitlow, Roberts, Houston & Straub, PLLC member E. Frederick (Rick) Straub, Jr., as a Fellow of this peer-selected and invitation-only trial lawyer honorary society. Fellows are selected based upon excellence and accomplishment in litigation, both at the trial and appellate levels, and superior ethical excellence and accomplishment in litigation, both at the trial and appellate levels, and superior ethical reputation. Straub joined Whitlow, Roberts, Houston & Straub, PLLC, in August 1980 and has been managing member since 1995. His practice focuses on civil litigation primarily the areas of medical malpractice and mediation.

He is also a Fellow in the American College of Trial Lawyers.

Betty Moore Sandler was presented with the 2015 Virginia State Bar, Family Law Section, Betty A. Thompson Lifetime Achievement Award on April 23, 2015. This award is given at the discretion of the Virginia State Bar Family Law Section Board of Governors and was established to recognize an individual who has made a substantial contribution to the practice and administration of family law in the Commonwealth of Virginia.

Dinsmore & Shohl’s Angela L. Edwards has been named “Barrister of the Year” by the Louisville Black Lawyers Association (LBLA). The event honors LBLA members who inspire others, are active in their communities and who promote diversity in the profession. Edwards has been a member of the LBLA for well over a decade. Edwards is the president of the Louisville Bar Association. She serves on the LBA’s Summer Internship and Diversity Committees and has been the secretary, vice president/treasurer and president-elect before becoming president. Edwards is a partner in Dinsmore’s Litigation Department. She practices in the areas of ERISA benefits litigation and commercial litigation. Edwards counsels clients with business disputes and represents employee benefit plans, claims administrators and employers with benefits issues. Edwards earned her J.D. from the University of Kentucky College of Law and her B.A. from Transylvania University.

Frost Brown Todd (FBT) announces Gene F. Price, a member in the firm’s Louisville office, was appointed by President Obama and confirmed by the U.S. Senate as a Rear Admiral in the Navy Reserve in 2014. Price has been on active duty several times in his reserve career, including serving as an Intelligence Officer during the wars in Iraq and Afghanistan. He has recently been ordered to return to active duty in support of the Navy’s cyber-related efforts to defend networks and communications. Price will serve as Deputy Commander of U.S. Fleet Cyber Command and U.S. Tenth Fleet (FCC/C10F) at Fort Meade, Md. Fleet Cyber Command’s purpose is to ensure the Navy’s freedom of action and superiority in cyberspace, while counter-acting the efforts of our nation’s adver-
saries. Fleet Cyber Command is also strengthening alliances and cooperation with entities across the U.S. Government, academia, industry and foreign partners. Tenth Fleet is Fleet Cyber Command’s operational arm. It executes its mission in a traditional U.S. Navy task force structure that includes cyberspace, networks, information operations, electronic warfare, space, cryptology, and signals intelligence. Price received his J.D. from the University of Louisville Louis D. Brandeis School of Law in 1988. He practices in FBT’s litigation department. He will remain a member of the firm and return to the firm’s Louisville office at the conclusion of his tour of duty at Fort Meade.

Stites & Harbison, PLLC attorneys Bill Gorton and Blaine Early have each earned Client Choice Awards for 2015 for outstanding client service. Gorton earned the sole Kentucky award for the practice of energy & natural resources and Early earned the sole Kentucky award for the practice of environment & climate change. The Client Choice Awards recognize attorneys and law firms worldwide who stand out for their excellence in client service based on the results of an extensive survey of senior corporate counsel.

Gorton is chair of the environmental, natural resources, and energy service group. His Ph.D. in biology and experience as a college professor help set him apart as an environmental lawyer, where evaluating and communicating technical information are important complements to the practice of law. He has a broad approach to environmental law that includes a focus on water and land issues, agriculture, natural resources and energy, and the intersection of surety law and environmental regulatory matters. He is co-chair of the Water Quality and Wetlands Committee of the American Bar Association’s Section of Environment, Energy, and Resources.

Early is a member (partner) of the firm, also based in the Lexington office in the environmental, natural resources, and energy service group. His Ph.D. in biology and experience as a college professor help set him apart as an environmental lawyer, where evaluating and communicating technical information are important complements to the practice of law. He has a broad approach to environmental law that includes a focus on water and land issues, agriculture, natural resources and energy, and the intersection of surety law and environmental regulatory matters. He is co-chair of the Water Quality and Wetlands Committee of the American Bar Association’s Section of Environment, Energy, and Resources.

Dinsmore & Shohl’s Thomas A. Hoy has been named a “2015 Partner in Healthcare” by Louisville Business First. The list is made up of the most prominent health care business leaders in Greater Louisville. Hoy has made the list for the past 10 years. A partner in Dinsmore’s Louisville office, Hoy is a member of the firm’s corporate department. His practice focuses on general business and corporate law with an emphasis on hospital and health care clients. Hoy is a member of the American Health Lawyers Association and serves as general counsel and Secretary of the WHAS Crusade for Children, Inc. He serves on the board of directors for Seven Counties Services, Inc., and was just named to the Health Enterprises Network (HEN) Executive Committee. Hoy will serve as vice chair for the Health Policy Forum. HEN is a non-profit network of nearly 200 investor companies focused on the economic development of the region’s health-related industry.

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As a final tribute, the Bench & Bar publishes brief memorials recognizing KBA members in good standing as space permits and at the discretion of the editors. Please submit either written information or a copy of an obituary that has been published in a newspaper. Submissions may be edited for space. Memorials should be sent to sroberts@kybar.org.

### Name City State Deceased

**Armand Angelucci** .......Lexington ......KY ......March 13, 2015

**Stephen John Brewer** .......Cincinnati ......OH ......January 24, 2015

**Wayne J. Carroll** .......Louisville ......KY ......March 7, 2015

**R. F. Cooper Jr.** .......Jackson ......MS ......January 12, 2015

**George B. Cox** .......Stamping Ground KY ......February 11, 2015

**Jed Kerstan Deters** .......Independence ......KY ......March 2, 2015

**John Richard Hamilton** .......Orlando ......FL ......January 27, 2015

**Ewing L. Hardy Jr.** .......Louisville ......KY ......February 27, 2015

**Alan N. Leibson** .......Louisville ......KY ......March 26, 2015

**Rodney Arthur Miller** .......Fulton ......KY ......September 3, 2013

**Jonathan R. Norris** .......Lexington ......KY ......February 9, 2015

**Robert W. Riley** .......Louisville ......KY ......March 1, 2015

**C. Wayne Shepherd** .......Corbin ......KY ......December 18, 2014

**William Henry Wambaugh** .......Crestview Hills ......KY ......January 16, 2015

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