

KENTUCKY BAR ASSOCIATION



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Judge In Limine Complaint
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Bruce K. Davis

VOLUNTEERS AT WORK

This fall, for the first time in the 26-year history of the Kentucky Law Update (KLU)-District Bar Programs, the combined attendance exceeded 5,000. This continuing legal education opportunity, which is included as part of the modest Kentucky Bar Association annual dues, remains a great member benefit. During the KBA President's presentation on the first morning of each KLU program, the vital KBA volunteer effort was highlighted. No part of the volunteer effort is more important to a unified professional and regulatory organization than the work of the Inquiry Commission is to the members of the Bar and the public.

The members of the Kentucky Bar participate in self regulation of the profession through the system of lawyer discipline established by the Kentucky Supreme Court. Section 116 of the Kentucky Constitution mandates the Court, through its Rules, to provide for admission of members to the Bar and discipline of Bar members. The Court has enacted rules of professional conduct (SCR 3.130) and created a system to respond to non-compliance and prepare cases for it to review in order to enforce the rules. As part of the system, it relies on the experience and willingness of volunteer members of the Bar, as well as lay people.

The Court has established the Inquiry Commission as a critical first step in the lawyer discipline system. The Inquiry Commission was established in 1998 to

replace the former Inquiry Tribunal, which consisted of a former Chair of the now eliminated KBA House of Delegates, a past president of the KBA, and a former member of the judiciary. The Inquiry Commission now consists of six volunteer lawyers and three volunteer lay persons who are all appointed directly by the Court. Although the KBA Office of Bar Counsel (OBC) provides the professional staff responsible for support of the Inquiry Commission, the Commission's work is independent of the governance of the KBA. Members of the Commission come from around the state and an effort is made by the Court to assure that law practices in both large and small communities are represented. (The 1998 Rule changes by the Court also added four lay members to the Board of Governors to sit with the Board to deliberate and vote on the discipline cases that come before the Board. The lay members on the Board are also appointed directly by the Court.)

The Inquiry Commission has the responsibility and duty to review those complaints which are formally opened by the Disciplinary Clerk, or which it itself opens when it becomes aware of possible misconduct of an attorney. In essence, the Commission serves as a probable cause adjudicator. These two types of complaints are the ones that will require investigation by the OBC. The Commission has had to deal with

an increasing number of complaints due in large part to an increasing number of members of the Bar and a consumer public that is increasingly more demanding in all areas. In FY 1998-99, Bar membership was at 12,517 members and 472 complaints were received. As of June 30, 2010, Bar membership had reached 16,028 and 1,223 complaints were received in the last fiscal year.

The Court has made a further change in the duties and responsibilities of the Inquiry Commission since its creation in 1998 by providing more mechanisms to filter those complaints sent to the KBA. The changes limit the complaints that will be filed by the Disciplinary Clerk for response and further investigation. SCR 3.160(3). The Rule was amended first as a pilot program and then as an amendment to the Rules that became effective Feb. 1, 2008. It allows the OBC, which now contains the Client Assistance Program, to review and attempt to resolve or close those complaints under guidelines set by the Inquiry Commission. These particular complaints do not require the attention of the Inquiry Commission volunteers, and would not result in any lawyer discipline if they were pursued. There were 779 complaints closed in this manner last year alone. Most arise from a simple matter of attorney/client miscommunication that can be readily corrected, or require only the attorney be pointed in the direction of the

appropriate rule for his or her own review in order to address the client's concerns. This process has assisted the Inquiry Commission in handling its volume of work as well as providing a far faster response to the Bar and the public.

Last year the Commission issued 83 charges which will then be prosecuted by the OBC under the Court Rules. It is the Inquiry Commission that determines whether to issue a charge and, if so, on which rules of professional conduct the lawyer is alleged to have violated. It is consistently true that the Inquiry Commission charges only a very small percentage of lawyers. Charges have been issued against less than one percent of the KBA members in each of the last five years. In 1998-99, the Kentucky Supreme Court issued 31 orders of public and private discipline and last fiscal year, ending on June 30, 2010, issued 49 Orders. These low numbers are a testament not only to the high quality of the Bar in Kentucky, but to the diligent work of the Inquiry Commission with the assistance of the professional staff of the KBA Office of Bar Counsel. The Commission makes careful determination as to those matters that should result in a charge rather than an earlier disposition or dismissal.

The volunteer lawyers and lay persons of the Inquiry Commission, as well as the volunteer Trial Commissioners appointed by the Court to hear testimony in many of the charge cases, deserve a sincere thank you for their efforts. Their work is an excellent example of what dedicated volunteers can accomplish in the vital role of the operation of the system of regulation of the legal profession.

In a sidebar letter to this column, we are pleased to receive comments on the work of the Inquiry Commission and the Office of Bar Counsel from one of the experienced lay members of the Commission, Judy Worth of Lexington. ☺

The following letter dated Dec. 10, 2010, was addressed to KBA President Bruce K. Davis by Judy Worth, who recently completed six years as a lay panel member for the KBA Inquiry Commission. Worth is a full-time consultant with Lexington-based Verble Worth & Verble, which provides human resources development for clients in industries, non-profits, health care, universities and government. She has an extensive background in training and development and holds a Master's Degree in Curriculum and Instruction from the University of Kentucky.

Dear Mr. Davis:

As I complete a third term as a lay member of the Kentucky Bar Association's Inquiry Commission (IC), I want to publicly thank the attorneys and staff of the KBA's Office of Bar Counsel (OBC), the attorneys who voluntarily serve on the IC panels, and the institution of the KBA as a whole for the largely unheralded work that is done on behalf of the legal profession and the community at large.

During my six years with the IC, I have observed the OBC work diligently to respond promptly to each complaint it receives alleging ethics violations by members of the bar, triage the complaints appropriately, ensure a fair and thorough investigation of legitimate complaints and provide an equitable disposition that adheres to both the spirit and letter of the law. In the rare instances when individual attorneys appear before the IC panels, I have seen all parties treated with courtesy and respect.

The OBC and IC panels have devoted many hours to reducing the backlog of cases that were pending when I began my initial term in 2004. In addition the OBC has prevented additional backlog from developing by working through the rules process of the Court to institute a process for alternative dispute resolution for matters that do not rise to the level of an IC complaint and has increased the use of technology to monitor progress on cases which are held in abeyance while associated matters are in litigation. The latter practice has been supported by the lay members of the IC panels, who collectively have brought experience in human resources management, process improvement and information technology to our work with the IC. Our suggestions for streamlining the process, thus reducing the time necessary to handle complaints, and for improving retention of the OBC staff have been enthusiastically received by the members of the OBC and IC, and we are thankful for the opportunity to contribute.

As a result of these experiences, I leave the IC with a high regard for the legal profession, a regard I will communicate to my friends and colleagues as I have opportunity. My sincere thanks to you all for the important work you do.

Sincerely,



Judy Worth
Verble Worth & Verble
Outgoing IC Lay Panel Member

Medication Use in Schools: Education Law Meets Pharmacy Law



By Mara W. Elliott &
Joseph L. Fink III

Headline writers across the country were drawn to the facts of a case leading to the recent decision of the U.S. Supreme Court in *Safford Unified School District #1 et al. v. Redding*.¹ School administrators found four prescription-strength and one non-prescription analgesic tablets among a thirteen-year old student's possessions at school, leading to a strip search that was subsequently declared to have been a violation of the student's Fourth Amendment right to be free of unreasonable search and seizure.

The issue of medications in school rose more locally when, in March 2009, a seventh-grade student in Lexington brought to school a prescription medication that he shared with another student.² While scenarios are fraught with potential danger, the benefit of allowing the administration of medication at school during school hours is increasingly evident. The safe and proper administration of medication at school during school hours allows students who require medication to receive educational benefit.³ However, the administration of medication during school hours on school grounds raises important legal and policy concerns that this article seeks to address, including federal and state laws regarding student use of medication at school; the roles played by school district personnel, the parent, the health care provider, and the student; the potential for liability associated with

the administration of medication; and confidentiality of student health records.

STATE LAWS APPLICABLE TO THE ADMINISTRATION OF MEDICATION IN THE SCHOOL SETTING

KRS 156.502: Health Services in the School Setting

In 2002, the Kentucky General Assembly enacted KRS 156.502, which specifies that a public school must employ or arrange for the availability of a qualified health care professional for purposes of providing health services in a school setting. The statute defines "health services" as "the provision of direct health care, including the administration of medication; the operation, maintenance, or health care through the use of medical equipment; or the administration of clinical procedures." "Health services" do not include first aid or emergency procedures. While they are not specifically stated, the statute does not appear to apply to private or parochial schools, since the statute places responsibility for performing health services on specific employees within "the public schools of this Commonwealth."⁴

Section 156.502 specifies that health care services are to be provided, within the health care professional's current scope of practice, in a school setting by a properly-licensed physician or an advanced registered nurse practitioner, registered nurse, or licensed practical nurse, or by a school employee who is delegated responsibility to perform the

health service by a physician, advanced registered nurse practitioner, or registered nurse. If the school district does not have an employee who has been trained and delegated responsibility to perform a health service, then the school district "shall make any necessary arrangement for the provision of the health service to the student in order to prevent a loss of a health service from affecting the student's attendance or program participation." The school district may contract with an outside provider if the provider is qualified as described in KRS 156.502 and if the services are provided in a school setting. If the district or individual school does not have a school nurse on staff, then school districts in the Commonwealth generally contract with a public health department, hospital, or a home health agency; with a physician's office; or with a school-based health center.⁵

KRS 158.834: Self-Administration of Medications by Students with Asthma or Anaphylaxis

KRS 158.834 is much more discreet than KRS 156.502 in that it applies only to the self-administration of medications by students with asthma or anaphylaxis. It does, however, have a broader impact, since it applies to the boards and governing bodies of each public, private, and parochial school or school district. All such boards and governing bodies are required to permit students with asthma, and students at risk of having anaphylaxis, to self-administer medication if the student's parent or guardian provides written authorization for self-administration to the school and a written statement from the student's health care practitioner. The health care practitioner's written statement, which must be kept on file in the school nurse's or school administrator's office, must include the following statements and information:

- 1) that the student has asthma or is at risk of having anaphylaxis;
- 2) the student has been instructed in self-administration;
- 3) the name and purpose of the medications;

- 4) the prescribed dosage;
- 5) the time or times the medications are to be regularly administered and under what additional special circumstances the medications are to be administered; and
- 6) the length of time for which the medications are prescribed.

Liability Under KRS 156.502 and 158.834

A school employee who has been properly delegated responsibility for performing a medical procedure under KRS 156.502 is deemed to be an agent of the school and thus is immune from liability under the Federal “Paul D. Coverdell Teacher Liability Protection Act of 2001.”⁶ Punitive damages may not be awarded unless the claimant establishes, by clear and convincing evidence, that the harm was caused by an act constituting willful or criminal conduct, or a conscious, flagrant indifference to the rights or safety of the individual.⁷ An exception to the Act’s protection exists if the harm was caused by an act or omission of the school employee that constitutes gross negligence, willful or criminal misconduct, reckless misconduct or a conscious, flagrant indifference to the rights and safety of the individual harmed.⁸

Under KRS 158.834, liability is limited to negligence so long as the school district and governing bodies inform the student’s parent or guardian that the school and its employees or agents shall not incur liability as a result of any injury sustained by the student from the self-administration of medication; the parent or guardian signs an acknowledgement to this effect; and the parent or guardian agrees to indemnify and hold harmless the school and its employees against any claims relating to the self-administration of medications used to treat asthma or anaphylaxis.

A 1996 article in the *School Health Professional* noted that courts generally afford “schools and educators immunity from charges of negligence or malpractice” deferring instead to the “professional expertise of educators.”⁹ Nevertheless, the article warns that parents frequently bring negligence

lawsuits against schools based on injuries sustained at school, especially when the injuries are related to participation in physical education and sports, or on a school’s alleged failure to meet the needs of students with disabilities. Recurring themes in successful suits against school nurses include failure to document adequately; to recognize urgent and emergency situations; to follow school district policy; and to challenge administrative decisions that put students at risk.

PROCEDURES AND PRECAUTIONS THAT SCHOOL DISTRICTS SHOULD CONSIDER TO MINIMIZE LIABILITY ASSOCIATED WITH THE ADMINISTRATION OF MEDICATION AT SCHOOL

The American Academy of Pediatrics (AAP) issued a policy statement recommending guidelines for the administration of medication to students during school hours or events. These recommendations, which are consistent with KRS 156.502, should be used by school districts to minimize liability.¹⁰ With regard to school administrators and health personnel, the AAP recommends as follows:

- Schools should require a written statement from the parent and the prescribing physician that provides the name of the drug, the dose, the approximate time it is to be taken, and the diagnosis or reason the medication is needed. The school should still require a written prescription from a US-licensed physician where medication is purchased outside of the United States.
- Personnel providing health care services must be properly trained in administration and contraindications.
- Older and responsible students should be allowed to self-medicate at school with over-the-counter medications, including herbal products, and certain prescription medications if so recommended in writing by the parent and physician; the student is deemed responsible; and the parents acknowledge in writing that the school bears no responsibility for ensuring the medication is taken. The student’s privileges should be revoked if the

student shares the medication with others while at school.

- The school should have physician-approved protocols (indications, dose, and contraindications) for using over-the-counter medications.
- Parents should be responsible for supplying the school with prescribed medications; providing labeled containers; keeping medications current; and supplying medical devices.
- School districts should develop protocols for the documentation of all therapies given at school, whether emergency or routine. Any error in medication administration at school should be reported to at least one common supervisor so that patterns of errors and corrective action can be taken.

School districts should also consider enacting the following procedures¹¹:

- The student’s parent or other responsible adult should deliver all medications to the school in the original pharmacy-labeled or manufacturer’s container. Medications must be left in and dispensed from the properly labeled container.
- Once the medication is delivered to the school, school personnel should count or measure the medication and document this information with written concurrence from the parent.
- Before administering any medication in school, the health care service provider¹² should develop an individualized medication plan for the student based upon a review of the student’s medication order and of the delivered medication for the correct drug, dosage, and compatibility with other treatments.
- All medications must be stored and disposed of in accordance with state and federal regulations.¹³
- Access to medications must be strictly limited to authorized personnel, and keys to the medicine cabinet must be secured from general access.
- Medication must never be left out on counters, pre-poured in anticipation of student arrival, or pre-poured for another person to administer.

The National Association of School Nurses recommends that the school

nurse and other key players, including other involved school personnel, parents, school medical advisors, pharmacists, and legal counsel, be included in policy development to ensure that the numerous issues surrounding medication administration are addressed.¹⁴

FEDERAL LAWS RELATED TO USE OF MEDICATIONS BY DISABLED STUDENTS WHILE AT SCHOOL

Although state laws generally govern the administration of medication to students while at school, the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973 address a school district's responsibility to administer medication to students deemed disabled under these statutes.

The Individuals with Disabilities Education Act

Some students require the administration of medication while at school in order to receive the benefit of educational instruction. To this end, the Individuals with Disabilities Education Act (IDEA) requires schools that receive federal funds to provide a free and appropriate education in the least-restrictive environment to students who qualify as disabled under the law.¹⁵ To qualify, the student's disability must significantly interfere with his or her ability to learn.¹⁶ Once qualified, the student receives "specially designed instruction," also known as "special education," so that he or she may benefit from the educational curriculum.¹⁷ While the IDEA does not require schools to provide medical services unless such services are needed for diagnostic or evaluation purposes, it does require the provision of "related services" necessary to support the student's educational program.¹⁸

In *Irving Independent School District v. Tatro*¹⁹, the Supreme Court set forth the factors to be considered in determining whether a service is a required "related service" under the IDEA: (1) whether the child has a disability requiring special education; (2) whether the service is necessary so that

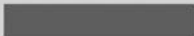

the child can benefit from special education; and (3) whether the service can be provided by a nurse or other qualified professional. In *Tatro*, for example, clean intermittent catheterization was deemed a "related service," and thus was required by the IDEA during school hours, because the disabled student would not receive educational benefit without this service and the service could be provided at school by properly-trained personnel.

Section 504 of the Rehabilitation Act of 1973

The requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), a civil rights statute, apply to programs and activities that receive funding from the Federal Government. A student is eligible for services under Section 504 if the student has a physical or mental health impairment that substantially limits one or more of his or her major life activities, such as caring for himself or herself, performing manual tasks, walking, seeing, hearing, speak-

ing, breathing, learning, and working. All students eligible under the IDEA are also protected by Section 504, since learning is a major life activity.²⁰

If a student is eligible for services under Section 504 and requires the administration of medication during school hours, the school is required to develop a plan so that the medication is administered according to relevant state laws and regulations. The importance of developing a plan for the administration of medication was emphasized in *San Juan Unified School District*.²¹ In this case, the school district properly evaluated a student's educational needs in light of his Attention Deficit Hyperactivity Disorder diagnosis as well as his need for the medication, Ritalin®, during school hours. Instead of developing a plan or process to ensure that the medication was properly administered, the school district placed responsibility for taking the medication on the 13-year old student who had a long history of attention problems and impulse control deficits. This consti-

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tuted a denial of a related service and, hence, a denial of a "free appropriate public education."²²

Confidentiality of Student Health Records

In Kentucky, any school that receives federal or state education funds must comply with the federal Family Education Rights and Privacy Act (FERPA)²³ and the Kentucky Family Education Rights and Privacy Act.²⁴ Under both laws, school districts are required to establish and implement written policies and procedures designed to protect the confidentiality of student education information, including student health information.

To maintain confidentiality, most school districts assign responsibility for record maintenance to a certain person or administrative position and train school staff who collect, use, or maintain school records in proper record maintenance. Only parents, including foster parents, guardians, and surrogate parents, and certain other individuals

have the right to view at or obtain a copy of a student's record without parental consent, although the law also allows access to authorized school personnel, staff from state and federal departments of education, and the school to which a student is transferring. Also note that a student may access his or her own records once the student turns 18 unless a court order or other legal document designates otherwise. In the case of a special education student, an agency or a professional under contract with the district to work with the student may access the student's education record without parental consent. It should also be noted that the IDEA includes requirements concerning parental access to their child's education records, some of which vary from FERPA's requirements.²⁵

Each school district is required to maintain a log of parties who access student education records. This log includes the name of the party accessing the record, the date on which the information was accessed, and the reasons

why the school district allowed access to the record.

When information is sent to others, the school district must list the names of the people and/or agencies to whom the information was sent and why the individual and/or agency needed the record to help with the education of the student.

When the student's education record is no longer needed to provide educational services to the student and the district wishes to destroy the record, the district must notify the parent so that the parent has the opportunity to request a copy of the record before it is destroyed. The school district may keep basic student information, such as the student's name, address, telephone number, attendance record, classes attended, grade level completed, and year completed, as long as the information is needed. As discussed above, however, the IDEA provides the parent with more control over record destruction than provided for in FERPA.

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Mara W. Elliott received a B.A. in English and Philosophy from the University of California at Santa Barbara in 1990 and earned a J.D.

from McGeorge School of Law in Sacramento, Calif., in 1994. She currently practices law as a deputy city attorney in the Government Affairs and Finance Section of the City of San Diego. From 2002 through 2007, she served as a senior deputy county counsel for the county of San Diego and worked in both its advisory and litigation units. Prior to that, Ms. Elliott served as the deputy general counsel for San Diego's transit system and as an associate at Lozano Smith, a reputable California school law firm. She is admitted to practice in California, Colorado, and Kentucky. In her spare time, she enjoys time with her two boys and volunteering for the National Multiple Sclerosis Society.

In summary, the administration of medication has become commonplace in school settings, and it has both benefits and liabilities. Nevertheless, school districts can limit their exposure to liability with proper training, adherence to specific and accurate policies and procedures, and due regard for a student's right to privacy.

An excellent resource about controlling and assuring safe and effective use of medications in schools is Philip E. Johnson, et al, "Medication Use in Schools," Tallahassee: Florida Society of Health-System Pharmacists (2003). 

ENDNOTES

1. 2009 U.S. LEXIS 4735 (Decided June 25, 2009).
2. Drug incident at school. Lex. Herald-Leader, Mar. 14, 2009, at D3.
3. National Association of School Nurses, Position Statement, Medication Administration in the School Setting (Rev. 2003), <http://www.nasn.org>.



Joseph L. Fink III completed his professional education in pharmacy at the Philadelphia College of Pharmacy and Science in

1970 and earned his J.D. from Georgetown University Law Center in 1973, where he was chairman of the Moot Court Board. He is Professor of pharmacy law and policy at the University of Kentucky College of Pharmacy and also holds professorial appointments in three other academic units at UK. He has twice served the institution as a vice president and currently chairs the University Appeals Board and the Intellectual Property Committee. He is a past president of the American Society for Pharmacy Law and holds memberships in a number of organizations in pharmacy and law. He is admitted to practice both pharmacy and law in Kentucky and Pennsylvania.

4. KRS 156.502(1)(b), emphasis added.
5. Kentucky Department of Education, Health Services Reference Guide, Chapter 2, page 31.
6. P.L. 107-110, at § 2361, codified at 20 U.S.C. § 6731 et seq.
7. 20 U.S.C. § 6736(c).
8. 20 U.S.C. § 6736(a).
9. Nadine Schwab & Mary H.B. Gelfman, Legal Issues in School Health Service: A Resource for School Administrator, School Attorneys, and School Nurses 77 (2001), citing *School Health Professional* (May 1996, p. 4).
10. American Academy of Pediatrics. Policy Statement: Guidelines for the Administration of Medication in School. 112 Pediatrics 697-699 (2003).
11. Nadine Schwab & Mary H.B. Gelfman, Legal Issues in School Health Service: A Resource for School Administrator, School Attorneys, and School Nurses 207-208 (2001).
12. KRS 156.502(2)(c).
13. Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances, 21 CFR § 1301.72.
14. National Association of School Nurses, Position Statement, Medication Administration in the School Setting (Rev. 2003), <http://www.nasn.org>.
15. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq.; 34 C.F.R. Parts 300, et seq.
16. Qualifying disabilities under the IDEA include mental retardation, hearing impairment (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, although individual states may expand these categories.
17. [12] 34 C.F.R. § 300.39(b).
18. Related services also include assistive technology services and devices; audiology; counseling services; early identification; medical services for evaluation purposes; occupational therapy; orientation and mobility (services); physical therapy; psychological services; recreation; rehabilitation services; speech language pathology; communication development services; and therapeutic recreation.
19. 468 U.S. 883 (1984).
20. Nadine Schwab & Mary H.B. Gelfman, Legal Issues in School Health Service: A Resource for School Administrator, School Attorneys, and School Nurses 337 (2001).
21. 20 IDELR 549 (OCR 1993).
22. Also see *Pearl Public School District*, 17 EHLR 1004 (OCR 1991), wherein the school district had a policy of prohibiting school personnel from administering Ritalin® during school hours to students with ADHD. This was found to violate Section 504.
23. 20 U.S.C. § 1232g; 34 CFR Part 99.
24. KRS 160.700-160.730.
25. 34 CFR §§ 300.611 – 300.627.

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Practicing Before a Board of Adjustment: Seven Practical Tips



By Kathryn L. Moore

After having taught land use planning at the University of Kentucky College of Law for more than a decade, I was appointed to the Lexington-Fayette Urban County Board of Adjustment (LFUC Board or Board) in July 2007. Over the past three years, I have seen some very experienced attorneys do a great job arguing before the board. These attorneys know that the board is an administrative agency, not a court of law, and practice before the board differs from general litigation. Not all attorneys, however, have the benefit of extensive experience. Thus, I would like to share some practical tips for attorneys new to the practice of law before a board of adjustment.

The Article will begin with a brief overview of the law governing appeals to boards of adjustment. It will then offer seven practical tips for a successful practice before a board.

I. Brief Overview of the Law Governing Appeals to a Board of Adjustment

Chapter 100 of the Kentucky Revised Statutes (KRS) governs planning and zoning in Kentucky. It authorizes, but does not require, cities and/or counties to enact zoning regulations.¹ Currently, 26 of Kentucky's 120 counties have county-wide planning and zoning.²

If a city and/or county elects to enact zoning regulations, KRS §100.217 requires that the mayor and/or county judge/executive appoint three, five, or seven citizens to serve on a board of

adjustment before any zoning regulation may have legal effect. The board is an administrative agency that serves as a "safety valve" to ensure that the zoning ordinance is both workable and not arbitrary.³ Under appropriate circumstances, the board provides a vehicle for relief from strict application of the zoning scheme.⁴

The board has jurisdiction over four basic types of appeals: (1) variances, (2) conditional use permits, (3) changes in nonconforming uses, and (4) appeals from the zoning administrator.

A. Variances

KRS § 100.111(24) defines a "variance" as "a departure from dimensional terms of the zoning regulation pertaining to the height, width, length, or location of structures, and the size of yards and open spaces where such departure meets the requirements of KRS 100.241 to 100.247." KRS § 100.247 prohibits use and density variances.⁵

KRS § 100.243 requires that the board make four separate findings before it may grant a variance. Specifically, the board must find that: (1) the variance will not adversely affect the public health, safety, or welfare; (2) the variance will not alter the essential character of the general vicinity; (3) the variance will not cause a hazard or nuisance to the public; and (4) the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.⁶ The statute directs the board to consider three specific factors in making these findings: (1) whether the requested variance arises

from special circumstances which do not generally apply to land in the general vicinity or in the same zone; (2) whether strict application of the regulation's provisions would deprive the applicant of reasonable use of the land or would create an unnecessary hardship; and (3) whether the circumstances giving rise to the request for a variance are the result of actions taken by the applicant after the adoption of the zoning regulation at issue.⁷ The statute prohibits the board from granting a variance if the request arises from the applicant's willful violation of the zoning regulation.⁸

B. Conditional Use Permits

KRS § 100.237 authorizes the board to hear and decide applications for conditional use permits. While variances authorize landowners to depart from the express dimensional terms of the zoning regulation, conditional uses are uses that are specifically named in the zoning regulation but require oversight by the board. Specifically, KRS § 100.111(6) defines a conditional use as

a use which is essential to or would promote the public health, safety, or welfare in one (1) or more zones, but which would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent, and character of performance are imposed in addition to those imposed in the zoning regulation.

Typical conditional uses include schools, churches, Sunday schools, parish houses, and cemeteries.⁹

KRS § 100.237(1) authorizes the board to modify or attach time limitations and other requirements to conditional use permits. A conditional use permit is defined as "legal authorization to undertake a conditional use" that consists of two parts: (1) a statement by the board of its factual determination which justifies the issuance of the permit, and (2) a list of the specific conditions imposed.¹⁰ Unlike variances, no specific factual

findings are required for the board to grant a conditional use permit, but the board's factual determination should demonstrate that the board "has considered the effect of the proposed land use on the public health, safety and welfare in the zone affected, in adjoining zones and on the overall zoning scheme."¹¹

C. Changes in Nonconforming Uses

A nonconforming use or structure is "an activity or a building, sign, structure, or a portion thereof which lawfully existed before the adoption or amendment of the zoning regulation, but which does not conform to all of the regulations contained in the zoning regulation which pertain to the zone in which it is located."¹² KRS § 100.253 allows nonconforming uses to continue, but prohibits the board from allowing nonconforming uses to be extended or enlarged or changed from one nonconforming use to another unless the new nonconforming use is in the same or more restrictive classification.¹³ Thus, the board may permit a nonconforming fourplex in a single-family residential district to be converted into a duplex but must prohibit a duplex from being converted into a fourplex.

D. Administrative Appeals from the Zoning Administrator

KRS § 100.257 authorizes the board to hear cases in which the applicant contends that there is an error in an order, requirement, decision, grant, or refusal made in the enforcement of the zoning ordinance. Administrative appeals typically involve questions of interpretation of the zoning regulations or nonconforming use determinations.

II. Seven Practical Tips

A. Know Your Forum

Walter May, former chair of the Lexington-Fayette Urban County (LFUC) Planning Commission and a frequent guest lecturer in my land use planning class, advises the students to "know their forum." By this he means become familiar with the specific court, planning commission, or board of adjustment before arguing before that forum. He recommends that the students watch a proceeding in the particular

forum at least once before arguing before the forum. Just as individual judges have their predilections, so too do particular administrative bodies. An attorney is much more likely to argue successfully before a particular forum if the attorney is familiar with and adapts to the practice in the forum.

B. Know the Law in Your Local Jurisdiction

Land use planning is inherently local in nature. KRS § 100.213 specifically authorizes cities and/or counties to enact zoning regulations. The local zoning regulations may be more restrictive than KRS Chapter 100. For example, although sign variances may be common in some areas, Article 17-8(a) of the LFUC Zoning Ordinance prohibits the LFUC Board of Adjustment from granting any variance that would increase the maximum total permitted sign area on a single lot or building. Thus, at public hearings, the board consistently rejects appeals for variances in sign size. There is no point in wasting


your time or your client's money appealing a building inspection decision limiting the size of a sign to that allowed by the zoning ordinance.

C. The Rules of Evidence Need Not Apply

Boards of adjustment are administrative agencies, not courts of law. Although general due process requirements apply,¹⁴ boards need not follow all of the formalities of courts of law.¹⁵ Boards may, for example, dispense with the rules of evidence and permit attorneys to testify. Again, attorneys would be well-advised to observe at least one public hearing before arguing before any particular board so that the attorney may become familiar with the procedural rules and practices for that particular board.


D. Establish Your Record and Move On

Members of the board of adjustment are required to be citizens.¹⁶ They may be, but typically are not, lawyers.



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Board members receive training and are committed to serving the public. Nevertheless, it is the rare board member who fully understands the intricacies and nuances of the law. To illustrate, in February 2008, the LFUC Board heard the most legally interesting case of my tenure.¹⁷ That case involved an appeal for an administrative review to allow a change in nonconforming use from public-school use to antique sales and an accessory restaurant. In January 2008, the staff recommended that the appeal be disapproved because the proposed use was not in the same or more restrictive classification as the prior use. The applicant's attorney requested that the case be postponed for a month and used that time to persuade the staff that "[u]nder these unique and special circumstances, utilizing the guidance of some related case law, it is appropriate to consider the sale of antiques with an accessory restaurant as being in the same classification as a public elementary school."¹⁸

The Board held a public hearing on the appeal in February 2008. At that hearing, the attorney spent about an hour making a very technical legal argument that the proposed use fell within the same or more restrictive classification as the prior use.

The Board voted 4-2 in favor of the appeal. Before making a motion to approve the appeal, one board member declared, "[W]e're not a court of law here. We're the board of adjustment, and we take a look at all the issues; and we either vote up or down on the appeal for this administrative review. . . I trust our planning and legal counsel that this has been thoroughly researched; and if it goes to a judicial appeal, that's not our purview."¹⁹ Before voting against the appeal, another board member said, "I think your legal gymnastics to get us to this nonconforming use are questionable; and I have a lot of nervousness about this."²⁰

The attorney did a great job of persuading the staff that it should adopt his interpretation of the law. The attorney, however, did not need to spend as much time as he did making his technical

legal argument at the public hearing. It appeared that most of the board members were satisfied with the staff's recommendation that the law supported the appeal and were more concerned with the likely impact of the proposed use on the surrounding property than whether the proposed use fell within the same or more restrictive classification than the existing use.

At the public hearing, lawyers should submit in writing whatever they need to establish the record in case there is an appeal. They need not, however, talk at length about technical legal arguments.

E. Work with the Staff

KRS § 100.223 authorizes the board of adjustment to hire a professional staff. The LFUC Board, like many boards across the state, has a professional staff. Each case is referred to a member of the professional staff who reviews the application, usually inspects the property, and prepares a written report making recommendations on the merits of the appeal. The report begins by identifying the zoning designation and existing land uses with respect to the property at issue and the surrounding property. It then identifies the proposed land use for the property at issue pursuant to the most recent comprehensive plan. It then clearly states the applicable legal requirements under the zoning ordinance. The report then provides a case review which includes the factual background and history, a discussion of the applicable law, and concludes with a recommendation as to whether or not the appeal should be approved. In setting forth the recommendation, the report offers specific reasons that correspond to the applicable legal standards. If the report recommends approval, it identifies any specific conditions that should be imposed.

Experienced land use attorneys know the importance of meeting with the staff and taking its recommendations seriously. If the staff recommends disapproval, attorneys will often ask to postpone the public hearing until they can convince the staff to recommend approval. They may amend their

request to garner staff approval²¹ or simply try to make a more persuasive legal argument as did the attorney in the nonconforming-use case discussed above. Attorneys who are unable to convince the staff to recommend approval often withdraw the case rather than risk having the Board disapprove the case.²²

F. Don't Forget About the Neighbors

In addition to working with the professional staff, attorneys should also try to address the concerns of neighbors. Although consent by the neighbors is not legally required, it makes a difference as a practical matter. In the 13 cases the board disapproved from July 2007 through December 2008, neighbors objected in eight of those cases. Perhaps more significantly, in more than half of the cases in which the board did not follow the staff's written recommendation, neighbors objected to the staff's recommendation. In fact, when sounding the agenda, the chair of the LFUC Board typically encourages applicants to discuss their case with objecting neighbors before the case is heard by the board.

On a related note, if you represent neighbors who object, be sure to attend the public hearing. Although the Board accepts and reads written objections, objections made in person tend to carry more weight.

G. There are Different Ways of Reaching the Same Practical Result

It is a canon of land use planning texts that landowners may reach the same practical result in different ways. For example, in a jurisdiction that allows use variances but does not permit barbershops in residential districts, a landowner might: (1) seek a use variance to allow a barbershop in a residential district; (2) seek to amend the text of the zoning ordinance to make barbershops conditional uses in residential districts and seek a conditional use permit for his barbershop; or (3) seek to amend the text of the zoning ordinance to make barbershops principal uses in residential districts.

Over the past three years, I have seen attorneys pursue alternate means to reach the same result in a number of cases. For example, in July 2007, an attorney requested an indefinite postponement of an administrative review of a digital-sign appeal so that the attorney could pursue a text amendment to the zoning ordinance which disallowed electronic message boards in planned shopping centers.²³ In another case, the applicant originally applied for a text amendment to the zoning ordinance seeking to add museums as conditional uses in agricultural rural zones.²⁴ When the proposed zone change met with resistance, the applicant amended the application to request an amendment to allow an expansion or enlargement of a nonconforming use under limited circumstances. The applicant then discovered that it had already been granted a conditional use permit to operate a museum on the land. Thus, the applicant sought, and was granted, a conditional use permit allowing the applicant to expand the museum.²⁵

III. Conclusion

Lawyers need to know the law. Yet knowing the law is not enough. In this Article, I have offered seven practical tips to help lawyers bridge the gap between theory and practice and argue successfully before a board of adjustment. ☐



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ENDNOTES

1. KRS § 100.203.
2. See Marshall D. Slagle, *Land Use and Planning Issues*, in LEGAL ISSUES INVOLVING LOCAL GOVERNMENT 193, 197 (NBI April 2008).
3. See *Louisville & Jefferson Cnty. Bd. of Zoning Adjustment & Appeals*, 325 S.W.2d 324, 326 (Ky. 1959); *Thomson v. Tafel*, 309 Ky. 753, 760 (Ky. 1949); *Bourbon Cnty. Bd. of Adjustment v. Currans*, 873 S.W.2d 836, 837 (Ky. Ct. App. 1994).
4. See *Currans*, 873 S.W.2d at 837.
5. A use variance is a variance that permits a use other than that prescribed by the zoning ordinance.
6. KRS §100.243(1).
7. *Id.* § 100.243(1)(a)-(c).
8. *Id.* § 100.243(2).
9. These conditional uses are among the 13 different categories of conditional uses authorized in the single family residential (R-1A) zone in Lexington. See Zoning Ordinance Lexington-Fayette Urban County, Kentucky Art. 8-5(d).
10. KRS § 100.111(7).
11. *Davis v. Richardson*, 507 S.W.2d 446, 449 (Ky. 1974).
12. KRS § 100.111(13).
13. Without specifically referring to Churchill Downs, Kentucky law allows for expansions and extensions in Churchill Downs' nonconforming use. See KRS § 100.253(2) (allowing for expansions and extensions in nonconforming use "where the use consists of the presenting of a major public attraction or attractions, such as a sports event or events, which has been presented at the same site over such period of years and has such attributes and public acceptance as to have attained international prestige and to have achieve the status of public tradition . . .").
14. See, e.g., *Morris v. City of Catlettsburg*, 437 S.W.2d 753, 755 (Ky. 1969); *Am. Beauty Homes Corp. v. Louisville & Jefferson Cnty. Planning & Zoning Comm'n*, 379 S.W.2d 450, 456 (Ky. 1964).
15. See also *Hilltop Basic Res., Inc. v. County of Boone*, 180 S.W.3d 464, 469 (Ky. 2005) (noting that procedural due process does not include "the right to an impartial tribunal").
16. KRS § 100.217.
17. A-2008-6, Athens Schoolhouse Partners, LLC.
18. See Staff Recommendation in Minutes for the Board of Adjustment Meeting, February 29, 2008, at 14.
19. Transcribed by Board's Secretary at Author's request.
20. *Id.*
21. For example, a variance case, V-2008-40 Rev. & Mrs. George Naze, was first scheduled for a public hearing in April 2008. The applicants sought a variance to reduce the required rear yard from ten feet to 5.5 feet and to reduce the side yard from five feet to zero feet to allow a sunroom and deck to remain as built. The staff recommended the variance be disapproved and the case was postponed for several months. By the time the public hearing was finally held in August 2008, the applicant had withdrawn the request for a side yard variance, and the staff had recommended approval. The Board voted unanimously to approve the variance.
22. Between July 2007 and December 2008, applicants withdrew their requests in 10 different cases. In only one of the cases did the staff recommend approval. In that case, the applicant withdrew the request because the variance was no longer needed. In six of the cases, the staff recommended disapproval while the staff recommended postponement in two of the cases and made no recommendation in one case.
23. A-2007-59, The Lamar Companies.
24. A-2007-2, Headley-Whitney Museum, Inc.
25. In the interest of full disclosure, I must say that I voted against the request because I thought that the initial conditional use permit had been erroneously approved and granting the applicant's request would be an impermissible expansion of a nonconforming use.

Collaborative Law and the Importance of Informed Consent



By Sandra G. Ragland

The emergence of Collaborative Law as an alternative method of resolving disputes, particularly in the context of divorce, has prompted extensive discussion about ethical considerations from both proponents and critics.

Collaborative law was the 1990 brain child of Stuart Webb, a Minnesota lawyer who was seeking a better way to deal with divorce litigation. His original model relied on two attorneys and their clients working together to reach a settlement without resorting to litigation. Pauline Tesler, an attorney in the San Francisco Bay Area, joined with family psychologists Peggy Thompson and Rodney Nurse to expand Webb's model to include interdisciplinary teams of professionals. A fully staffed collaborative divorce team consists of mental health professionals who serve as divorce coaches, child specialists, and financial experts.¹

Both models require the attorneys and clients to engage in four-way meetings where issues are resolved and a final agreement is accomplished. When an interdisciplinary team is involved, each party has a divorce coach, there is a child specialist, if necessary, and one neutral financial expert. The goal of the collaborative divorce process is the avoidance of adversarial litigation and minimizing post-divorce acrimony, of special importance when the parties will be co-parenting minor children.

At the outset, the parties and their attorneys sign a four-way contract in which they agree that if the process

breaks down, no agreement is reached, and the matter proceeds to litigation, the attorneys will withdraw and may not participate in ensuing court proceedings. Withdrawal of the attorneys in the event the process fails is considered a "linchpin,"² a necessary component of collaborative practice. The parties also agree to negotiate in good faith, to voluntarily disclose information, maintain confidentiality, and to refrain from litigation during the process.

The linchpin feature has generated the most controversy. Critics point out that if the process fails, clients will be burdened with unnecessary legal fees to engage new lawyers and begin an adversarial process. Proponents insist that failure is relatively rare and that the benefits outweigh the risks.

American Bar Association, Standing Committee on Ethics and Professional Responsibility, Formal Opinion 07-446

In August, 2007, the American Bar Association Standing Committee on Ethics and Professional Responsibility issued an ethics opinion finding the withdrawal feature ethical as long as clients give their informed consent.³

The ABA Opinion explained that the provisions of the four-way agreement represent a permissible limited scope representation under Model Rule 1.2⁴ and rejected the suggestion that the practice of collaborative law sets up a non-waivable conflict under Rule 1.7(a)(2)⁵. Rule 1.2(c) permits reasonable limitation of the scope of a representation, and comment [6]⁶ provides that "[a] limited representation may be appropri-

ate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives."

In its discussion of informed consent, the Opinion requires the lawyer to communicate adequate information and explanation about the material risks of and reasonably available alternatives to the limited representation. The lawyer must explain fully the rules and contractual terms governing the collaborative process, the advantages and disadvantages, and alternatives. The lawyer must take special care to assure that the client understands that if the process fails and litigation results, the collaborative lawyer is compelled to withdraw and the parties must retain new counsel to prepare for trial.

With respect to the issue of whether the four-way agreement creates a non-waivable conflict of interest under Rule 1.7(a)(2), the Opinion found that it did not.⁷ Such a conflict exists between a lawyer and client "if there is a significant risk that the representation [of the client] will be materially limited by the lawyer's responsibilities to ... a third person or by a personal interest of the lawyer." If the client gives informed consent, in writing, a self-interest conflict can be resolved, but the lawyer must reasonably believe he or she can provide competent and diligent representation before seeking the client's informed consent.

The Opinion reasoned that participation in the collaborative process is a limited scope representation. Therefore, if a client has given informed consent to a representation limited to collaborative negotiation toward settlement, then the lawyer's withdrawal if collaboration fails is consistent with the client's limited goals for the representation.

Kentucky Bar Association, Ethics Opinion KBA E-425 Issued June, 2005⁸

Four years before the ABA Opinion, the Kentucky Bar Association rendered an ethics opinion in response to an inquiry from Kentucky Collaborative Law practitioners. It described the col-

laborative law process as “based upon a problem-solving model rather than an adversarial model and tends to focus on the future, rather than the past; on relationships rather than facts; and on rebuilding relationships rather than finding fault.” The inquiry focused on four major issues: 1) the requirement of voluntary disclosure by the client; 2) the lawyer’s withdrawal if the client fails to negotiate in good faith or make the required disclosures; 3) the prohibition against the lawyers’ continued representation if the parties fail to reach a settlement through the collaborative process; and 4) the communication of information about collaborative law.

Before engaging in its responses to the questions presented, the Committee made general observations about collaborative law. First, the collaborative law agreement between the lawyer and client cannot alter the lawyer’s ethical obligations under the Rules of Professional Conduct. Next, the lawyer must provide competent representation, exercise independent professional judgment, and give candid advice. The lawyer is responsible for assessing whether participation in the collaborative process is in the client’s best interest. Finally, because of the special implications of collaborative law, the lawyer’s obligation to communicate with the client regarding the representation is enhanced.

Under the Rules of Professional Conduct, the client has the right to make certain decisions about the representation. The lawyer is charged with the responsibility of providing sufficient information to the client so that the client’s decision-making is informed. This obligation complies with SCR 3.130-1.2⁹ which requires that the lawyer abide by the client’s decision concerning the objectives of representation and consult with the client as to the means by which they are pursued. The objectives of a representation may be limited by the lawyer, but only if the client consents after consultation. The lawyer should explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Comment [1] of SCR 3.130-1.4¹⁰ provides that the client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to

be pursued. The lawyer has the absolute responsibility to fully explain the collaborative law process so that the client’s decision to participate is fully informed.

To make certain the client is sufficiently informed, the lawyer must explain the differences between the collaborative process and the adversarial process, the advantages and risks of each, reasonably available alternatives, and the consequences should the collaborative process fail. The collaborative law agreement is unlikely to meet the requirements of consultation and informed decision-making and should be carefully explained with the client given the opportunity to ask and discuss all questions. It is recommended that the lawyer’s explanation of the process and the client’s agreement to participate should be confirmed in writing before entering into the collaborative agreement.

KBA E-425 addressed four specific questions:

Question 1:

Whether a lawyer may enter into a collaborative law agreement that requires both sides to reveal all material facts and circumstances? Since civil discovery rules require disclosure of relevant facts and many family courts require the exchange of extensive financial data, there is nothing to prevent

parties from agreeing to full disclosure as long as the client understands the implications of such an agreement.

While SCR 3.130-1.3¹¹ imposes a duty of competence and diligence on behalf of a client, it does not preclude non-adversarial representations. SCR 3.130-2.1¹² provides that in rendering advice, a lawyer may refer not only to law, but to other considerations such as moral, economic, social and political factors that may be relevant. Comment (2) to SCR 3.130(2.1)¹³ advises that purely technical legal advice can sometimes be inadequate and that it is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. One of the lawyer’s primary obligations is to help the client define the objectives of the representation and decide how to achieve them. If the client’s objective is to obtain a divorce in the most amicable way possible, it is the lawyer’s duty to help the client achieve that goal.

Question 2:

The second question concerns the fact that the lawyer is encouraged to withdraw from the collaborative process if the client fails to comply with the agreement by withholding or misrepresenting information or otherwise acting in bad faith.

SCR 3.130-1.16¹⁴ permits withdrawal if the “client insists upon pursuing an



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objective the lawyer considers repugnant or imprudent,” or if the “client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services and has been given reasonable warning,” or if “other good cause for withdrawal exists.” Comment [8] to SCR 3.130-1.16¹⁵ provides that a lawyer may withdraw “if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.” If the client is violating the collaborative agreement, the lawyer may withdraw under the provisions of the Rules, but must still comply with the protective provisions and any court-imposed requirements. It should also be emphasized that while some collaborative agreements give the lawyer discretion to withdraw if the client fails to comply with the agreement, the lawyer must withdraw if the representation will result in violation of the Rules of Professional Conduct or other law. SCR 3.130-1.2¹⁶ prohibits a lawyer from

assisting a client in criminal or fraudulent conduct. The collaborative agreement permitting discretionary withdrawal does not alter the lawyer’s mandatory obligation to withdraw under the Rules of Professional Conduct. In addition, the withdrawing lawyer must be careful not to misrepresent the reason for withdrawal. If the collaborative law agreement requires full disclosure by all parties, withdrawal without explanation may violate the spirit of the agreement unless the agreement provides that withdrawal may be silent and there will not be full disclosure on this point.

Question 3:

The third question addressed is the disqualification provision of the collaborative law agreement. This provision requires both lawyers to withdraw if the parties are unable to reach a settlement and both parties must retain new counsel. The collaborative lawyers agree they will not represent the parties in subsequent litigation. The question concerned whether this provision violates Rule

3.130-5.6 which applies to agreements between lawyers practicing together and settlement agreements between parties to litigation. The Opinion found that the collaborative law agreement is not the kind of restrictive covenant contemplated by Rule 3.130-5.6.

In its further analysis of this question, the Opinion notes that under the collaborative law agreement, the parties agree to a limited representation. SCR 3.130-1.2(c)¹⁷ permits limited representations if the client consents after consultation. The collaborative law agreement limits the terms of the lawyer’s engagement as he is retained to assist the client in settlement negotiations. If there is no settlement, the representation ends. The client must give informed consent to the limited nature of the engagement and all the implications of the arrangement. The client may be willing to assume the risks of the collaborative process but it is the lawyer’s responsibility to communicate sufficient information to assure that the client has an adequate basis for such a decision.

Question 4:

This inquiry relates to the formation of collaborative law groups, solicitation and advertising. The Opinion states that lawyers may join law-related organizations so long as their activities do not violate the Rules of Professional Conduct. Without more specific information, it was impossible to assess whether its activities are permissible.

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Matters of advertising and solicitation were referred to the Advertising Commission for evaluation.

The KBA Ethics Opinion cautions that because collaborative law is an evolving concept, there are ethical issues that may arise during a collaborative representation. Lawyers who engage in the process must remember that they are bound by the Rules of Professional Conduct which may not be circumvented by the collaborative agreement. Lawyers must be alert to potential ethical challenges and be prepared to address ethical pitfalls.

Informed Consent as a Prerequisite

The common thread woven throughout discussions of ethical concerns related to collaborative law is the requirement that the client give informed consent to participation in the process. SCR 3.130(1.0)(e)¹⁸ defines "informed consent" as "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." Unfortunately the rule fails to define what constitutes "adequate information."

Collaborative law practitioners must first be mindful of the fact that collaborative law is not a "one size fits all" process. Their enthusiasm for a process perceived as less stressful, less expensive, beneficial to the children and more conducive to peaceful relationships in the future, may blind these lawyers to the fact that not all divorcing couples are appropriate subjects for collaborative proceedings. Whenever there is evidence of domestic violence or abuse, mental disorders, substance abuse, or significant imbalance of power in the relationship, the lawyer should have serious reservations about recommending the collaborative process. These couples may need the protections the courts provide and it is not in the best interests of these clients to abandon the litigation model.

Collaborative law should be presented as an alternative process, not "sold" as a panacea. If, after having determined in initial interviews that collaborative law is appropriate for a representation, the lawyer must make absolutely certain the

client understands not only the advantages, but the disadvantages of a limited representation. In the collaborative setting, there will be no formal discovery, no interim motions for spousal or child support, and if the process fails, the attorneys must withdraw and the parties must engage new counsel.

If the intrepid client weighs all the pros and cons and decides to assume the risks of the collaborative process, then it is the responsibility of the lawyer to confirm, in writing, that the scope of the representation is limited to participation in the collaborative process and that the client has been completely informed of the consequences of the decision. The client should be encouraged to ask any question that may come to mind, and the lawyer should respond in plain language easily understood by the client. The execution of an engagement contract describing in detail the limited scope of the representation should occur before the first four-way meeting and before the four-way agreement is signed.

The first four-way meeting should be devoted to careful scrutiny of the four-way agreement. This requires a line-by-line, paragraph-by-paragraph reading of the document. After each section of the contract, the lawyers should allow as much time as it takes for the clients to ask whatever questions necessary for their complete understanding of the process. If all the parties are fully engaged in this activity, this is likely to be a lengthy process that will consume the time set aside for the first session. Only after the lawyers are convinced that the parties completely understand all the terms of the agree-

ment should the four-way contract be circulated for signatures.

Conclusion

Collaborative law is relatively new and unfamiliar to clients as well as to some lawyers. Unanticipated ethical issues are certain to arise. Future uncertainties need not doom the concept, but as in all other legal disciplines, practitioners must remain alert to potential problems and act promptly to identify solutions which will satisfy the most stringent ethical demands. ☐

ENDNOTES

1. See Susan Daicoff, *Collaborative Law: A New Tool for the Lawyer's Toolkit*, 20 V. Fla. J.W. & Pub. Pol'y 113 (April 2009).
2. *Id.* at 123.
3. ABA Comm. On Ethics and Professional Responsibility, Formal Op. 07-447 (2007).
4. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.2
5. See *Id.* Rule 1.7(a)(2).
6. See *Id.* Rule 1.7(a)(2) cmt. (6).
7. See *Id.* *supra* note 5.
8. Kentucky Bar Ass'n Op. E-425, (June, 2005).
9. See SCR 3.130-1.2
10. See SCR 3.130(1.4) cmt. 1.
11. See SCR 3.130(1.3).
12. See SCR. 3.130(2.1).
13. See SCR 3.130(2.1) cmt. 2.
14. See SCR 3.130(1.16).
15. *Id.* at cmt. 8.
16. See SCR *supra* note 9.
17. See SCR 3.130(1.2)(c).
18. See SCR 3.130(1.0)(e).

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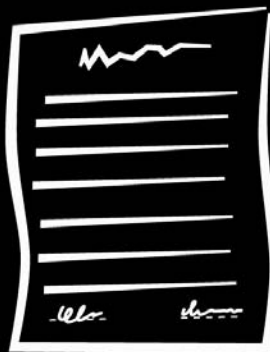
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Contractual Dissenters' Rights for Kentucky LLCs



By Scott W. Dolson

Dissenters' rights statutes were enacted during the last century for the purpose of protecting minority shareholders from being forced to accept stock of an acquiring corporation in a merger transaction. The introduction of dissenters' rights statutes coincided with a shift in state corporation acts from unanimous vote requirements to majority rule. Dissenting shareholders were entitled to receive fair value for their shares through an appraisal process presided over by a state court judge.

Over time, shareholders began using their control position to engineer transactions to oppress or "squeeze-out" minority shareholders. Squeeze-out transactions (aka "freeze-out" transactions) were usually structured as forced cash-out mergers. Freeze-out transactions could also take the form of asset sales to affiliates of majority owners or changes in the economic rights of shareholders. As controlling shareholders became more aggressive, dissenters' rights statutes evolved into the role of protecting minority shareholders against being cashed-out for inadequate consideration.

Dissenters' rights are available to shareholders of Kentucky corporations.¹ Statutory dissenters' rights are available in connection with corporate mergers, share exchanges, certain asset sales, conversions of corporations into limited liability companies and amendments to articles of incorporation that materially and adversely affect the economic or

voting rights of shareholders.² Dissenters' rights are also available in transactions requiring a shareholder vote to the extent provided for in a corporation's articles or bylaws, or by director resolution.³ If dissenters' rights are properly perfected, a shareholder will receive fair value for his shares determined through a court overseen appraisal process.

Kentucky LLCs and Dissenters' Rights

Limited liability companies ("LLCs") were introduced in Kentucky during 1994 through the enactment of KRS Chapter 275 (the "LLC Act"). Seventeen years later, LLCs are the favored entity choice for holding investment assets or operating closely-held businesses. The LLC Act does not expressly provide for dissenters' rights. Until 2007, the LLC Act was silent on the issue of dissenters' rights. Amendments to the LLC Act during that year added several negative references to dissenters' rights, each one confirming that those rights are not available unless expressly adopted in an LLC's organizational documents or a merger agreement.⁴ These amendments did eliminate any doubt whether dissenters' rights were available by contract to LLC members.⁵

Four provisions of the LLC Act reference dissenters' rights. One provision states that LLC members cannot dissent from amendments to an LLC's articles of organization unless such rights are provided for in the articles.⁶ A second provision states that LLC members can-

not dissent from a sale, lease, exchange or other disposition by an LLC of all or substantially all of its properties outside of the ordinary course of business unless such rights are provided for in the LLC's organizational documents.⁷ Two additional provisions read together state that LLC members cannot dissent from a merger unless such rights are provided for in the LLC's articles of organization or operating agreement, or in a written agreement and plan of merger.⁸

Although these provisions open the door for the adoption of dissenters' rights by contract, they fail to provide any procedural rules governing dissenters' rights, or confirm whether Kentucky's courts will oversee the appraisal process.

In spite of the 2007 amendments to the LLC Act referencing dissenters' rights, dissenters' rights are rarely incorporated into Kentucky LLC operating agreements. This article identifies circumstances where the adoption of contractual dissenters' rights should be considered. The focus then shifts to various legal and drafting issues associated with adopting dissenters' rights by contract. The article concludes with a reference to suggested dissenters' rights provisions found on the KBA's website.

Should LLC Owners Adopt Dissenters' Rights?

In order to decide whether to adopt dissenters' rights, LLC owners need to understand how dissenters' rights function and who benefits from their adoption.

At the most fundamental level, dissenters' rights protect minority owners from oppressive actions engineered by majority owners, most frequently squeeze-out (cash-out) merger transactions. Dissenters' rights are intended to ensure that minority owners receive fair value for their equity, without preventing the squeeze-out transaction from going forward. Majority owners may favor dissenters' rights if those rights are an exclusive remedy, or at least materially reduce the frequency or potency of alternative remedies such as breach of fiduciary duty claims. The

availability of dissenters' rights may avoid expensive and time consuming litigation and ensure that minority owners receive a fair price for their equity. In those circumstances, both minority and majority owners may benefit from the availability of dissenters' rights.

The use of dissenters' rights should be considered within the framework of other means available for protecting minority owners. Other minority owner protections "tools" include adopting super-majority voting requirements, providing for limitations on management's ability to orchestrate related-party (self-dealing) transactions without minority owner approval, expanding the scope of fiduciary duties, and toughening the standards for satisfying fiduciary duties.⁹ Dissenters' rights won't be needed to protect minority owners if decisions are made by unanimous vote. Requiring unanimous decision-making provides minority owners with sufficient bargaining power. But majority owners often refuse to agree to super-majority or unanimous voting requirements.

Adopting dissenters' rights by contract affords LLC owners the flexibility to either expand or limit the list of triggering events and allows them to establish acceptable rules and procedures governing their operation. For example, LLC owners may require unanimous approval of organizational document amendments affecting the economic rights of minority owners, thus eliminating the need for dissenters' rights. But these same owners may want to offer dissenters' rights in cash-out merger transactions. Making dissenters' rights available in connection with cash-out mergers often makes sense because minority owners have no choice but to take the cash offered, whether or not the amount is adequate. LLC owners may, however, want to limit the availability of dissenters' rights to cash-out mergers. Minority owners who receive the same equity consideration as majority owners would not be afforded dissenters' rights. Majority owners will often want a provision confirming that dissenters' rights are the sole remedy in a cash-out merger, absent misconduct by management or controlling owners beyond mere approval of the merger.

The negative references to dissenters' rights in the LLC Act fail to resolve whether LLC members are free to agree upon additional events triggering dissenters' rights. But given the fact that the adoption of dissenters' rights is a matter of contract, there doesn't appear to be any reason why the scope of events triggering dissenters' rights cannot be expanded or limited.

Should Dissenters' Rights be the Exclusive Remedy?

Under Kentucky corporation law, dissenters' rights are generally considered to be an exclusive remedy. KRS 271B.13-020(2) provides that "a shareholder entitled to dissent and obtain payment for his shares under this chapter shall not challenge the corporate action creating his entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation." The Kentucky Court of Appeals has held that, in the absence of fraud or illegality, dissenters' rights represent the exclusive remedy available to minority shareholders in connection with cash-out mergers.¹⁰ The court reached this conclusion in spite of the fact that the merger under review was a classic "freeze-out" transaction undertaken for the purpose of cashing-out unwanted minority shareholders.

Delaware's courts, usually a bellwether on business law issues, are unsettled on the question of whether dissenters' rights are the sole remedy absent other evidence of misconduct beyond the orchestration of a cash-out merger. Delaware's Supreme Court has stated that the appraisal statute requires the determination of "fair value" of dissenting stockholders' shares and that "fairness" implicates both the concept of fair dealing and fair price.¹¹ The "entire fairness" test, which is applied where management has a conflict of interest (which is often the case in squeeze-out transactions), shifts the burden of proof to management and opens the door for misconduct claims by minority owners.¹² If a Kentucky court applied the entire fairness test to a cash-out merger and determined that the transaction failed those requirements, the court could enjoin the merger or award damages beyond fair value to the minority LLC owners.

If majority LLC owners don't want a Kentucky court to adopt Delaware's entire fairness standard in reviewing a squeeze-out transaction, the best course of action would be to adopt dissenters' rights, or perhaps clearly state in an LLC's operating agreement that it is permissible to squeeze-out minority owners (i.e., call their membership interests at will or upon the occurrence of certain triggering events) at appraised

An additional article by Mr. Dolson, as well as the "Prototype Provisions" that are mentioned in this article, have been placed on the KBA website under **Hot Topics**.



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fair value. The operating agreement should provide that absence of a business purpose beyond cashing-out minority owners is not adequate grounds for legal action by minority owners. Language along the lines of KRS 271B.13-020(2) could also be incorporated into the operating agreement.¹³ If the possibility of being forcibly cashed out for fair value is unacceptable to minority owners, those owners should negotiate for super-majority voting rights in their operating agreement so they can effectively block approval of squeeze-out transactions.

In several states, appraisers are directed to consider management or majority owner misconduct in connection with the determination of fair value. But the general rule followed by courts is that the dissenters' rights appraisal process is a "limited legislative remedy" and "allegations of fraud and bad-faith have a limited place in a statutory appraisal action."¹⁴ Adding damages for misconduct to the fair value calculation may allow dissenters'

rights to better serve as a sole remedy in squeeze-out transactions, but would also complicate the process of determining fair value outside of a court proceeding. LLC owners who are interested in incorporating this type of remedy for misconduct into their operating agreement should consider requiring that the valuation process be undertaken through a judicial or arbitration proceeding rather than by a business appraiser who may not be well equipped to address misconduct. A better solution may be to agree that dissenters' rights will not be the exclusive remedy if there is misconduct beyond the squeeze-out transaction itself or the issue of inadequate merger consideration. Under these circumstances, minority owners would be free to bring a direct or derivative action to recover damages from fiduciaries engaging in misconduct.

Determination of "Fair Value"

The goal of dissenters' rights is to ensure that owners receive "fair value" for their equity interests. But what is "fair value" for this purpose? In a 1982 decision, the Kentucky Court of Appeals, in the context of valuing corporate shares, adopted what was at that time Delaware's state-of-the-art position on this issue: "in all appraisals or valuations of fair value of stock, pursuant to Ky. Rev. Stat. Ann. § 271A.405, the three elements to be considered in computation of the fair value of the shares owned by dissenting stockholders are market value, investment or earnings value, and net asset value. All three components of 'fair value' may not influence the result in every valuation proceeding, yet all three should be considered."¹⁵ Thirty years later, most appraisers and Delaware's courts have abandoned this three element formulation, choosing to instead rely on what they consider to be more "modern" valuation methods such as discounted cash flow or earnings capitalization. Delaware's courts

now consider the determination of value to be a factual question which must be decided in each particular case using the best applicable valuation methodologies.¹⁶ If Delaware's approach is followed, it would be unnecessary to include any guidelines in an LLC operating agreement beyond requiring "fair value" to be determined by independent appraisers. But in light of the *Ford* decision, it makes sense to confirm in an operating agreement that appraisers are not limited by its outdated methodologies. And if an LLC is engaged in a particular business activity or holds assets that are traditionally valued using specific valuation methodologies, the operating agreement should also identify these methodologies and mandate their consideration or required use during the appraisal process.

A recent unpublished Kentucky Court of Appeals decision suggests that Kentucky courts may not adhere to the *Ford* three-element formulae.¹⁷ In *Shawnee Telecom*, the court rejected the application of the net asset approach endorsed in the *Ford* decision as one of the three factors to be considered in a dissenters' rights appraisal process. The court appears to endorse appraisal methodologies such as the capitalization of earning method that value a company as a going concern. Most courts have concluded that fair value means a going concern value rather than liquidation value for a corporation.¹⁸ But while going concern value works adequately in the context of a corporation's common stock, this approach will be difficult to apply in whole cloth to the valuation of an LLC interest. LLC interests may include preferential operating and liquidating distribution rights, special tax allocations, or economic rights based on a combination of capital account balances and percentage interests in operating income and loss. Unless an LLC's equity is denominated as units that are economically the functional equivalent of common stock, it makes sense to expressly direct an appraiser to take into account any special allocation or distribution rights associated with an LLC's equity interests, even where the value of the LLC's business is first determined on a going concern value basis. In other



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words, the determination of the fair value of an LLC member's interest requires that the appraiser first determine the value of the LLC's business as a going concern and then assumes that the LLC is sold and the proceeds distributed as dictated by the allocation and distribution provisions. Fair value would be the net proceeds distributed to a dissenting member under such circumstances (i.e., valuation using a liquidation methodology).

Another issue that is often addressed in dissenters' rights statutes is identifying the point in time where an equity interest should be valued. Kentucky statutes, again in the context of valuing corporate shares, provides that "fair value" with respect to a dissenter's shares means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable."¹⁹ Delaware's statutes provide that the valuation of stock should be "exclusive of any element of value arising from the accomplishment or expectation of the merger."²⁰ This statute was interpreted to exclude only speculative elements of value created by the merger.²¹ The Delaware Supreme Court stated that "elements of future value including the nature of the enterprise, which are known or susceptible of proof as of the date of the merger and are not the product of speculation may be included." Appraisers should have the flexibility to take into account certain aspects of value associated with the merger or other transaction. The Kentucky Court of Appeals in *Yeager* commented that "[c]onsideration of the future prospects of the merged corporation in appraising the value of a dissenter's shares, to the extent that evidence of those prospects, beyond speculation, is available as of the statutory date for valuation, would do much to enhance the fairness of the appraisal."²² The take away from *Yeager* is that an operating agreement should address whether "future prospects" should be considered or excluded from valuation.

Should Valuation Discounts Apply?

A significant issue that should be addressed in an LLC operating agreement is whether valuation discounts should apply in determining fair value. The two valuation discounts that are most often applied are the minority interest discount (reflecting the fact that controlling interests are more valuable) and the lack of marketability discount (reflecting the fact that LLC interests are not generally readily salable on an established secondary market and that the holder cannot force the LLC's liquidation to directly access the LLC's valuable assets). Kentucky's corporation laws are silent on the issue of discounts in dissenters' rights actions. In *Ford*, the court rejected the use of a minority interest discount. *Shawnee Telecom* and a recent Court of Appeals case rejected after lengthy discussion the use of a marketability discount.²³ Drafters of operating agreements are free to adopt or reject valuation discounts. And since various courts and appraisers have identified and applied additional valuation discounts under certain circumstances (e.g., a discount for unrealized capital gains), valuation discounts should be expressly excluded if that represents the intent of the parties.

There is a good policy argument for excluding valuation discounts in squeeze-out transactions. The Delaware courts have held that "[d]iscounting individual share holdings injects into the appraisal process speculation on the various factors which may dictate the marketability of minority shareholdings. More important, to fail to accord to a minority shareholder the full proportionate value of his shares imposes a penalty for lack of control, and unfairly enriches the majority shareholders who may reap a windfall from the appraisal process by cashing out a dissenting shareholder, a clearly undesirable result."²⁴ An important point is that in a squeeze-out transaction, the minority owner is involuntarily divested of his interest, and would otherwise presumably continue to hold a proportionate interest in a going concern. But if the dissenting member is voluntarily electing to be cashed-out rather than receive equity of a surviving entity in a merger, a strong contrary policy argument could be made.²⁵ Here it is the minority owner that is taking advantage of the availability of dissenters' rights to impose the burden of cashing the dissenter out of his or her LLC interest, perhaps at a financially inopportune time for the LLC. Given the differing policy interests and concerns, the best

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approach is to carefully consider the pros and cons of valuation discounts and clearly state in the operating agreement whether or not valuation discounts apply.

Dissenters' Rights Process and Procedures

LLC owners may adopt dissenters' rights in their operating agreement, articles of organization, or in a merger agreement. The operating agreement is the logical place to provide for dissenters' rights and to establish triggering events and procedures.²⁶ Minority owners should make sure that the operating agreement cannot be amended to eliminate dissenters' rights without their consent. The freedom to contract affords LLC owners the flexibility to exclude certain categories of members or membership interests from eligibility to exercise dissenters' rights. Membership interests that might fall into the excluded category include service provider or preferred membership interests.

The dissenters' rights provisions in an LLC's operating agreement should address each of the following:

- events triggering dissenters' rights (remember that dissenters' rights triggered by an amendment of the articles must be in the articles),

such as mergers, assets sales, amendments to the operating agreement adversely affecting the economic rights of members, and conversion of the LLC into a corporation or other business entity;

- the time of valuation (e.g., whether or not future value created by the transaction triggering dissenters' rights should be considered in the valuation process);
- notice requirements applicable to the dissenters' rights notice provided by the LLC to its members;
- notice requirements applicable to LLC members with respect to the exercise of their dissenters' rights;
- process and valuation guidelines (if any) for determining the "fair value" of the dissenters' membership interest;
- confirmation of whether discounts (e.g., minority owner and lack of marketability) are expressly included or excluded from the valuation process;
- payment terms, including whether interest is payable on the amount due to the dissenting owners;
- assessment of the costs of the appraisal process among the parties or to the LLC; and
- the determination of whether dissenters' rights is the sole remedy (including whether there are

exceptions for misconduct, fraud or other breach of fiduciary duty claims).

Once the decision has been made to adopt dissenters' rights, the question of who oversees the appraisal process should be addressed in the operating agreement. Under Kentucky's corporation statutes, dissenters' rights actions are brought as a proceeding before a Circuit Court. The Circuit Court then appoints appraisers to receive evidence and make recommendations as to fair value. Dissenting shareholders are entitled to the same discovery rights as parties in other civil proceedings. This procedure raises a threshold question in the LLC context. Would a Kentucky Circuit Court take jurisdiction of a dissenters' rights action established by contract in the absence of any express statutory mandate? The answer should be a qualified yes, as any disagreement regarding what constitutes fair value under the terms of an operating agreement would appear to be a real matter in controversy, therefore placing the issue within a Circuit Court's jurisdiction. But a Kentucky court might refuse to take jurisdiction if it determines that a contractual dissenters' rights process is essentially a valuation question better suited for a professional appraiser outside of the court's supervision.

LLC owners should consider bypassing Circuit Court involvement in the valuation process by directing that the valuation process be undertaken by a professional appraiser. The operating agreement could further provide that issues of misconduct, breach of fiduciary duty, fairness or fraud would be handled under the direction of an arbitrator with possible damages in excess of the fair value of the LLC interests and, if necessary, the LLC members could still have the right to seek equitable relief (e.g., a restraining order) in a Kentucky court.

Prototype Dissenters' Rights Provisions are available on the KBA Website

Prototype dissenters' rights provisions for a Kentucky LLC are included on the Kentucky Bar Association's web-



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site at www.kybar.org. These prototype provisions are intended to provide an informal checklist and drafting aid for LLC owners considering adopting dissenters' rights. There are a number of elements of the prototype provisions that may be modified based on the goals of an LLC's members and, of course, the relative bargaining positions of the owners. ©

ENDNOTES

1. KRS 271B.13-010 to 271B.13-310.
2. KRS 271B.13-020(1)(a) through (f).
3. KRS 271B.13-020(1)(g).
4. KRS 275.015(6) was also amended to define "dissent" as "a right to object to a proposed action or transaction and, in connection therewith, to demand a redemption of a limited liability company interest."
5. Some Kentucky attorneys believed from the early days of LLCs that the freedom of contract principles incorporated in the LLC Act gave them the right to adopt dissenters' rights through operating agreement provisions. See KRS 275.003(1).
6. KRS 275.030(6).
7. KRS 275.247(2).
8. KRS 275.345(3) and 275.350(4).
9. For a discussion of fiduciary duty issues, see Scott Dolson's article *Fiduciary Duty Standards of Conduct for Kentucky LLCs*, published on the KBA website at www.kybar.org.
10. *Yeager v. Paul Semonin Co.*, 691 S.W. 2d 227 (Ky. Ct. App. 1985).
11. *Cavalier Oil Corp. v. Harnett*, 564 A.2d 1137 (Del. 1989) referring to *Weinberger v. UOP, Inc.* 457 A.2d 701 (Del. 1983). In *Weinberger*, the Delaware Supreme Court stated that "[t]he concept of fairness has two basic aspects: fair dealing and fair price. The former embraces questions of when the transaction was timed, how it was initiated, structured, negotiated, disclosed to the directors, and how the approvals of the directors and the stockholders were obtained. The latter aspect of fairness relates to the economic and financial considerations of the proposed merger, including all relevant factors: assets, market value, earnings, future prospects, and any other elements that affect the intrinsic or inherent value of a company's stock. . . All aspects of the issue must be examined as a whole since the question is one of entire fairness. However, in a non-fraudulent transaction we recognize that price may be the preponderant consideration outweighing other features of the merger. *Weinberger*, 457 A.2d at 711.
12. See *Weinberger* supra n. 11 and *Glassman v. Unocal Exploration Corporation*, 777 A.2d 242 (Del. 2001).
13. KRS 271B.13-020(2) provides that shareholders entitled to dissent shall not challenge the corporate action triggering dissenters' rights unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.
14. *Rapid-American Corp. v. Harris*, 603 A.2d 796 (Del. 1992)
15. *Ford v. Courier-Journal Job Printing Co.*, 639 S.W.2d 553, 556 (Ky. Ct. App. 1982).
16. See Delaware General Corporation Law § 262(h); *Weinberger* supra n. 11; *Cavalier Oil Corp.* supra n. 11; and *In re Valuation of Common Stock of McLoon Oil Co.*, 565 A.2d 997 (Me. 1989).
17. *Shawnee Telecom, Inc. v. Kathy Brown*, 2009 Ky. App. Unpub. LEXIS 675 (August 14, 2009).
18. See *Elk Yarn Mills v. 514 Shares of Common Stock of Elk Yarn Mills, Inc.*, 742 S.W.2d 638 (Tenn Ct. App. 1987) and *Cavalier Oil Corp.* supra n. 11 at 1145.
19. KRS 271B.13-010(3).
20. Delaware General Corporation Law § 262(h).
21. *Weinberger* supra n. 12.
22. *Yeager* supra n. 10 at 229.
23. *Brooks v. Brooks Furniture Mfgs., Inc.*, 2010 WL 4290068 (Ky. Ct. App.), overruling *Ford* supra n. 15 on this issue.
24. *Cavalier Oil Corp.* supra n. 11.
25. See *Lawson Mardon Weaton Inc. v. Smith*, 716 A.2d 550 (N.J. Sup. Ct. App. Div. 1998), where the New Jersey courts addressed a situation where the court felt that applying no discounts would create an unfair transfer of wealth to a dissenting shareholder who is merely seeking to exploit a "highly illiquid" corporation's minor certificate change and to "opportunistically exploit" the company. See also American Law Institute's *Principles of Corporate Governance* and an article by Bobbie Hollis, *The Unfairness of Applying Lack of Marketability Discounts to Determine Fair Value in Dissenters' Rights Cases*, 25 J. Corp. L. 137 (1999-2000).
26. KRS 275.030(6) provides that dissenters' rights triggered by amendments to articles of organization must be set forth in the articles.



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Introduction

Last July the Kentucky Paralegal Association (KPA) launched the KPA Certified Paralegal Program. The KPA describes the program as follows:

The purpose of the Kentucky Paralegal Association's Certified Paralegal Program is to implement Kentucky Supreme Court Rule 3.700 for paralegals in Kentucky by establishing a procedure for paralegal certification, which will promote competence and high standards of professional responsibility, including the Kentucky Paralegal Association's Paralegal Professional Standards of Conduct. This is accomplished by setting minimum training, work experience, and education requirements for eligibility to be a designated Certified Kentucky Paralegal. The ultimate purpose of this self-regulation program is to improve the quality of legal service in Kentucky and make it more readily available to the public. Certification of qualifications and commitment to high professional and ethical standards by paralegals will lead to appropriate recognition of the substantial and essential contribution paralegals make to the provision of legal services in Kentucky.

This development is a major step forward for Kentucky paralegals and offers important benefits for Kentucky lawyers and legal service in Kentucky. The purpose of this article is to:

- Show why the KPA Certified Paralegal Program matters to Kentucky lawyers.
- Provide an overview of paralegals in Kentucky.
- Describe the KPA Certified Paralegal Program including its stringent requirements for achieving certification.

Why the KPA Certified Paralegal Program Matters to Kentucky Lawyers

In the hurly burly of today's practice of law it is easy to overlook some professional duties that are not the subject of much emphasis or do not stand out as important as they are. A prime example of this is the responsibility of lawyers to comply with Supreme Court rules on the supervision and training of paralegals working in their offices. In addition to

duties regarding paralegals in the Kentucky Rules of Professional Conduct¹, the Kentucky Supreme Court in SCR 3.700, Provisions Relating to Paralegals, provides detailed guidance for lawyers on their employment of paralegals. What follows is an overview of what these rules require of Kentucky lawyers.

The Supreme Court adopted SCR 3.700 in January 1980. It is one of the strongest policy statements by a state Supreme Court on the value of paralegals for the delivery of legal service as indicated in the following extracts from the Rule:

Preliminary Statement. The availability of legal services to the public at a price it can afford is a goal to which the Bar is committed, and one which finds support in Canons 2 and 8 of the Code of Professional Responsibility.² The employment of paralegals furnishes a means by which lawyers may expand the public's opportunity for utilization of their services at a reduced cost.

Purpose. Rapid growth in the employment of paralegals increases the desirability and necessity of establishing guidelines for the utilization of paralegals by the legal community. This Rule is not intended to stifle the proper development and expansion of paralegal services, but to provide guidance and ensure growth in accordance with the Code of Professional Responsibility,³ statutes, court rules and decisions, rules and regulations of administrative agencies, and opinions rendered by Committees on Professional Ethics and Unauthorized Practice of Law.

The key requirements of SCR 3.700 are:

- Direct supervision of a paralegal by a licensed lawyer is required.
- A lawyer must ensure that a paralegal does not engage in the unauthorized practice of law.
- It must be made clear to a client that a paralegal is not a lawyer.
- The lawyer must remain fully responsible for the representation.
- The lawyer must instruct a paralegal to preserve the confidences and secrets of a client.

The 2009 Revised Kentucky Rules of Professional Conduct buttress Rule 3.700 by providing more detailed guidance

An Overview of Paralegals in Kentucky

Vicki Howard, Kentucky Paralegal Association President

SCR 3.700 defines a Kentucky paralegal as follows:

A person under the supervision and direction of a licensed lawyer, who may apply knowledge of law and legal procedures in rendering direct assistance to lawyers engaged in legal research; design, develop or plan modifications or new procedures, techniques, services, processes or applications; prepare or interpret legal documents and write detailed procedures for practicing in certain fields of law; select compile and use technical information from such references as digests, encyclopedias or practice manuals; and analyze and follow procedural problems that involve independent decisions.

According to the Bureau of Labor Statistics, there are currently close to 300,000 paralegals employed in the U.S., with roughly 4,000 working in Kentucky. The occupation, overall, is expected to grow faster than average through the year 2018. While paralegals work in all areas of law, law firms, corporations and the federal and state governments predominantly employ them.

There are three national paralegal associations in which many Kentucky paralegals participate that offer voluntary paralegal certification, provided one has a combination of education and work experience. All certification programs require documentation of qualifications to sit for exams, and all require specific hours of continuing legal education to retain certification. They are:

- The National Federation of Paralegal Associations (NFPA) offers the “PACE” exam and grants the designation of “Registered Paralegal” (RP).
- The National Association of Legal Assistants (NALA) offers a two-day examination that gives the choice of title. One may be a “Certified Legal Assistant” (CLA) or a “Certified Paralegal” (CP).
- The American Alliance of Paralegals, Inc. also has an examination and those passing become an “American Alliance Certified Paralegal” (AACP).

There are paralegal associations in every state in the U.S. and some have several associations as Kentucky does. Currently, Kentucky has one statewide association, the Kentucky Paralegal Association (KPA), and five local associations. Below is an overview of paralegal associations in Kentucky:

- The **Kentucky Paralegal Association (KPA)** was officially incorporated in 1990 with the purpose of serving as a unified voice for Kentucky paralegals, promoting continuing paralegal education with emphasis on ethics and professionalism, and increasing paralegal use by Kentucky lawyers. These activities are carried out in cooperation with the Kentucky Bar Association and in compliance with SCR 3.700. The KPA has approximately 100 members who pay annual dues of \$50.00 for active membership.

- The **Greater Lexington Paralegal Association (GLPA)** was established in 1980 and has approximately 100 members. Though the GLPA’s mission statement is similar to that of the KPA, it requires an educational component to be an active member and cost of membership varies according to eligibility. Annual dues range from \$30.00 to \$150.00. The GLPA is affiliated with NFPA and members become NFPA members when they join. Primary and Secondary NFPA Representatives are elected to GLPA Board positions. There are several Registered Paralegals participating in the GLPA.
- The **Louisville Association of Paralegals (LAP)**, established in 1978, has a membership of close to 200 paralegals and annual cost for membership ranges from \$20.00 to \$100.00. Its mission parallels that of the KPA. The LAP is the major contributor in funding the “Certified Kentucky Paralegal” (CKP) examination. LAP members may become associate members of the Louisville Bar Association.
- **Western Kentucky Paralegals (WKP)** is affiliated with NALA. Part of the annual membership dues provides for NALA membership. WKP has two National Liaisons who attend NALA meetings around the country and encourages paralegals to take NALA’s certification exam. Annual membership in WKP costs up to \$50.00.
- The **Northern Kentucky Association of Paralegals (NKAP)** has professional standards similar to the KPA and attracts some paralegals from nearby Cincinnati, Ohio. They are not affiliated with a national association and annual dues are a maximum of \$25.00. NKAP has fewer than 50 members, attributable to its proximity to Ohio and larger associations.
- The **Greater Appalachian Paralegal Association (GAPA)** is the newest association and also has fewer than 50 members. There is a flat fee of \$25.00 for membership. GAPA is not affiliated with a national association.

The five local associations each have liaisons that are voting members of the KPA Board and all share commonalities.

- All keep members updated on pertinent legal information and trends, and provide newsletter updates.
- All offer student membership for those seeking paralegal degrees and are involved in and support accredited local paralegal educational programs.
- All offer seminars for continuing paralegal education, some on a monthly basis and at a cost.
- All participate in philanthropic endeavors in their communities and assist with local pro bono activities.
- All local associations support the Certified Kentucky Paralegal program and have members who have expressed interest in becoming CKPs.

for the ethical management of paralegals. A significant change to Comment (1) and new Comment (2) to Rule 5.3, Responsibilities Regarding Nonlawyer Assistants, make it clear that it is mandatory for firm management to take a proactive role in assuring that nonlawyer assistants comply with ethics standards:

KENTUCKY PARALEGAL ASSOCIATION PARALEGAL PROFESSIONAL STANDARDS OF CONDUCT

STANDARD 1. COMPETENCE

A paralegal shall provide competent service when assisting supervising lawyers and their clients. Competent service requires paralegal education, training, and work experience in the application of legal concepts, skills, and knowledge. A paralegal shall be knowledgeable of Supreme Court Rule 3.700 Provisions Relating to Paralegals and the Kentucky Rules of Professional Conduct. A paralegal shall maintain competence by participating in continuing paralegal education programs on substantive legal subjects, skills, and paralegal standards of conduct.

STANDARD 2. DILIGENCE

A paralegal shall work with reasonable care, industry, and punctuality when assisting supervising lawyers and their clients.

STANDARD 3. RELATIONS WITH CLIENTS

A paralegal shall communicate with and provide service to clients only under the supervision of a lawyer. The lawyer must remain fully responsible for the representation and all paralegal relations with a client must be directed by a supervising lawyer. It shall be made clear to a client that a paralegal is not a lawyer. A paralegal shall not form lawyer-client relationships for a supervising lawyer, give legal advice, or exercise independent legal judgment when communicating with a client.

STANDARD 4. CLIENT AND FIRM CONFIDENTIALITY

(a) A paralegal shall not reveal information relating to the firm's representation of clients or firm internal operations except for disclosures that are impliedly authorized to perform paralegal services for supervising lawyers and clients except:

- (1) a paralegal may reveal such information to the minimum extent necessary to establish a claim or defense in a controversy with a supervising lawyer or client, or
- (2) to comply with law or court order.

- Comment (1): Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer ~~should~~ **must** give such assistants

(b) A paralegal's duty of confidentiality to a firm and its clients is a continuing responsibility which is applicable even though a paralegal has changed employment or left paralegal practice.

STANDARD 5. CONFLICTS OF INTEREST

(a) To avoid conflicts of interest a paralegal shall inform supervising lawyers of any responsibilities the paralegal has to third persons or by the paralegal's own personal or financial interests which may conflict with the interests of firm clients. The supervising lawyer is responsible for resolving paralegal conflict issues.

(b) A paralegal shall not use information relating to a client learned in the course of employment to the disadvantage of a client unless the supervising lawyer is informed and the lawyer obtains client consent after consultation.

STANDARD 6. CLIENT AND FIRM PROPERTY

A paralegal responsible for working with and safeguarding client property shall comply with Kentucky Rule of Professional Conduct 1.15 Safeguarding Property. In working with client and firm property a paralegal will apply reasonable business practices to assure its proper use, security, and disposition.

STANDARD 7. RELATIONS WITH PERSONS OTHER THAN CLIENTS

In the course of performing paralegal services under the supervision of a lawyer a paralegal shall not:

- (a) knowingly make a false statement of material fact or law to a third person;
- (b) communicate with a person known to be represented by a lawyer without the consent of that lawyer;
- (c) when dealing with an unrepresented person state or imply the paralegal is disinterested and correct any perceived misunderstandings by such person;
- (d) communicate legal advice to an unrepresented person (a paralegal may suggest that the unrepresented person secure counsel); and
- (e) use means that only embarrass, delay, or burden a third person.

continued on 27

appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline. (*emphasis added*)

- New Comment (2) provides in part: Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct.

While it can be hoped that lawyers throughout Kentucky are complying with the spirit and requirements of SCR 3.700 and the Rules of Professional Conduct, Kentucky paralegals advise that many firms do not. As will be

described below, the KPA Certified Paralegal Program offers an ideal way for lawyers to make up for this professional responsibility shortfall and assure that employed paralegals are thoroughly versed on professional conduct rules, their role in delivering legal service, and familiarity with good risk management principles. Additionally, the Certification Program is an important aid for lawyers in hiring qualified paralegals. An individual that meets the demanding requirements for certification shows that she or he is a well-qualified paralegal as well as highly motivated. This dual benefit of the KPA Certification Program is why it matters to Kentucky lawyers.

Paralegals in Kentucky

At the time of this writing the KBA does not have a paralegal committee or any other official activities concerning paralegals. There are, however, a number of private paralegal associations in Kentucky. See the sidebar for an overview of paralegal service in Kentucky provided for this article by Vicki Howard, Kentucky Paralegal Association President.

A paralegal who receives a document relating to the representation of a supervising lawyer's client and knows or reasonably should know that the document was inadvertently sent shall refrain from reading the document and promptly inform the supervising lawyer for instructions on promptly notifying the sender, and abiding by the instructions of the sender regarding its disposition.

STANDARD 8. LAW FIRM PARALEGAL POLICIES

A paralegal shall adhere to law firm measures for paralegal compliance with the professional obligations of a lawyer. In most cases a supervising lawyer's instructions on matters of professional responsibility will be determinative of the issue and a complying paralegal will not be subject to discipline under these Standards of Conduct. However, following the instructions of a lawyer will not excuse paralegal conduct that any reasonable nonlawyer would understand as abusive, fraudulent, dishonest, deceitful, or illegal.

STANDARD 9. UNAUTHORIZED PRACTICE OF LAW

A paralegal shall not engage in the unauthorized practice of law as proscribed by Kentucky law and Supreme Court Rules.

STANDARD 10. DONATED PARALEGAL SERVICE

A paralegal should voluntarily donate paralegal service as a matter of public service. Paralegals are encouraged to donate 25 hours of service a year. Donated service must be performed under the supervision of a lawyer. Normally a paralegal should coordinate donated service with that of the

employing lawyer. This will permit best use of a paralegal's donated service and assist the supervising lawyer in meeting the Kentucky Bar Association's goal of 50 hours annually of donated lawyer service.

STANDARD 11. ADVERTISING AND SOLICITATION

A paralegal shall know the Kentucky Rules of Professional Conduct on lawyer advertising and limitations on solicitation of clients. A paralegal's name and status may be included on the letterhead of an employing lawyer and the paralegal may with the lawyer's permission include the lawyer's name on the paralegal's business card.

STANDARD 12. MISCONDUCT

It is professional misconduct for a paralegal to:

- (a) violate or attempt to violate the KPA Paralegal Professional Standards of Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) engage in the unauthorized practice of law;
- (c) commit any felony or crime involving moral turpitude;
- (d) commit fraud or deceit in applying for Certified Kentucky Paralegal status;
- (e) disclose the contents of the Certified Kentucky Paralegal exam;
- (f) advertise paralegal services in a manner that is false or misleading to the public;
- (g) fail to pay KPA fees or other monies; and
- (h) fail to meet Continuing Paralegal Education requirements.

The KPA Certified Paralegal Program

For many years the KPA, the LAP, and other paralegal associations in Kentucky struggled to establish a Kentucky paralegal certification program. Meetings were held with national paralegal associations with the hope that a way could be found to use their certification programs for Kentucky paralegals on an affordable basis. Unfortunately, the cost of study and exam materials of those programs was prohibitive. Then the Internet came to the rescue. The administration of a certification program could be done inexpensively over the Internet on the KPA website. Just as important exam study materials could be made available at no cost on the website. To everyone's pleasant surprise there was so much support for establishing a certification program that it was developed at virtually no cost. Paralegals, paralegal educators, lawyers, and even the printing company that printed certification exams all worked pro bono to bring the KPA Certification Program into being. What follows is an overview of the program. I think you will be impressed.

Eligibility Requirements

To sit for the exam a candidate must meet at least one of the following requirements:

- Graduation from an ABA approved course of paralegal studies; or
- Graduation from a paralegal course of study which is not ABA approved, but is in substantial compliance with ABA approval guidelines; or
- Graduation from an appropriately accredited college or university with a bachelor's degree in any field plus one year of paralegal work experience verified by the supervising lawyer; or
- A minimum of five years work experience as a paralegal performing substantive legal tasks under the supervision and direction of a licensed attorney.⁴

The Certification Exam

The examination was prepared by Professor Nicholas W. Riggs, Director of Legal Studies at Sullivan University; Paralegal Dana Lee Martin, Greenebaum Doll & McDonald and past-president of the Louisville Association of Paralegals; and me in my capacity as a legal ethics and risk management consultant. Based on a question bank of 150 questions, each exam given will consist of 40 true/false or multiple-choice questions on ethics and professional responsibility. A minimum passing score of 70% is required to become a Certified Kentucky Paralegal. To pass the exam candidates must demonstrate a thorough knowledge of the Paralegal Professional Standards of Conduct. See the sidebar to this article for the Paralegal Standards of Conduct.

Study Materials

Study materials for the exam are provided at <http://www.kypa.org> at no cost. The primary source for exam preparation is the *Kentucky Paralegal Association Paralegal Professional Standards Of Conduct, Second Edition – 2010*. This 93-page book is based on the Kentucky Rules of Professional Conduct and SCR 3.700. It contains a rule-by-rule review of the 12 Paralegal Standards of Conduct in the context of the Kentucky Rules. It also includes full text KBA Ethics and Unauthorized Practice opinions covering the scope of paralegal work, client confidentiality, conflicts of interest, sharing offices, changing lawyer employers, unsupervised paralegals, suspended and disbarred lawyers working as paralegals, paralegal limitations in the courtroom, and paralegals participation in depositions. It concludes with a review of changes in the 2009 Revised Kentucky Rules of Professional Conduct of special significance for paralegals.

Other study materials cover lawyer supervision of paralegals, fees, client trust accounts, client files, and sharing offices. Please go to the KPA Web Site and review these extensive materials. As you will see this is a demanding program and earning the designation of Certified Kentucky Paralegal will not come easily.

Continuing Paralegal Legal Education Requirements

To retain certification a Certified Kentucky Paralegal must earn a minimum of eight credit hours of KPA approved continuing paralegal education annually including two credit hours on the Paralegal Professional Standards of Conduct.

Summing Up

The KPA Certified Paralegal Program is a significant contribution to the practice of law in Kentucky. It is of major assistance to lawyers in complying with their paralegal professional responsibility duties. Furthermore, by employing paralegals that are Certified Kentucky Paralegals, lawyers can be confident that they are bringing into the firm competent and highly motivated professional staff. ⑥

ENDNOTES

1. SCR 3.130.
2. Now the Kentucky Rules of Professional Conduct.
3. *Ibid*.
4. Go to the KPA Web Site at <http://www.kypa.org> for the complete details for eligibility.

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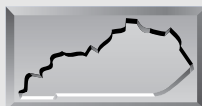
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KENTUCKY BAR ASSOCIATION

**FINANCIAL STATEMENTS AND
SUPPLEMENTARY INFORMATION**

For the Years Ended
June 30, 2010 and June 30, 2009

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INDEPENDENT AUDITORS' REPORT

To the Board of Governors
Kentucky Bar Association
Frankfort, Kentucky

We have audited the accompanying statements of financial position of Kentucky Bar Association (a non-profit organization) as of June 30, 2010 and June 30, 2009, and the related statements of activities and cash flows for the years then ended. These financial statements are the responsibility of the Association's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Kentucky Bar Association as of June 30, 2010 and June 30, 2009, and the changes in its net assets and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

The audit was performed for the purpose of forming an opinion on the basic financial statements taken as a whole. The supplemental information on pages 16 through 21 is presented for the purpose of additional analysis and is not a required part of the basic financial statements. The supplemental information is the responsibility of the Association's management. The supplemental information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.



Ft. Wright, Kentucky
November 12, 2010

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KENTUCKY BAR ASSOCIATION
STATEMENTS OF FINANCIAL POSITION
June 30, 2010 and June 20, 2009

	June 30, 2010	June 30, 2009
ASSETS:		
Cash	\$ 743,371	\$ 247,857
Cash - Bond sinking fund	3,893	3,888
Investments	5,268,319	4,928,068
Accounts receivable	79,184	63,027
Due from affiliate	54,877	52,942
Interest receivable	3,465	5,377
Prepaid expenses	46,056	61,883
	<hr/>	<hr/>
Total Current Assets	6,199,165	5,363,042
Property, building and equipment, net	<hr/> 3,316,457	<hr/> 3,417,442
Total Assets	<hr/> <hr/> 9,515,622	<hr/> <hr/> 8,780,484
LIABILITIES:		
Accounts payable	393,832	90,410
Accrued expenses	330,589	295,634
Funds held	8,941	-
Current maturities of bonds payable	<hr/> 100,000	<hr/> 100,000
Total Current Liabilities	833,362	486,044
Deferred revenue	33,280	31,728
Bonds payable, less current maturities	<hr/> 1,665,000	<hr/> 1,765,000
Total Liabilities	<hr/> 2,531,642	<hr/> 2,282,772
NET ASSETS:		
Unrestricted -		
Board designated	815,850	841,986
Undesignated	<hr/> 6,168,130	<hr/> 5,655,726
	<hr/> 6,983,980	<hr/> 6,497,712
Total Liabilities and Net Assets	<hr/> <hr/> \$ 9,515,622	<hr/> <hr/> \$ 8,780,484

The accompanying notes are an integral part of these financial statements.

KENTUCKY BAR ASSOCIATION
STATEMENTS OF ACTIVITIES
For the Years Ended June 30, 2010 and June 30, 2009

	<u>June 30, 2010</u>	<u>June 30, 2009</u>
UNRESTRICTED NET ASSETS:		
REVENUE AND SUPPORT:		
Membership dues	\$ 3,807,020	\$ 3,717,958
Other dues	164,296	157,249
Investment income/realized gain(loss)	225,810	(604,020)
Sections income	136,148	138,383
Reimbursement of costs	22,164	21,485
Attorney Advertising Commission	122,502	67,975
Publications/Communications	72,076	83,613
Conventions and Conferences	543,640	443,087
Rent of building	9,600	9,600
Net change in the fair value of investments	207,612	48,241
Other revenue and support	725,695	630,411
Total Revenue and Support	<u>6,036,563</u>	<u>4,713,982</u>
EXPENSES:		
Program Services:		
Sections	127,685	155,932
Board of Governors, Officers, Committees	111,545	140,826
Disciplinary/Unauthorized practice	1,640,195	1,517,273
Publications/Communications	286,993	268,783
Conventions and Conferences	348,400	348,113
Attorney Advertising Commission	143,028	138,529
Lawyers Assistance Program	160,008	140,971
Continuing Legal Education	804,829	895,273
Client Security	302,781	159,204
Bar Center	371,492	337,514
Bar Center Construction	3,047	2,555
Donated Legal Services	82,258	32
Total Program Services	<u>4,382,261</u>	<u>4,105,005</u>
Supporting Services:		
Management and General	<u>1,168,034</u>	<u>1,267,506</u>
Total Expenses	<u>5,550,295</u>	<u>5,372,511</u>
INCREASE(DECREASE) IN NET ASSETS	486,268	(658,529)
NET ASSETS AT BEGINNING OF YEAR	<u>6,497,712</u>	<u>7,156,241</u>
NET ASSETS AT END OF YEAR	<u><u>\$ 6,983,980</u></u>	<u><u>\$ 6,497,712</u></u>

The accompanying notes are an integral part of these financial statements.

KENTUCKY BAR ASSOCIATION
STATEMENTS OF CASH FLOWS
For the Years Ended June 30, 2010 and June 20, 2009

	<u>June 30, 2010</u>	<u>June 30, 2009</u>
CASH FLOWS FROM OPERATING ACTIVITIES		
Increase (Decrease) in net assets	\$ 486,268	\$ (658,529)
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation	139,200	145,714
Net (increase) in the fair value of investments	(207,612)	(48,241)
Realized (gains)/ losses on sales of investments	(225,811)	827,286
(Increase) decrease in operating assets		
Accounts receivable	(16,157)	(14,789)
Due from affiliate	(1,935)	(2,834)
Prepaid expenses	15,827	42,797
Interest receivable	1,912	5,021
Increase (decrease) in operating liabilities		
Accounts payable	303,422	(252,739)
Accrued expenses	34,955	80,449
Deferred revenue	1,552	227
Funds Held	8,941	-
Net Cash Provided By Operating Activities	<u>540,562</u>	<u>124,362</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchase of property and equipment	(38,216)	(58,944)
Purchase of investments	(594,912)	(2,552,603)
Proceeds from sale of investments	<u>688,085</u>	<u>2,597,059</u>
Net Cash Provided (Used) By Investing Activities	<u>54,957</u>	<u>(14,488)</u>
CASH FLOWS FROM FINANCING ACTIVITIES		
Payments on long term debt	<u>(100,000)</u>	<u>(95,000)</u>
Net Cash Used By Financing Activities	<u>(100,000)</u>	<u>(95,000)</u>
Net Increase (Decrease) in Cash	495,519	14,874
Cash, Beginning of Year	<u>251,745</u>	<u>236,871</u>
Cash, End of Year	<u><u>\$ 747,264</u></u>	<u><u>\$ 251,745</u></u>

The accompanying notes are an integral part of these financial statements.

KENTUCKY BAR ASSOCIATION
NOTES TO FINANCIAL STATEMENTS
June 30, 2010 and June 30, 2009

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The statements presented are those of the Kentucky Bar Association (KBA). This is an agency of the judicial branch of the Commonwealth of Kentucky. The KBA implements, administers and enforces Kentucky Supreme Court Rules regarding the discipline and education of the lawyers of Kentucky and is the professional association for the practice of law in Kentucky.

The KBA is an agency that provides various services which are maintained in accounts in accordance with the principles and practices of “fund accounting”. Fund accounting is the procedure by which resources for various purposes are classified for accounting purposes in accordance with activities or objectives as specified by donors, in accordance with regulations, restrictions, or limitations imposed by sources outside the organization, or in accordance with directions issued by the governing board. The assets, liabilities, and net assets of the Association are reported in seven self-balancing fund groups, a description of which is as follows:

General Fund The General Fund is engaged in the administrative, general and disciplinary functions of the Association, primarily dealing with Kentucky attorneys and the practice of law within the State of Kentucky.

Continuing Legal Education Fund The Continuing Legal Education Fund administers the continuing legal education rule of the Supreme Court, which includes mandatory continuing legal education attorney records, District Bar Education Programs and New Lawyers’ Skills Programs.

Client Security Fund The Client Security Fund provides assistance to individuals who have suffered financial loss due to misappropriation of clients’ funds by members of the KBA. During the 2009 – 2010 fiscal year, 49 new claims were received alleging losses totaling approximately \$793,929. During the 2008 – 2009 fiscal year 24 new claims were received alleging losses totaling approximately \$898,836. Pursuant to Supreme Court Rule 3.820(13)(a) the Board of Governors has established Fund claim limits of \$65,000 per claim and \$200,000 aggregate claims against one attorney; accordingly, the total exposure was approximately \$513,509 and \$689,183 for the years ended June 30, 2010 and June 30, 2009, respectively.

Bar Center Headquarters Trustees Fund The Bar Center Headquarters Trustees Fund acts for the KBA in all matters incidental to the ownership, management, and control of the Bar Center building.

Bar Center Fund The Bar Center Fund is to be used for the furnishing and maintenance of the Bar Center building located in Frankfort, Kentucky.

Capital Construction Fund The Capital Construction Fund is a segregation of membership dues to be used exclusively for financing the expansion and maintenance of the Bar Center building and property.

Donated Legal Services Fund The Donated Legal Services Fund accounts for revenues and expenses associated with statewide pro bono efforts.

KENTUCKY BAR ASSOCIATION
NOTES TO FINANCIAL STATEMENTS
June 30, 2010 and June 30, 2009

Basis of Financial Statements

The KBA prepares its financial statements on the accrual basis of accounting. The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The following accounting policies are presented to facilitate the understanding of information presented in the financial statements.

Presentation

The financial statements are presented in accordance with generally accepted accounting principles for not-for-profit organizations. Under this guidance, the KBA is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets. Unrestricted net assets are not subject to donor-imposed restrictions and may be designated for specific purposes by action of the Board of Governors. Temporarily restricted net assets are subject to donor-imposed restrictions that can be fulfilled by actions of the organization pursuant to those restrictions or that expire by the passage of time. Permanently restricted net assets are subject to donor-imposed restrictions that they be maintained permanently. The KBA has no temporarily or permanently restricted net assets as of June 30, 2010 and June 30, 2009.

Cash and Cash Equivalents

The KBA considers cash in operating bank accounts to be cash and cash equivalents. Money Market accounts in investments are not included in cash and cash equivalents.

Supplemental Disclosure of Cash Flow Information:	<u>2010</u>	<u>2009</u>
Cash paid during the year for interest	<u>\$89,100</u>	<u>\$92,900</u>

Investments

Investments are reported at fair value. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. See Note J for discussion of fair value measurements.

Purchases and sales of securities are recorded on a trade-date basis. Interest income is recorded on the accrual basis. Dividends are recorded on the ex-dividend date. Net appreciation (depreciation) includes the Plan's gains and losses on investments bought and sold as well as held during the year.

Fixed Assets

Fixed assets are stated at cost. Major renewals and improvements are charged to the fixed asset accounts. Expenditures, which increase values or extend useful lives of the respective assets, are capitalized, whereas expenditures for maintenance and repairs are charged to expense as incurred. At the time fixed assets are retired or otherwise disposed of, the asset and related accumulated depreciation accounts are relieved of the applicable amounts. Gains or losses from retirements or sales are credited or charged to income.

KENTUCKY BAR ASSOCIATION
NOTES TO FINANCIAL STATEMENTS
June 30, 2010 and June 30, 2009

Revenue

The major source of revenue is membership dues. All members are required to pay dues to the KBA, with the exception of those members whose status is Senior Retired Inactive. Dues are determined annually and are recognized as revenues when assessed because they are measurable and are collectible within the current period.

Depreciation

Depreciation and amortization are provided on a straight-line basis over the estimated useful lives of the assets. Depreciation expense was \$139,200 and \$145,714 for the years ended June 30, 2010 and June 30, 2009, respectively. Estimated useful lives for purposes of depreciation are as follows:

Bar Center building	50 years
Furniture, fixtures and equipment	5-10 years
Equipment under capital leases	5 years

Pension Plan

The Association participates as members of the Kentucky Employee Retirement System (KERS), a cost sharing, multiple-employer, public employee retirement system. KERS provides retirement benefits based on an employee's final average salary and number of years of service. Benefits are subject to certain reductions if the employee retires before reaching age sixty-five, or after less than twenty-seven years of service. The plan also provides for disability retirement, death and survivor benefits and medical insurance.

The Kentucky Employee Retirement System issues a publicly available financial report that includes financial statements and required supplementary information. That report may be obtained by writing to Kentucky Employees Retirement System, 1260 Louisville Road, Perimeter Park West, Frankfort, Kentucky 40601 or by calling (502)564-4646.

Funding for the plan is provided by eligible employees who contribute 5% of their salary, 6% for employees hired after September 1, 2008, through payroll deductions and the Association, which contributed 11.61% and 10.01% of current eligible employee's salary to the KERS during the 2009-2010 and 2008-2009 fiscal years, respectively. The KBA's contribution rates are determined by Kentucky Revised Statute and the Board of Trustees of the Kentucky Retirement Systems biennium. The KBA's contributions totaled \$273,012 and \$228,778 for the 2009-2010 and 2008-2009 fiscal years, respectively.

NOTE B – INVESTMENTS

Investments are administered utilizing the services of the trust department of a bank. These investments are Category 2 investments, which include investments that are uninsured and unregistered held by the counterparty's trust department or agent in the KBA's name. Investment service fees of approximately \$25,666 and \$19,517 have been included in bank and investment fees in the statement of activities for the years ended June 30, 2010 and June 30, 2009, respectively. All investments have been classified as current assets in the accompanying statement of financial position since proceeds would be available to the KBA upon request to the trust department of the bank.

KENTUCKY BAR ASSOCIATION
NOTES TO FINANCIAL STATEMENTS
June 30, 2010 and June 30, 2009

A summary of investments at June 30, 2010 is as follows:

	Cost	Fair Market Value	Unrealized Gains/Losses
General Fund -			
Money Market Funds	\$ 287,627	\$ 287,627	\$ -
Fixed income	699,690	730,471	30,781
Equities	1,150,850	1,188,574	37,724
	<u>2,138,167</u>	<u>2,206,672</u>	<u>68,505</u>
Continuing Legal Education Fund -			
Money Market Funds	1,099,945	1,099,945	-
Fixed income	129,102	134,887	5,785
Equities	215,763	240,261	24,498
	<u>1,444,810</u>	<u>1,475,093</u>	<u>30,283</u>
Client Security Fund -			
Money Market Funds	7,824	7,824	-
Fixed income	247,740	264,506	16,766
Equities	567,031	623,015	55,984
	<u>822,595</u>	<u>895,345</u>	<u>72,750</u>
Bar Center Headquarters Trustees Fund -			
Money Market Funds	133,033	133,033	-
	<u>133,033</u>	<u>133,033</u>	<u>-</u>
Bar Center Fund -			
Money Market Funds	61,370	61,370	-
	<u>61,370</u>	<u>61,370</u>	<u>-</u>
Capital Construction Fund -			
Money Market Funds	34,756	34,756	-
Fixed income	406,462	409,937	3,475
	<u>441,218</u>	<u>444,693</u>	<u>3,475</u>
Donated Legal Services Fund -			
Money Market Funds	52,113	52,113	-
	<u>52,113</u>	<u>52,113</u>	<u>-</u>
	<u>\$ 5,093,306</u>	<u>\$ 5,268,319</u>	<u>\$ 175,013</u>

KENTUCKY BAR ASSOCIATION
NOTES TO FINANCIAL STATEMENTS
June 30, 2010 and June 30, 2009

A summary of investments at June 30, 2009 is as follows:

	Cost	Fair Market Value	Unrealized Gains/Losses
General Fund -			
Money Market Funds	\$ 419,640	\$ 419,640	\$ -
Fixed income	657,059	647,828	(9,231)
Equities	1,196,441	1,113,033	(83,408)
	<u>2,273,140</u>	<u>2,180,501</u>	<u>(92,639)</u>
Continuing Legal Education Fund -			
Money Market Funds	687,781	687,781	-
Fixed income	120,840	119,853	(987)
Equities	206,289	222,952	16,663
	<u>1,014,910</u>	<u>1,030,586</u>	<u>15,676</u>
Client Security Fund -			
Money Market Funds	14,496	14,496	-
Fixed income	306,051	303,105	(2,946)
Equities	583,008	629,203	46,195
	<u>903,555</u>	<u>946,804</u>	<u>43,249</u>
Bar Center Headquarters Trustees Fund -			
Money Market Funds	133,098	133,098	-
	<u>133,098</u>	<u>133,098</u>	<u>-</u>
Bar Center Fund -			
Money Market Funds	61,400	61,400	-
	<u>61,400</u>	<u>61,400</u>	<u>-</u>
Capital Construction Fund -			
Money Market Funds	63,173	63,173	-
Fixed income	407,674	408,789	1,115
	<u>470,847</u>	<u>471,962</u>	<u>1,115</u>
Donated Legal Services Fund -			
Money Market Funds	103,717	103,717	-
	<u>103,717</u>	<u>103,717</u>	<u>-</u>
	<u>\$ 4,960,667</u>	<u>\$ 4,928,068</u>	<u>\$ (32,599)</u>

KENTUCKY BAR ASSOCIATION
NOTES TO FINANCIAL STATEMENTS
June 30, 2010 and June 30, 2009

Investment return is summarized as follows:

	<u>2010</u>	<u>2009</u>
Interest and dividend income	\$ 93,685	\$ 223,266
Realized gains(losses)	132,126	(827,286)
Change in fair value	<u>207,612</u>	<u>48,241</u>
	<u>\$ 433,423</u>	<u>\$ (555,779)</u>

NOTE C – INCOME TAX STATUS

The KBA is not a private foundation and is exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code of 1954, except on certain unrelated business income, which is not material.

NOTE D – LEASES

The KBA leases office equipment under non-cancelable operating leases expiring in various years through the year 2012. The KBA incurred approximately \$35,766 and \$35,546 of lease-related expense in the years ended June 30, 2010 and June 30, 2009, respectively. These leases are classified as operating with minimum rental commitments as follows:

Year Ending

<u>June 30,</u>	
2011	\$ 28,975
2012	<u>\$ 13,162</u>
	<u>\$ 42,137</u>

NOTE E – LONG-TERM DEBT

Long-term debt is comprised of the following as of June 30,

	<u>2010</u>	<u>2009</u>
2.0% - 5.0% Kentucky Bar Center Headquarters Project Bonds Series 2003, payable with semi-annual interest payments and annual principal payments, with final payment due April 1, 2023	\$ 1,765,000	\$ 1,865,000
Less current portion	<u>(100,000)</u>	<u>(100,000)</u>
	<u>\$ 1,665,000</u>	<u>\$ 1,765,000</u>

KENTUCKY BAR ASSOCIATION
NOTES TO FINANCIAL STATEMENTS
June 30, 2010 and June 30, 2009

During October 2002, the KBA issued \$2,390,000 in City of Frankfort, Kentucky Governmental Project Revenue Obligation Bonds with rates of 2.0% - 5.0%. In order to retire the revenue bonds, the KBA is required to make deposits to sinking funds in amounts sufficient to meet the principal and interest payments due for the required semi-annual installments. The bonds are secured by membership dues revenue. In compliance with bond requirements the KBA maintains a separate bond sinking fund cash account included in cash and cash equivalents on the statement of financial position.

The principal and interest repayment requirements relating to the above long-term debt at June 30, 2010 are as follows:

Year Ending June 30,	Principal	Interest	Total
2011	\$ 100,000	\$ 85,100	\$ 185,100
2012	105,000	81,100	186,100
2013	110,000	76,900	186,900
2014	115,000	72,500	187,500
2015	120,000	66,750	186,750
Thereafter	1,215,000	289,500	1,504,500
	<u>\$ 1,765,000</u>	<u>\$ 671,850</u>	<u>\$ 2,436,850</u>

Interest expense for the years ended June 30, 2010 and June 30, 2009 was \$89,100 and \$92,900, respectively.

NOTE F – RELATED PARTY

The Kentucky Bar Foundation, Inc. (the Foundation) is a related party to the Kentucky Bar Association in that both organizations share common facilities and that the KBA provides payroll services for the Foundation.

The following summarizes significant transactions and balances between the two at June 30, 2010 and June 30, 2009 and for the years then ended.

	<u>2010</u>	<u>2009</u>
Accounts receivable from Foundation	<u>\$54,877</u>	<u>\$52,761</u>
Rent paid or payable to the KBA from Foundation	<u>\$ 9,600</u>	<u>\$ 9,600</u>

NOTE G – COMPENSATED ABSENCES

In prior years the KBA has allowed a carryover of a maximum of forty-five unused vacation days accumulated through year-end. For fiscal years 2010 and 2009, the KBA allowed employees to have over forty-five unused vacation days until September 30, 2010 and 2009. Accordingly, the KBA had in accrued expenses a liability of \$164,896 and \$19,395 at June 30, 2010 and \$148,596 and \$16,966 at June 30, 2009 in the general and continuing legal education funds, respectively, for these future compensated absences.

KENTUCKY BAR ASSOCIATION
NOTES TO FINANCIAL STATEMENTS
June 30, 2010 and June 30, 2009

NOTE H – DESIGNATED FUND BALANCE

By Board resolution, the General Fund surplus for Sections, Just Solutions, Brief Insights, and Lawyer's Assistance Program funds are allowed to be carried over to the next ensuing budget year and have been designated as such. Any current year excess support and revenue over expenses excluding the current effects of the aforementioned carryforward funds less transfers made to other funds may be transferred to related investment accounts for future operating needs.

NOTE I – CONTINGENCIES

The Association is subject to various other claims and investigations covering a wide range of matters that arise in the ordinary course of business. In the opinion of management, all such matters are adequately covered by insurance or by accruals when determinable. There are also matters that are without merit or are of such kind, or involve such amounts, as would not have a significant effect on the financial position or results of operations of the Association, if disposed of unfavorably.

NOTE J – FAIR VALUE MEASUREMENT

Financial Accounting Standards Board Accounting Standards Codification 958-320 (formerly SFAS No. 157), establishes a framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to unobservable inputs (level 3 measurements). The three levels of the fair value hierarchy under FASB Statement No. 157 are described below:

- | | |
|---------|--|
| Level 1 | Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Plan has the ability to access. |
| Level 2 | Inputs to the valuation methodology include:
Quoted prices for similar assets or liabilities in active markets;
Quoted prices for identical or similar assets or liabilities in inactive markets;
Inputs other than quoted prices that are observable for the asset or liability;
Inputs that are derived principally from or corroborated by observable market data by correlation or other means.
If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability. |
| Level 3 | Inputs to the valuation methodology are unobservable and significant to the fair value measurement. |

KENTUCKY BAR ASSOCIATION
NOTES TO FINANCIAL STATEMENTS
June 30, 2010 and June 30, 2009

The asset's or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs.

Following is a description of the valuation methodologies used for assets measured at fair value. There have been no changes in the methodologies used at June 30, 2010 and June 30, 2009.

Common stocks, money market funds, corporate bonds and U.S. government securities: Valued at the closing price reported on the active market on which the individual securities are traded.

Mutual funds: Valued at the net asset value (NAV) of shares held by the plan at year end.

The methods described above may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, while the Plan believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date.

The following table sets forth by level, within the fair value hierarchy, the Plan's assets at fair value as of June 30, 2010 and June 30, 2009.

Assets at Fair Value as of June 30, 2010

	Level 1	Level 2	Level 3	Total
Money market funds	\$ 1,676,668	\$ -	\$ -	\$ 1,676,668
Common stocks	1,023,250	-	-	1,023,250
Mutual funds	2,158,464	-	-	2,158,464
U.S. government securities	409,937	-	-	409,937
Total assets at fair value	<u>\$ 5,268,319</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 5,268,319</u>

Assets at Fair Value as of June 30, 2009

	Level 1	Level 2	Level 3	Total
Money market funds	\$ 1,483,305	\$ -	\$ -	\$ 1,483,305
Common stocks	888,927	-	-	888,927
Mutual funds	2,147,047	-	-	2,147,047
U.S. government securities	408,789	-	-	408,789
Total assets at fair value	<u>\$ 4,928,068</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 4,928,068</u>

KENTUCKY BAR ASSOCIATION
NOTES TO FINANCIAL STATEMENTS
June 30, 2010 and June 30, 2009

NOTE K – SUBSEQUENT EVENTS

KBA's management has evaluated events through November 12, 2010, the date on which the financial statements were available for issue.

SUPPLEMENTARY INFORMATION

KENTUCKY BAR ASSOCIATION
COMBINING STATEMENT OF FINANCIAL POSITION
June 30, 2010

	Continuing							Total
	General Fund	Legal Education Fund	Client Security Fund	Bar Center Headquarters Trustees Fund	Bar Center Fund	Capital Construction Fund	Donated Legal Services Fund	
ASSETS								
CURRENT ASSETS:								
Cash	\$ 569,684	\$ 72,858	\$ 66,395	\$ 22,381	\$ 4,486	\$ 2,166	\$ 5,401	\$ 743,371
Cash - Bond sinking fund				3,893				3,893
Investments	2,206,672	1,475,093	895,345	133,033	61,370	444,693	52,113	5,268,319
Accounts receivable	32,239	46,945						79,184
Interfund receivable	52,477			62,257				62,257
Due from Bar Foundation/IOLTA				2,400				54,877
Interest receivable	530	288	222	26	12	2,377	10	3,465
Prepaid expenses	21,425	19,716		4,915				46,056
Total Current Assets	2,883,027	1,614,900	961,962	228,905	65,868	449,236	57,524	6,261,422
Noncurrent Assets								
Property, building, and equipment, net	-	2,290		3,314,167				3,316,457
Total Noncurrent Assets	-	2,290		3,314,167				3,316,457
Total Assets	2,883,027	1,617,190	961,962	3,543,072	65,868	449,236	57,524	9,577,879
	330,804	8,299	16,851	37,878	62,257			393,832
	257,155	32,960	40,474					62,257
	8,941							330,589
				100,000				8,941
	596,900	41,259	57,325	137,878	62,257	-	-	100,000
								895,619
	31,275	2,005						
				1,665,000				33,280
	31,275	2,005	-	1,665,000	-	-	-	1,665,000
	628,175	43,264	57,325	1,802,878	62,257	-	-	1,698,280
								2,593,899
NET ASSETS:								
Designated for financing building						449,236		449,236
Designated for Sections	236,987							236,987
Designated for Just Solutions	1,509							1,509
Designated for Lawyer's Assistance Program	122,392							122,392
Designated for Brief Insights	5,726							5,726
Undesignated	1,888,238	1,573,926	904,637	1,740,194	3,611	-	57,524	6,168,130
Total Net Assets	2,254,852	1,573,926	904,637	1,740,194	3,611	449,236	57,524	6,983,980
	2,883,027	1,617,190	961,962	3,543,072	65,868	449,236	57,524	9,577,879

See Auditors' Report.

KENTUCKY BAR ASSOCIATION
COMBINING STATEMENT OF FINANCIAL POSITION
June 30, 2009

	ASSETS	Continuing						Total
		General Fund	Legal Education Fund	Client Security Fund	Bar Center Headquarters Trustees Fund	Bar Center Fund	Capital Construction Fund	Donated Legal Services Fund
CURRENT ASSETS:								
Cash		\$ 72,527	\$ 123,515	\$ 13,975	\$ 22,058	\$ 2,915	\$ 1,559	\$ 11,308
Cash - Bond sinking fund					3,888			
Investments		2,180,501	1,030,586	946,804	133,098	61,400	471,962	103,717
Accounts receivable		40,406	22,621					
Interfund receivable		110			60,685			
Due from Bar Foundation/IOLTA		50,542			2,400			
Interest receivable		746	428	257	66	30	3,798	52
Prepaid expenses		29,152	21,515		11,216			
Total Current Assets		2,373,984	1,198,665	961,036	233,411	64,345	477,319	115,077
								5,423,837
Noncurrent Assets								
Property, building, and equipment, net			12,787		3,404,655			
Total Noncurrent Assets		-	12,787		3,404,655			
Total Assets		2,373,984	1,211,452	961,036	3,638,066	64,345	477,319	115,077
								8,841,279
LIABILITIES AND NET ASSETS								
CURRENT LIABILITIES:								
Accounts payable		85,541	1,375		3,494			
Interfund payable					110	60,685		
Accrued expenses		259,729	35,349		556			
Current maturities of bonds payable					100,000			
Total Current Liabilities		345,270	36,724	-	104,160	60,685	-	-
								546,839
OTHER LIABILITIES:								
Deferred revenue		18,758	12,970		1,765,000			
Bonds payable, less current maturities								31,728
Total Other Liabilities		18,758	12,970	-	1,765,000			1,765,000
Total Liabilities		364,028	49,694	-	1,869,160	60,685	-	-
								1,796,728
								2,343,567
NET ASSETS:								
Designated for financing building							477,319	
Designated for Sections		228,526						477,319
Designated for Mock Trial		547						228,526
Designated for Just Solutions		1,509						547
Designated for Lawyer's Assistance Program		127,323						1,509
Designated for Brief Insights		6,762						127,323
Undesignated		1,645,289	1,161,758	961,036	1,768,906	3,660	-	6,762
Total Net Assets		2,009,956	1,161,758	961,036	1,768,906	3,660	477,319	115,077
								5,655,726
Total Liabilities and Net Assets		2,373,984	1,211,452	961,036	3,638,066	64,345	477,319	115,077
								8,841,279

See Auditors' Report.

KENTUCKY BAR ASSOCIATION
COMBINING STATEMENT OF ACTIVITIES
For the year ended June 30, 2010

	General Fund	Continuing Legal Education Fund	Client Security Fund	Bar Center Headquarters Trustees Fund	Bar Center Fund	Capital Construction Fund	Donated Legal Services Fund	Total
UNRESTRICTED NET ASSETS								
REVENUE AND SUPPORT:								
Membership dues	\$ 2,671,748	\$ 707,493	\$ 107,808	\$ -	\$ 68,257	\$ 227,168	\$ 24,546	\$ 3,807,020
Other dues	164,296							164,296
Investment income/realized gain(loss)	76,700	35,025	103,615	372	160	9,779	159	225,810
Sections income	136,148							136,148
Reimbursement of costs	22,164							22,164
Attorney Advertising Commission	122,502							122,502
Publications/Communications	72,076							72,076
Conventions and Conferences	543,640							543,640
Rent of building				9,600				9,600
Net change in the fair value of investments	161,145	14,606	29,502			2,359		207,612
Other support and revenue	260,365	459,873	5,457					725,695
Total Support and Revenue	4,230,784	1,216,997	246,382	9,972	68,417	239,306	24,705	6,036,563
EXPENSES:								
Program Services:								
Sections	127,685							127,685
Board of Governors, Officers, Committees	111,545							111,545
Disciplinary/Unauthorized practice	1,640,195							1,640,195
Publications/Communications	286,993							286,993
Conventions and Conferences	348,400							348,400
Attorney Advertising Commission	143,028							143,028
Lawyers Assistance Program	160,008							160,008
Continuing Legal Education		804,829						804,829
Client Security			302,781					302,781
Bar Center				365,283	6,209			371,492
Bar Center Construction						3,047		3,047
Donated Legal Services							82,258	82,258
Total Program Services	2,817,854	804,829	302,781	365,283	6,209	3,047	82,258	4,382,261
Supporting Services:								
Management and General	1,168,034	-	-	-	-	-	-	1,168,034
Total Expenses	3,985,888	804,829	302,781	365,283	6,209	3,047	82,258	5,550,295
INCREASE (DECREASE) IN NET ASSETS	244,896	412,168	(56,399)	(355,311)	62,208	236,259	(57,553)	486,268
NET ASSETS AT BEGINNING OF YEAR	2,009,956	1,161,758	961,036	1,768,906	3,660	477,319	115,077	6,497,712
TRANSFERS IN (OUT)				326,599	(62,257)	(264,342)		
NET ASSETS AS OF JUNE 30, 2010	\$ 2,254,852	\$ 1,573,926	\$ 904,637	\$ 1,740,194	\$ 3,611	\$ 449,236	\$ 57,524	\$ 6,983,980

See Auditors' Report.

KENTUCKY BAR ASSOCIATION
COMBINING STATEMENT OF ACTIVITIES
For the year ended June 30, 2009

	General Fund	Continuing Legal Education Fund	Client Security Fund	Bar Center Headquarters Trustees Fund	Bar Center Fund	Capital Construction Fund	Donated Legal Services Fund	Total
UNRESTRICTED NET ASSETS								
REVENUE AND SUPPORT:								
Membership dues	\$ 2,609,274	\$ 690,925	\$ 105,259	\$ -	\$ 66,684	\$ 221,819	\$ 23,997	\$ 3,717,958
Other dues	157,249							157,249
Investment income/realized gain(loss)	(265,066)	(75,876)	(279,664)	3,609	1,094	10,215	1,668	(604,020)
Sections income	138,383							138,383
Reimbursement of costs	21,485							21,485
Attorney Advertising Commission	67,975							67,975
Publications/Communications	83,613							83,613
Conventions and Conferences	443,087							443,087
Rent of building				9,600				9,600
Net change in the fair value of investments	(14,428)	14,824	46,331			1,514		48,241
Other support and revenue	215,154	413,084	2,173					630,411
Total Support and Revenue	3,456,726	1,042,957	(125,901)	13,209	67,778	233,548	25,665	4,713,982

EXPENSES:								
Program Services:								
Sections	155,932							155,932
Board of Governors, Officers, Committees	140,826							140,826
Disciplinary/Unauthorized practice	1,517,273							1,517,273
Publications/Communications	268,783							268,783
Conventions and Conferences	348,113							348,113
Attorney Advertising Commission	138,529							138,529
Lawyers Assistance Program	140,971							140,971
Continuing Legal Education		895,273						895,273
Client Security			159,204					159,204
Bar Center				331,496	6,018			337,514
Bar Center Construction						2,555		2,555
Donated Legal Services							32	32
Total Program Services	2,710,427	895,273	159,204	331,496	6,018	2,555	32	4,105,005
Supporting Services:								
Management and General	1,267,506							1,267,506
Total Expenses	3,977,933	895,273	159,204	331,496	6,018	2,555	32	5,372,511
INCREASE (DECREASE) IN NET ASSETS	(521,207)	147,684	(285,105)	(318,287)	61,760	230,993	25,633	(658,529)
NET ASSETS AT BEGINNING OF YEAR	2,531,163	1,014,074	1,246,141	1,805,108	2,585	467,726	89,444	7,156,241
TRANSFERS IN (OUT)				282,085	(60,685)	(221,400)		
NET ASSETS AS OF JUNE 30, 2009	\$ 2,009,956	\$ 1,161,758	\$ 961,036	\$ 1,768,906	\$ 3,660	\$ 477,319	\$ 115,077	\$ 6,497,712

See Auditors' Report.

KENTUCKY BAR ASSOCIATION
SCHEDULE OF FUNCTIONAL EXPENSES
For the fiscal year ended June 30, 2010

	General and Administrative	Sections	Board of Governors, Officers, and Committees	Disciplinary and Unauthorized Practices	Publications	Conventions	Commission	Lawyers Assistance Program	Continuing Legal Education	Client Security	Bar Center	Donated Legal Services	Total
Salaries	\$ 595,811	\$ -	\$ -	\$ 1,138,926	\$ 109,410	\$ -	\$ 98,858	\$ 103,203	\$ 338,772	\$ -	\$ -	\$ -	\$ 2,404,980
Payroll taxes	44,984			88,583	8,693		7,939	8,252	27,930				186,381
Retirement	67,594			129,340	12,571		11,386	11,532	40,589				273,012
Benefits	41,305			148,106	9,983		15,702	14,224	60,944				290,264
Accounting fees	12,660												12,660
Legal fees	63,357			50,956									114,313
Professional fees	1,524			10,706	17,861	10,824	3,879	793	1,069	1,249			47,905
Supplies	33,205	2,512	1,889	14,215	529	12,190	236	326	13,233	431	2,263		81,029
Telephone	11,056	250	349	595	352	624	100	1,001	1,631	24			15,982
Postage	8,504	455	1,795	20,749	39,595	9,542	937	139	16,922	910			99,548
Utilities											39,066		39,066
Equipment/computer expense	152,479	2,100							5,367				159,946
Printing	3,638	1,446	2,334	5,141	81,000	60,590	126	51	43,501	137			197,964
Travel and lodging	10,613	18,971	60,940	24,496	3,846	25,004	3,121	14,221	36,033	2,221		331	199,797
Conference, convention, & meeting expense	2,842	3,688	3,613	4,675	749	33,170		930	70,037	450			120,154
Interest											89,100		89,100
Depreciation									10,496		128,703		139,199
Bank/investment fees	11,985								5,284	4,646	4,273	214	33,738
Stipends	8,000												8,000
Meals & entertainment	15,729	29,338	36,762	3,687	559	100,063	563	4,741	26,972	497	187	113	219,211
Library/research	40,025			20									40,045
Maintenance/repairs	487								487				93,979
Audio visual expense		3,224				42,557			77,941				123,722
Contributions, sponsors, & grants	550	21,334			1,500				884			81,600	104,984
Insurance	30,047	3,500				46,500			892		11,938		42,869
Speakers									2,519				50,892
Teleseminars/special program													2,519
Payment on claims										252,216			252,216
Contribution in lieu of taxes											6,000		6,000
Unrelated business tax	(500)												(500)
Other	11,103	40,312								40,000			91,415
Miscellaneous	1,036	555	3,863		345		181	595	3,326		4		9,905
Total	\$ 1,168,034	\$ 127,685	\$ 111,545	\$ 1,640,195	\$ 286,993	\$ 348,400	\$ 143,028	\$ 160,008	\$ 804,829	\$ 302,781	\$ 374,539	\$ 82,258	\$ 5,550,295

See Auditors' Report

KENTUCKY BAR ASSOCIATION
SCHEDULE OF FUNCTIONAL EXPENSES
For the fiscal year ended June 30, 2009

	General and Administrative	Sections	Board of Governors, Officers, and Committees	Disciplinary and Unauthorized Practices	Publications	Conventions	Advertising Commission	Lawyers Assistance Program	Continuing Legal Education	Client Security	Bar Center	Donated Legal Services	Total
Salaries	\$ 618,599	\$ -	\$ -	\$ 1,071,911	\$ 88,785	\$ -	\$ 95,608	\$ 92,872	\$ 404,653	\$ -	\$ -	\$ -	\$ 2,372,428
Payroll taxes	49,899			84,794	7,308		7,853	7,261	32,860				189,974
Retirement	55,372			105,174	8,534		9,271	8,731	41,697				228,778
Benefits	49,595			124,124	5,753		11,349	8,428	64,445				263,693
Accounting fees	12,500												12,500
Legal fees	84,905			33,408									118,313
Professional fees	1,344	920	2,500	28,236	5,189	4,001	5,024	1,873	1,788	412			51,287
Supplies	37,396	726	2,887	11,664	588	15,468	438	438	10,960	245	4,657		85,466
Telephone	10,907	182	676	627	182	1,211	82	1,024	1,995	1			16,884
Postage	26,297	1,052	1,840	18,120	34,849	10,208	343	248	18,886	717	36,725		112,559
Utilities											200		36,725
Equipment/computer expense	160,852	2,100							13,675				176,827
Printing	5,636	2,580	5,058	4,441	112,878	68,764	353	54	49,640	105			249,506
Travel and lodging	12,831	22,131	80,120	25,337	2,865	36,315	5,477	12,360	42,398	2,044			241,877
Conference, convention, & meeting expense	8,501	2,627	5,890	4,485		33,594		1,878	69,042	650	92,900		126,666
Interest													92,900
Depreciation	484								10,639		134,591		145,714
Bank/investment fees	12,577					6,531			4,190	2,197	3,766	32	29,294
Stipends	8,000												8,000
Meals & entertainment	11,116	36,676	40,101		322	81,991	2,357	4,799	16,789	293			199,172
Library/research	35,633			4,728									35,633
Maintenance/repairs	1,616								693		49,882		52,191
Audio visual expense		4,475				47,561			87,896				139,932
Contributions, sponsors, & grants		32,046									11,347		32,046
Insurance	29,103	3,500				41,947			68				40,517
Speakers									4,017				49,464
Teleseminars/special program									13,030				13,030
Payment on claims										117,540			117,540
Contribution in lieu of taxes											6,000		6,000
Unrelated business tax	(801)												(801)
Other	30,910	46,346		223						35,000			112,256
Miscellaneous	4,235	573	1,755		1,535	523	375	1,007	5,916				16,143
Total	\$ 1,267,506	\$ 155,932	\$ 140,826	\$ 1,517,273	\$ 268,783	\$ 348,113	\$ 138,529	\$ 140,971	\$ 895,273	\$ 159,204	\$ 340,068	\$ 32	\$ 5,372,511

See Auditors Report.

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JUDICIAL ETHICS OPINION

JUDICIAL ETHICS OPINION JE-120

December 22, 2010

SENIOR STATUS JUDGE PRACTICE OF LAW: SERVING AS CO-COUNSEL DEFENDING ATTORNEY CHARGED WITH ETHICS VIOLATION BEFORE THE KENTUCKY BAR ASSOCIATION

The Ethics Committee of the Kentucky Judiciary has received an inquiry from a senior status judge regarding the propriety of the judge serving as co-counsel in representing an attorney against whom a Kentucky Bar Association ethics complaint has been filed.

The inquiry was as follows:

I have been contacted by an attorney who has undertaken representation of another attorney against whom a Kentucky Bar Association ethics complaint has been made. The attorney who contacted me would like for me to join him in defense of the accused attorney.

[E]thics complaints against attorneys are reviewed in the first instance by the Office of Bar Counsel and if a charge is preferred, a hearing is held and the Board of Governors reviews the case and its decision is the final administrative determination. Throughout the proceeding, the Office of Bar Counsel acts as the prosecution and, of course, attorneys who are charged are entitled to full due process rights with respect to counsel, etc. Upon an adverse determination by the Board of Governors, the convicted attorney is entitled to review by the Supreme Court of Kentucky. The Supreme Court is the only court with any role in the process, and senior judges may not be assigned to sit on the Supreme Court. They serve only in the three lower courts.

The Committee has decided¹ that the answer to the inquiry is “no,” and issues this formal opinion at the request of the senior status judge.

Part A of the Application section of the Code of Judicial Conduct provides for Part-Time Judges or Special Judges:

A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

- (1) is not required to comply with Canon 4D(3), E, F, and G;
- (2) should not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves. . . .

Canon 4G is the provision which prohibits judges from practicing law. Under the scenario presented, senior judges appear to be exempt from that requirement.

That said, the Guidelines for the Senior Status Program for Special Judges, promulgated by Order of the Supreme Court of Kentucky on September 24, 2004, impose limitations on the practice of law by senior judges. Significantly, a senior judge is not to “associate with a Kentucky law firm” or to “appear in any Kentucky court in an adversarial role and shall not actively participate in litigation in the courts of Kentucky.”

Case law recognizes in certain situations, an administrative agency and its decisions are not the equivalent of a court and its rulings. *See Spencer County Pres., Inc. v. Beacon Hill, LLC*, 214 S.W.3d 327, 329 (Ky. App. 2007) (holding that for purposes of Ky. Const. § 115, “an administrative agency and its decisions are [not] the equivalent of a court and the rulings therefrom”). On the other hand, and as recognized by the inquiry, certain administrative proceedings are judicial in nature and litigants must be afforded procedural due process, including a hearing, the taking and weighing of evidence, an order supported by substantial evidence, and a right of appeal. *E.g., Kentucky Alcoholic Beverage Control Bd. v. Jacobs*, 269 S.W.2d 189, 192 (Ky. 1954).

The Committee’s view is that a senior status judge should not engage in any practice of law involving an adjudicative, adversarial proceeding, whether that proceeding occurs in a court or in an administrative agency. To do otherwise creates an appearance of impropriety under Canon 2. The inherent conflict in permitting a person to serve as an advocate in one proceeding, while having judicial powers in other proceedings, has been recognized and prohibited in other contexts. *See* CR 53.03(2) (prohibiting part time domestic relations commissioners from practicing domestic relations law). The appearance problem is real, and the litigants and attorneys on the opposing side and the attorneys composing the Board of Governors will be placed in a difficult position of potentially ruling against and imposing sanctions on the senior judge’s client, knowing that the senior judge either is or very well may soon be in a position to adjudicate one of their cases. *See also*, Canon 2D, which provides: “A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others.” In so noting, the Committee does not impugn the integrity of the inquiring senior judge; rather, the issue concerns the appearance of impropriety and the unintended effect that the status of the senior judge might have on the Board of Governors and opposing parties and attorneys.

Finally, the Guidelines for the Senior Status Program explicitly prohibit a senior judge from associating with a Kentucky law firm. The contemplated employment as co-counsel with another Kentucky attorney to represent the accused attorney appears to be inconsistent with this prohibition.

Please be aware that opinions issued by or on behalf of the Committee are restricted to the content and scope of the Canons of Judicial Ethics and legal authority interpreting those Canons, and the fact situation on which an opinion is based may be affected by other laws or regulations. Persons contacting the Judicial Ethics Committee are strongly encouraged to seek counsel of their own choosing to determine any unintended legal consequences of any opinion given by the Committee or some of its members.

Sincerely,

Arnold Taylor, Chairman
The Ethics Committee of the Kentucky Judiciary

cc: Donald H. Combs, Esq.
The Honorable Laurance B. VanMeter, Judge
The Honorable Jean Chenault Logue, Judge
The Honorable Jeffrey Scott Lawless, Judge
Jean Collier, Esq.

1. One member of the Committee concurs in the result, but would restrict the Committee’s reasoning to the prohibitions found in the Guidelines for the Senior Status Program for Special Judges.



by Susan Hanley Duncan

Best Dressed Briefs – Why Appearance Matters

There's no particular evidence that any of the lower mammals or any of the other animals have any interest in aesthetics at all.

But Homo sapiens does, always has and always will.

— Jock Sturges

In September of 2010, the New York Post reported that the street signs found throughout New York City would change from all caps to lower case letters. According to studies cited in federal documents, lowercase letters improve readability which ultimately prevents accidents. In addition, the new regulations require a change in font to Clearview specifically designed for this purpose.

So why is this news important to report in a column on legal writing? Choosing the typeface of a legal document will never be more important than the content of the document but document design can help the reader absorb the substance of the material. Before the curmudgeons among us dismiss this column as utter nonsense, take note that the United States Supreme Court weighed in on the issue. The Court's clerk accepts only documents using fonts in the Century family and refuses to accept filings of any brief printed in Times New Roman.

The Supreme Court is not the only court passionate about how the brief looks. The Seventh Circuit Court of Appeals posted a seven page primer on its website concerning how to make court documents "more legible-and thus more likely to be grasped and retained." In support of its suggestions, the court reminds attorneys of

the volume of cases coming before it and the advantages that are gained by making the documents attractive and readable. This guide suggests among other things:

- Using proportionally spaced type;
- Using italics, not underlining, for case names and emphasis; and
- Avoiding all caps with headings.

The court specifically references Professor Ruth Anne Robbins's law article, "Painting with Print: Incorporating Concepts of Typographic and Layout Design into The Text of Legal Writing Documents." This article, grounded in science using interdisciplinary research, explains the theory behind the accepted practices in graphic design and is definitely worth a read. Professor Robbins refers her readers to four design elements used by graphic designers: Contrast, Repetition, Alignment and Proximity. She even provides an example format for a well-designed textual document and an appendix which charts the rules for state and federal appellate courts.

Other legal writing experts agree with Professor Robbins's advice. In a recent column in the *Michigan Bar Journal*, legal writing guru, Bryan A. Garner, acknowledges the bar's limited awareness of the importance of document design and offers his own tips for improving the aesthetics of legal writing. These suggestions include:

- Choosing a readable typeface;
- Using white space meaningfully;
- Supplying headings as needed;
- Putting more space above headings than below;

- Avoiding all-caps and initial-caps text;
- Using boldface type appropriately;
- Avoiding underlining;
- Using vertical lists when possible, with hanging indents;
- Using bullets for lists as needed; and
- Not creating "fine print" or wall-to-wall print.

A website devoted to this issue even exists, www.typographyforlawyers.com. Attorney Matthew Butterick offers his advice on the subject at this site and in his book, *Typography for Lawyers*, published in November. The website breaks suggestions into beginning, intermediate and advanced discussions of typography. But beware this topic may stir strong emotions as indicated by a quote from a lawyer who took Butterick's advice:

"I'd been using Times Roman as default font for years. At your site's suggestion I began using Goudy a couple months ago. (I think that's the only one of your favorites that comes with my computer.) At first I thought it looked more elegant but otherwise was no big deal. Over time, I've become psychologically dependent on it. Somehow it puts me more at ease. Now when Times Roman comes up I want toretch."

Hopefully your choices will not produce such a dramatic response but it may be helpful to Kentucky attorneys to spend time reading these resources to gain a familiarity with the principles of effective document design. Document design, including selecting an appropriate typeface, should be another integral

step of the writing process in addition to brainstorming, outlining, drafting and editing. The document design principles will not make your legal arguments stronger but they certainly can make reading these arguments less of a chore. ☺

ENDNOTES

1. Jeremy Olshan, \$27 Million to Change NYC Signs from All-Caps, *NEW YORK POST*, Sep. 30, 2010, available at http://www.nypost.com/f/print/news/local/bronx/million_kuj8X4Z2VolVhXnCymfkVM.
2. *SUP. CT. R. 24.1, 33.1(b)*
3. Seventh Circuit Court of Appeals Requirements and Suggestions for Typography in Briefs and Other Papers, <http://www.ca7.uscourts.gov/Rules/type.pdf>.
4. *Id.*
5. Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 *J. ASS'N LEGAL WRITING DIRS.* 108 (2004).
6. *Id.* at 126.
7. Bryan A. Garner, *Pay Attention to the Aesthetics of Your Pages*, 89 *MICH. BAR JOURNAL* 42 (2010).
8. *Typography for Lawyers*, <http://www.typographyforlawyers.com> (last visited Nov. 20, 2010); *Typography for Lawyers* (Jones McClure Publishing 2010). (A special thanks to Professor Richard Neumann at Hofstra University for posting this information on a recent Legal Writing Institute listserv discussion. In addition, Derek Kiernan-Johnson and Ruth Ann Robbins's posts were helpful in drafting this article.)
9. *Id.* at Font Recommendations, <http://www.typographyforlawyers.com/?p=587>.



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Funded by a generous grant from the Kentucky Bar Foundation, "*Kentucky Lawyers Speak* does what any good book should – it makes you want to read on," according to a review by Dr. James C. Klotter, the State Historian of Kentucky and a professor of history at Georgetown College. "The stories here tell of the human side of the law, of the joys and sorrows, of the hopes and despairs, of the humor and pathos. These interviews provide the raw material of history, from those who lived it, for those who enjoy it now. They make the law come alive and make history come alive."

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NKU Salmon P. Chase College of Law

By Amber Potter
NKU Chase College of Law
Communications Coordinator

NKU Chase Alumni Association Presents Alumni Awards

The NKU Chase College of Law Alumni Association honored four alumni and one honorary alumnus during its annual Chase Alumni Luncheon on Friday, October 8, at the Bank of Kentucky Center on NKU's campus.



Bea V. Larsen



Timothy S. Black



Richard A. Cullison



Kenneth H. Kinder II



Wm. T. (Bill) Robinson III

Bea V. Larsen '69, senior mediator with the Center for Resolution of Disputes, was the recipient of the Lifetime Achievement Award. The Honorable Timothy S. Black '83, United States District Court for the Southern District of Ohio, was the recipient of the Professional Achievement Award. Richard A. Cullison '76, executive director of Legal Aid of the Bluegrass, was the recipient of the Exceptional Service Award. Kenneth H. Kinder II '00, partner with Cors & Bassett, was the recipient of the Outstanding Recent Alumnus Award. Wm. T. (Bill) Robinson III, a Member-in-Charge with Frost Brown Todd, was the recipient of the inaugural Honorary Alumnus Award.

More than 300 Chase alumni and

friends attended the luncheon. The alumni association also hosted a CLE program before and after the luncheon. Featured speakers were William E. Hesch '80, principal of the William E. Hesch Law Firm; Philip J. Schworer '86, member with Frost Brown Todd; Colleen P. Lewis '89, partner with Dinsmore & Shohl; Thomas L. Rouse, attorney at law; the Honorable Joy A. Moore '96, Kentucky Court of Appeals; and Cathy M. Jackson '91, managing counsel for Toyota Motor Engineering & Manufacturing North America, Inc. Chase Alumni Association President Edward J. McTigue '78 served as the emcee for the luncheon and CLE program.

The luncheon program sponsor was Reminger Co. The table sponsors were: Adams, Stepner, Woltermann & Dusing; Honorable Timothy S. Black '83; Chase College of Law; Cors & Bassett; Richard A. Cullison '76; Dinsmore & Shohl; Dressman, Benzinger & LaVelle; The Farrish Law Firm; Freund, Freeze & Arnold; Frost Brown Todd; Kenneth H. Kinder II '00; Bea V. Larsen '69; The Lawrence Firm; Lerner, Sampson & Rothfuss; NKU Alumni Programs; NKU Foundation; O'Hara, Ruberg, Taylor, Sloan & Sergeant; Reminger Co.; Wm. T. (Bill) Robinson III; Schuh & Goldberg; Sutton Rankin Law; Taft, Stettinius & Hollister; Turner Construction Company; and Wood & Lamping.

NKU Chase Teams Succeed at Competitions

The NKU Chase College of Law Arbitration Team won the American Bar Association Regional Arbitration Competition held on NKU's campus Nov. 13-14. Alyse Bender, Jessica Biddle, Jonathan Davis and MyLinda Sims defeated teams from John Marshall Law School, Georgia State University College of Law, Louisiana State University Hebert Law Center and St. Mary's University School of Law. The team will advance to the National Arbitration Competition Jan. 21-22 in Chicago, Ill.



ABA Regional Arbitration Competition champions.

A second Chase team of Michelle Eviston, Lisa Gentry, Steven Doan, and Meg Thompson advanced to the semifinal round and tied for third place, defeating teams from Emory University School of Law and the University of South Dakota School of Law in the preliminary rounds.

The teams competed under the direction of Professor Richard Bales and with the support of local practitioners and professors who judged practice rounds.

Chase's National Trial Team won the Kentucky Mock Trial Competition hosted by the University of Louisville Nov. 13-14. The team of Lawrence Hilton, John Milligan, Sean Pharr and Danielle Reesor won the competition, defeating teams from the University of Kentucky College of Law and the University of Louisville Louis D. Brandeis School of Law. Third-year law student Lawrence Hilton won the award for Best Advocate.

Also, Chase students Ronald Bowling, Lauren Jansen, Peter Tripp and Siobhan Whitlock were semifinal-



Kentucky Mock Trial Competition champions.

ists at the Buffalo-Niagara Mock Trial Competition held in Buffalo, N.Y., Nov. 11-14. The Chase team defeated Georgia State University College of Law and South Texas College of Law to advance to the semifinals. The tournament consisted of 32 schools from across the country in what is one of the largest mock trial competitions of the fall semester. Second-year Chase student Ronald Bowling won the award for Best Cross Examination and third-year Chase student Siobhan Whitlock won the award for Best Summation.

The trial teams competed under the direction of Professor Kathleen Johnson and coaches Tifanie McMillan, Richard Smith Monahan and Robert Sanders. ©

UK University of Kentucky College of Law

By David A. Brennan
Dean and Laramie L. Leatherman
Professor of Law

UK Law to Host Conference on Structural Racism

I am pleased to announce the inaugural James and Mary Lassiter Distinguished Visiting Professor Conference, to be held on February 25, 2011, at the University of Kentucky Boone Faculty Center. Professor William M. Wiecek, Congdon Professor of Public Law and Professor of History at Syracuse University College of Law and the inaugural Lassiter Distinguished Visiting Professor at the UK College of Law, will lead this interdisciplinary exploration of structural racism.

Structural racism is a complex, dynamic system of cultural beliefs, historical legacies, practices within and among public and private organizations, and social policies that interweave to cause glaring racial disparities. Unlike traditional forms of racism, which result from individuals'



William M. Wiecek

attitudes and intent, structural racism remains unperceived by most Americans. Our society typically identifies, through law and other means, only explicit conscious and intentional acts of racism, while the discriminatory effects of social structures and processes go largely ignored by our legal system. Structural racism explains these unequal racial outcomes by focusing not on individual behavior but on social infrastructure.

Professor Wiecek is the first Lassiter Distinguished Visiting Professor, and will teach constitutional law to first-year UK Law students this spring. Thanks to a generous gift from the estate of Judge James M. Lassiter that the UK College of Law is proud to host Professor Wiecek and keynote speaker John A. Powell from the Kirwan Institute for the Study of Race and Ethnicity at The Ohio State University, as well as faculty from many disciplines at the University of Kentucky and presenters from other area universities and organizations, as they engage in this cross-disciplinary exploration. Judge James M. Lassiter was a 1949 graduate of the University of Kentucky College of Law. He served as judge of the 42nd Judicial Circuit of Kentucky for 18 years and as commonwealth attorney for the Circuit from 1954 to 1967. Judge Lassiter and his wife, Mary Moore Windsor Lassiter, were generous supporters of the college, and directed a third of their estate to the College of Law through in order to allow the college to recruit prominent legal scholars such as Professor Wiecek.

All are invited to attend. Please contact UK College of Law

Communications Director, Amanda DeBord, at amanda.debord@uky.edu for more information or visit the UK College of Law website at www.law.uky.edu. ©



University of Louisville School of Law

The Good Shepherd

In the beginning was a word; as that word was in the beginning, so shall it be in the end.

The Industrial Revolution and the Information Age have given new meaning to an old and ordinary English word, *shepherd*. In a society where few people tend sheep for a living, the word *shepherd* often connotes the lofty, even the ecclesiastical. Today's *good shepherd* tends a metaphorical flock and wears a clerical cloak. In most other contemporary uses, *shepherd* typically connotes a dog breed, as in a *German shepherd*.

Lawyers and legal educators should think of *good shepherds* in both of the modern senses of that phrase.

I speak first of dogs. The case is admittedly circumstantial, but William Prosser, the great torts scholar from New Albany, Indiana, was almost assuredly a dog lover. His treatise on torts asserted that even dogs know the difference between being tripped over and getting kicked. The dogs of Prosser's treatise often (but not always) got one free bite. And in a memorably delicate turn of phrase, Prosser described how libel *per se* inhered in "the imputation of canine parentage," presumably on the distaff side.

What Prosser never said of dogs, though, was this: No shepherd is good that is in want of work. Ask anyone who has ever kept a German shepherd. Dogs of that breed, known for their intelligence and their loyalty, hold down all sorts of jobs in our post-agrarian society beyond the tending of sheep. Shepherds serve with distinction in K9 units in police departments

■ In Memoriam

James T. Carey	Louisville
Philip Charles Chance	Louisville
Peter Mark Fox	Cincinnati
Marshall B. Hardy Jr.	Louisville
Michael Louis Harned	Frankfort
Charlene Hall Jones	Louisville
Elmer E. Morgan	Louisville
George C. Perry III	Paintsville
Linda Lee Robinson	Frankfort
Tramuel L. Runnels	Bowling Green

KENTUCKY BAR NEWS

everywhere. Thoroughly trained shepherds lend their eyes to the blind; ordinary shepherds lend their good natures to adoring children. But deprive a shepherd of work, even a modest job such as the entertainment of children, and you will have a vile, destructive son of a gun. People say that dogs smell fear; I say that dogs hate sloth. Dogs definitely know the difference between being pampered and being consigned to a life of idle waste.

Today's legal profession faces a challenge akin to that of the dog lover who wants to own a German shepherd but isn't prepared to find work for such an intelligent dog. American law schools are sending roughly 45,000 graduates each year into a legal employment market that offers only 20,000 jobs. The message for legal education is clear: We must find new ways to make law school worth 1,000 days in sweat and \$50,000 in debt. Young people with talent will eventually abandon a professional path that offers less than even chances of securing the \$70,000 annual income that many experts now regard as the threshold of financial viability for professional school graduates. We must keep law school affordable even as we make it more relevant to the practicing bar and to career paths outside the conventional boundaries of the legal profession.

The University of Louisville, quite fortunately, enjoys the distinction of being one of *preLaw Magazine's* best value law schools. Indeed, UofL Law is number 3 in this survey, trailing only Georgia State and Brigham Young. We

take pride in being an exceptional school for the common person. But we're not content to rest on our combination of affordable tuition and outstanding instruction. The University of Louisville's recently announced capital campaign, called "Charting Our Course," challenges the School of Law and its supporters to raise millions in new gifts and endowments. Investments in access to legal education mean more than just scholarships. They represent investments in the legal profession and the administration of justice in our society.

With equal seriousness we are tackling the challenge of professional relevance. Law professors have historically viewed themselves as gatekeepers of the profession. We are gatekeepers indeed, in ways that transcend the computation of grades and honors and the certification of character and fitness befitting the practice of law. Our relationship with our students is a covenant that spans not merely 1,000 days of law school, but the 2,000 weeks of a life spent serving others. In our transformed economic landscape — our utterly, traumatically, permanently transformed landscape — we must infuse intense, new energy into our teaching, our curricular design, our career counseling.

Students seek legal education as the last formal step to a life filled with service and meaning. As they pursue a calling that befits their talents, those of us in positions of leadership should find ways to ensure access to legal education, to sharpen its relevance to our

Mary Beth Cutter was recently named Director for Continuing Legal Education (CLE) of the Kentucky Bar Association after serving as the department's interim director. Cutter received her B.A., with distinction, from Centre College



Mary Beth Cutter

in 1994, and her Juris Doctorate from the University of Kentucky College of Law in 1997. Following her admission to the Kentucky Bar, Cutter was engaged in private practice in Lexington, focusing primarily in the area of health care law. She later joined the firm now known as Johnson, True & Guarnieri, LLP, in Frankfort, and expanded her practice to include general civil litigation, employment, real estate, and domestic law. She has been with the Kentucky Bar Association since November of 2008.

graduates' careers, and to reinvent ourselves. In language that resonates today as never before, each one of us needs to be a good shepherd.

For more information on UofL Law's "best value" ranking, see <http://www.law.louisville.edu/best-value>. For more information on the University of Louisville's "Charting Our Course" capital campaign, see <http://chartingourcourse.org>. Special thanks to Sophie, Savannah, and Finnegan, the three dogs in the author's household. ☺

Legally Insane by Jim Herrick



"No, offhand I don't know if being extradited would earn you any 'Sky Miles.'"

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SUMMARY OF MINUTES KBA BOARD OF GOVERNORS MEETING SEPTEMBER 17, 2010

The Board of Governors met on Friday, September 17, 2010. Officers and Bar Governors in attendance were, *President* B. Davis; *President-Elect* M. Keane; *Vice President* D. Myers; *Immediate Past President* C. English, Jr., and *Young Lawyers Section Chair* N. Billings. *Bar Governors 1st District* – J. Freed, S. Jaggars; *Bar Governors 2nd District* – R. Sullivan, J. Harris; *3rd District* – R. Hay, G. Wilson; *4th District* – D. Farnsley, *5th District* – F. Fugazzi, Jr.; *6th District* – D. Kramer, T. Rouse; and *7th District* – B. Rowe, W. Wilhoit. Bar Governors absent were: *Bar Governors* D. Ballantine, A. Britton, and J. Freed.

In Executive Session, the Board considered two (2) discipline cases, three (3) discipline default cases and two (2) restoration cases. Roger Rolfes of Covington and Dr. Robert Strode of Frankfort, non-lawyer members serving on the Board pursuant to SCR 3.375, participated in the deliberations.

In Regular Session, the Board of Governors conducted the following business:

- Heard a status report from the Board Policy Review Subcommittee, Diversity in the Profession

Committee, Kentucky Lawyer Assistance Program, Rules Committee and Office of Bar Counsel.

- Approved the appointment of the Corporate House Counsel Section 2010-2011 Officers.
- Approved the amended Bylaws of the Heath Law Section.
- Approved the amended Bylaws of the Young Lawyers Section.
- Approved the total reserve/surplus carry forward of 23 section funds for fiscal year ending on June 30, 2010.
- A copy of the CLE Commission Annual Report that is filed with the Supreme Court was distributed to the Board for their information and review.
- Approved increasing the Certificate of Good Standing fee to \$25.00 effective January 1, 2011.
- Director of Accounting/Membership Nicole Key presented the financial report.
- Approved the submission of three nominees to the Supreme Court of Kentucky for the appointment of one person to the CLE Commission from the Second District to fill the remainder of Kerry Morgan's term ending on June 30, 2013: Matthew P. Cook, Shawn Rosso Alott and Henry Brent Brennenstuhl.
- Approved the suspension of all KBA committee term limits for one year in an effort to finalize the committee member reappointments with the staggered term limits.
- Approved the recommendation of

- Charles E. English, Jr. of Bowling Green, William E. Johnson of Frankfort and W. Robert Lotz of Covington for submission to the Governor as nominees for the Board of Governors' appointment to the Public Advocacy Commission.
- Approved changing the Mentoring Committee to "Task Force on Mentor Program" with no term limits for the members and whose work will be completed upon making a report to the Board of Governors.
- President Davis reported that the 2011 Annual Convention Planning Committee will be chaired by Mindy Barfield of Dinsmore & Shohl in Lexington and the CLE Program Committee will be chaired by Anne Chesnut with Greenebaum Doll & McDonald in Lexington. The committees are scheduled to have their first organizational meetings on October 13. ☺

To KBA Members

Do you have a matter to discuss with the KBA's Board of Governors? Board meetings are scheduled on

March 18-19, 2011

May 20-21, 2011

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.

Before You Move...

Over 16,000 attorneys are licensed to practice in the state of Kentucky. It is vitally important that you keep the Kentucky Bar Association (KBA) informed of your correct mailing address. Pursuant to rule SCR 3.175, all KBA members must maintain a current address at which he or she may be communicated, as well as a physical address if your mailing address is a Post Office address. If you move, you must notify the Executive Director of the KBA **within 30 days**. All roster changes must be in writing and must include your 5-digit KBA member identification number. There are several ways to do this for your convenience.

VISIT our website at www.kybar.org to make **ONLINE** changes or to print an Address Change/Update Form

EMAIL the Executive Director via the Membership Department at kcobb@kybar.org

FAX the Address Change/Update Form obtained from our website or other written notification to:

Executive Director/Membership Department (502) 564-3225

MAIL the Address Change/Update Form obtained from our website or other

written notification to:

**Kentucky Bar Association
Executive Director
514 W. Main St.
Frankfort, KY 40601-1812**

* Announcements sent to the *Bench & Bar's Who, What, When & Where* column or communication with other departments other than the Executive Director do not comply with the rule and do not constitute a formal roster change with the KBA.

KENTUCKY AOC TO OFFER "LEGAL TRAINING FOR DEPENDENCY, NEGLECT AND ABUSE CASES"

The Department of Family and Juvenile Services for the Kentucky Administrative Office of the Courts will present six free CLE seminars this spring entitled "Legal Training for Dependency, Neglect and Abuse Cases."

While previously titled "Guardian *ad litem* Seminars," the training was renamed this year to be more representative and inclusive, according to department officials. Individuals invited to attend include Guardians ad litem (GAL), parents' attorneys, supervisors and caseworkers for the Cabinet for Health and Family Services (CHFS), volunteers for the Citizen Foster Care Review Board, volunteers with Ky. Court Appointed Special Advocates (CASA), as well as any others interested in the program.

Free CLEs, including one hour of ethics, will be provided. Although there is no fee for attending the seminars, advanced registration is required as space is limited.

To register for this training, please contact the Department of Family and Juvenile Services, Administrative Office of the Courts, 100 Millcreek Park, Frankfort, KY 40601, 1-800-923-2350,

ext. 50510, or email
DNATraining@kycourts.net

To register by email, please include the following information:

Name; title; Kentucky Bar Association member number; mailing address; city, state, zip code; phone

number; fax number; email address.

Any schedule and/or location changes will be sent by email, so please include a correct email address.

For more information, visit:
<http://courts.ky.gov/stateprograms/gal/default.htm#training>

The sites for these trainings are listed below:

March 29, 2011 –

***Basic Curriculum**

Murray State University
Mason Hall
Room 101
Corner of 14th and Payne Streets
Murray, Ky.

April 12, 2011 –

***Basic Curriculum**

Mason County Justice Building
Circuit Courtroom – 2nd Floor
100 West 3rd Street
Maysville, Ky.

April 20, 2011 –

***Advanced Curriculum**

South Central Bank Operations Center
Bale O'Bryan Community Room
501 S.L. Rogers Wells Blvd.
Glasgow, Ky.

*CLE credits for these programs are pending.

April 26, 2011 –

***Advanced Curriculum**

Kentucky Wesleyan College
Rogers Hall
(Inside the Winchester Center)
3000 Frederica Street
Owensboro, Ky.

May 13, 2011 –

***Advanced Curriculum**

Kenton County Justice Center
2nd Floor Conference Room
230 Madison Avenue
Covington, Ky.

June 3, 2011 –

***Advanced Curriculum**

Johnson County Judicial Center
2nd Floor Family Court Courtroom
908 Third Street
Paintsville, Ky.



LAW DAY 2011
The Legacy of John Adams, From Boston to Guantanamo

LAW DAY 2011 PLANNING GUIDES COMING SOON

Presidents of local bar associations across the Commonwealth should be on the lookout in February for their Law Day 2011 Celebration planning guides. This year's theme — *The Legacy of John Adams from Boston to Guantanamo* — provides the legal community with an opportunity to assess and celebrate the legacy of John Adams, explore the historical and contemporary role of lawyers in defending the rights of the accused, and renew our understanding of and appreciation for the fundamental principle of the rule of law.

Law Day 2011 falls on Sunday, May 1. For more information on Law Day, visit www.lawday.org or contact Shannon Roberts in the KBA Communications Department at (502) 564-3795, ext. 224.

**Kentucky Office of Bar Admissions
would like to hear from Lexington
area attorneys interested in serving
as proctors to assist with the
February 2011 KY Bar Exam.**

**The exam will be held February
22 & 23, 2011 at the Clarion Hotel
(formerly Holiday Inn North), in
Lexington, Ky. Interested attorneys
should be licensed at least three
years. Please call 859-246-2381,
Ext. 226 for more information.**

FEBRUARY 2011 KENTUCKY BAR APPLICANTS

Following is a list of applicants who have applied to take the February 22 & 23, 2011 Kentucky Bar Examination. If anyone has knowledge pertinent to determining the character and fitness of any of the applicants to become a member of the Kentucky Bar, please provide that information to:

Kentucky Office of Bar Admissions
1510 Newtown Pike, Suite 156
Lexington, KY 40511-1255
Phone: (859) 246-2381
Fax: (859) 246-2385
E-mail: info@kyoba.org

NOTE: This list is current as of November 29, 2011. Any applications filed after this date will not be included in this list.

KATHRYN ANN ADAMS	KIRBY JAMES FULLERTON	MELISSA GAYLE MCHENDRIX	JAMES LEIF SANDERS
ANNA MEGAN ADKINS	DAVID ANDREW GIBBONS	HERBERT LOUIS MCKEE JR	DESIRAE LEE SANDERS
TODD GREGORY ALLEN	ANNA KATHERINE GIRARD	KELLI ANN MCSURLEY	JESSICA ELIZABETH SCHELLENBERGER
ROBERT EUGENE ALTMAN III	LAUREN ALYESE GONDING	ERIN CHRISTINE MELCHIOR	DEVIN BRANIGAN SCHENK
KELLY LYNN AMICONE	DENISE MICHELLE GRAY	EDWARD LEO METZGER III	MATTHEW PAUL SCHULTZ
LINNSEY MARIE AMORES	SEAN PATRICK GRAY	JOHN PETER MILLON	NICOLE LEIGH SCHULZE
JOBETH MARIE BAIRD	BRENNAN CLAY GRAYSON	DAVID MICHAEL MOENING	MERIBETH HAMILTON SEWELL
DANIELLE WILSON BARR	KIM ANGELA GREEN	JAMES YASH MOORE	OLLIELORETTA DESSIEMARIE SHEPHERD
JAMES MICHAEL BELL	ERIC SHANE GRINNELL	ANNE-TYLER MORGAN	KATHERINE ANN SHOULTZ
ANDRES FELIPE BERNAL	KEVIN ANDREW GROSECLOSE	SEAN CHRISTOPHER MOWERY	BENJAMIN ISAAC SILVER
MATHEW JONIS BLYTHE	MEGAN BRITTNEY HALL	SEAN ELLISON MOYNAHAN	AMBER HUNT SISCO
JAMIE S BOLYARD	STEPHEN THOMAS HAMILTON JR	ALISON LYNN MURRELL	SUESAN DIANE SKAVDAHL
AMANDA LEAH BRAGG	LISA DAWN HAMPTON	JENNIFER MARIE MURZYN	SETH JASON SKLARE
TIMOTHY JAMES BRAMBLE	RYAN CHRISTOPHER HAMPTON	WILLIAM JEROME MYERS JR	ANDREA LAYNE STACKHOUSE
CLAIRE B BRICKMAN	SHUO HAN	SAM BOYD NEELY III	COURTNEY WHITING STALLWORTH
JOHN G BRITTAIN	JENNIFER MICHELE HANSEN	MELISSA CLAIRE NICHOLS	CHRISTEN MARIE STEIMLE
ADAM MICHAEL BROADUS	AHMED CHADY HASSAN	BRIAN PATRICK O'CONNOR	MICHELE LEE STEPHENS
KAREN ANN BROCKENBROW	MOLLY ANN HAWKINS	JUSTIN NEAL O'MALLEY	NICHOLAS RUSSELL STUCHELL
MICHAEL RYAN BRODARICK	SHELLIE LEANN HAYES	RANDY M O'NEAL	RICHARD SCOTT STUTLER
KENT RYAN BROWN	LORI GOETZ HEILMAN	SHAMEKA LYNN O'NEIL	JAMES CHRISTIAN TAUZIAC
CLAYTON TYLER BROWN	CRYSTAL LYN HEINZ	SAMUEL JEREMIAH OTTLEY III	LAURA ANN THOLKE
WILLIAM JOSHUA BROWN	ALLISON MARIE HELSINGER	LISA MARIE OWEN	JOHN HANSFORD THOMAS
HELEN GULGUN BUKULMEZ	BROOKE ELIZABETH HEMBREE	GABRIELLE LEIGH PASCHALL	MEGAN LOVELACE THOMPSON
BARRY GUY BURTON	ADRIENNE DENISE HENDERSON	TIMOTHY L PERDUE	SEAN PATRICK TILLMAN
KEVIN MICHAEL BUSH	MICHELLE MARIE HOFF	JESSICA MICHELLE PEYTON	CORINNE NOELLE TIRONE
KEISHA IRENE CALDWELL RICE	PATRICK MAURICE HOUSE	LAURA ANN PHILLIPS	KATHERINE JEAN TOMS
LEAH FAYE CAMPBELL	JOSHUA DAVID HOWARD	NICHOLAS JOSEPH PIECZONKA	TERRELL DESHA TOWLES
WILLIAM SCOTT CARBY	ANDREA RENEE HUNT	JENNIFER NICOLE PINARDO	NATALIE NICOLE TREECE
CHRISTOPHER MICHAEL CAREY	JAMES ANDREW INMAN	SHARI POLUR	FRANK KERN TREMPER
MARQUE GETHOMAS CAREY	RICHARD JOSEPH INSKEEP	CRYSTAL DAWN POMER	JAMES THOMAS TRENT
HART ROXANNA CARWELL	DAGNY JAMES	TARA BRITTANY POPE	DARLENE TURNMIRE
ROBERT WESTLEY CHARLES	JUSTIN WILLIAM JANES	JOEL JAMES CLAIR POWLESS	ANDREW JAMES VANDIVER
BLAKE ASHBY CHAVIS	TRACEY LOUISE JOHNSON-KIDD	BENJAMIN THOMAS DIXON PUGH	RACHEL ELYSE VOLK
LAURA ANN CLEMMONS	JEFFREY CURTIS KAKISH	NOELLE BRYANT RAO	SUZANNE MARIE VON LEHMAN
ROBERT DOUGLAS COBURN	CARRIE ANN KALBFLEISCH	RACHEL ELIZABETH RAWLINGS	SARAH ANN WALLING
JEDEDIAH LAWRENCE CONRAD	JAMES LEER KAY II	STEVEN LAWRENCE RAYBURN	LEE CANNON WEATHERLY
MATTHEW PAYTON COX	CASEY MARIE KELLER	SAMANTHA JEAN RAYMER	LARRY BRANDON WEST
VANESSA G CUNNINGHAM-ENGRAM	COURTNEY PRESTON KELLNER	DEVON ELLICE REAMS	CHARLES PHILLIP WEST
MEGAN ELIZABETH DAVIS	RASHONDA RENE' LAYE KENNEDY	KRISTEN MARIE REISS	JENNY TERESA WHITE
MATTHEW JAMES DAY	JOEL THOMAS KING	BRETT MICHAEL RENZENBRINK	DANIEL ELLIOTT WHITLEY
DAVID MICHAEL DIRR	MARY LOUISE KOVALESKY	TANYA GAIL RICE	KACIE ALLYN WILKINSON
THOMAS PATRICK DEMPSEY DOYLE	CASEY ALAN KRILL	TANYA MARIE RICHARDSON	GARY WAYNE WILLIAMS II
ERIC G ECKES	ATHANASIA NICOLE LEWIS	COLE BEYER RICHINS	TIFFANY WILLIAMSON-COLEMAN
JEREMY TILFORD ELLIS	HANSEL ELI LIGHTNER II	MEAGAN DEAN RIDEOUT	JACK FRANKLIN WISE III
JOHN ANTHONY ENGEL	CARRIE LYNN JOLLY LINK	DAVID THOMAS RILEY	JENNIFER MARIE WOLSING
PHILIP MICHAEL ESKEW	HENRY C. A. LIST JR	CARRIE DANIELE RITSERT	KRISTEN NICOLE WORAK
BRITTANY NICHOLE-LYNN EVERMAN	GRACE LU	EMILY O'NEAL ROACH	JOSEPH ANTHONY WORTHINGTON JR
JILL DORIS FEDDERS	ANTHONY ALAN MAHAN	BRIANDA ALUBA ROJAS	JONATHAN ANDREW WRIGHT
KATHERINE ELIZABETH FINNELL	ERIN NICOLE MALONY BOGGS	JEFFERY GARRISON ROUSSEAU	KEITH ANDREW WURZBACHER
JOHN DENNIS FLEMING	ELIZABETH MCKENZIE MARSHALL	SARAH RUTH RUEDEMAN	LEAH M YADEN
KELLY DIANE FORGHANI	KELLY LYNN MCDANIEL	LANGDON STITES RYAN	MELISSA EYRE YEAGLE
KRISTEN HANNAH FOWLER	CHRISTOPHER ALLAN MCGEE	STACEY ELIZABETH SALE	ELIZABETH PETERMAN YOUNGER

WHO, WHAT, WHEN & WHERE

ON THE MOVE



Anetria Connell

The law firm of **Goldberg Simpson** is pleased to announce that **Anetria Connell** has joined the firm as an associate in the Corporate and Tax Practice Group. Her practice primarily includes corporate and business, tax, real estate and securities matters. Connell graduated from Carleton College in 1999 and earned her J.D. from The George Washington University Law School in 2004 where she graduated with honors. Connell was admitted to the Kentucky Bar in 2005 and the Ohio Bar in 2004.



Mary Moorhouse

Mary Moorhouse has joined the law firm of **Sullivan, Mountjoy, Stainback & Miller PSC** as an associate. Moorhouse, an Owensboro High School alumnus, graduated from Indiana University in 2007 with a degree in Psychology and Criminal Justice. She is a 2010 graduate of Valparaiso University School of Law.

Spurgeon & Tinker is pleased to announce that **Matthew Barszcz** has joined the firm. Barszcz is a 2010 graduate of the University of Kentucky College of Law, where he was elected to the Order of the Coif and served as a staff member of the Kentucky Law Journal. During law school Barszcz was the recipient of numerous scholarships and won the Best Appellee Brief Award for the Reed Writing Club. Barszcz will concentrate his practice at Spurgeon & Tinker in the area of plaintiff and defense, catastrophic litigation, insurance defense and civil litigation.

Weber & Rose, P.S.C., is pleased to announce that **Chris Melton** and **Jennifer Wintergerst** have joined the firm as associates. Melton received his B.A., *cum laude*, from the University of Louisville and his J.D. from Washington



Chris Melton



Jennifer Wintergerst

University. Wintergerst received her B.A. from Indiana University and her J.D., *cum laude*, from the University of Louisville Louis D. Brandeis School of Law. Both Melton's and Wintergerst's practices concentrate on healthcare law, including long-term care facilities, Medicare and Medicaid billing and compliance, professional licensure, STARK, anti-kickback, and EMTALA, as well as general counsel services and white collar criminal defense. Prior to joining the firm, both Melton and Wintergerst served as Assistant Attorneys Generals where they prosecuted cases in the Medicaid Fraud and Abuse Control Division.

Wilson Elser has expanded its national healthcare practice with the addition of **Linda M. Stimmel** and **James Burd** as two new partners and the opening of a new Louisville office. Stimmel was a founding partner of Stewart & Stimmel LLP, of Dallas, Texas. Her extensive practice addresses transactional matters, and the operational and regulatory issues of the healthcare industry. She represents hospitals, physicians and other health care providers. She is licensed in Texas and Kentucky, and will travel between Wilson Elser's Dallas office and the new Louisville office, located at 100 Mallard Creek Road, Suite 400-A. Burd will lead Wilson Elser's entry into the Louisville market. He has experience in long-term care and medical malpractice cases as well as general liability litigation at both the state and federal level. He is also a Fellow in The Litigation Counsel of America, a trial lawyer honorary society composed of less than one-half of one percent of American lawyers.

Lindsay A. Cordes, has become associated with the Louisville law firm of **Fernandez Haynes & Kohn PLLC**. Cordes is a graduate of the University of Kentucky and the University of

Kentucky College of Law. As a law student, Cordes was a member of the Trial Advocacy Board and received the book award for the highest grade in her family law class. She will concentrate her practice in the area of family law.

Charles W. Arnold and **Christopher D. Miller** are pleased to announce the formation of **Arnold & Miller, PLC**. Their contact information is: Arnold & Miller, PLC, Victorian Square, 401 W. Main Street, Suite 303, Lexington, Kentucky 40507. Telephone: (859) 381-9999. Facsimile: (859) 389-6666. Email: carold@arnoldmillerlaw.com and cmiller@arnoldmillerlaw.com.



Allison L. Grogan



Courtney R. Samford

Wyatt, Tarrant & Combs, LLP, is pleased to announce that **Allison L. Grogan** and **Courtney Ross Samford** have joined the firm's Lexington office. Grogan was a former summer associate at Wyatt in 2009. She received her J.D. from the University of Kentucky College of Law in May 2010 and her B.A., *magna cum laude*, in English Writing and Spanish in 2006 from DePauw University. Samford was a former summer associate at Wyatt in 2008. She received her J.D. from the University of Kentucky in May 2010 and her B.A. in Government in 2006 from Centre College.



Hans Pfaffenberger

The law firm of **Goldberg Simpson** is pleased to announce that **Hans Pfaffenberger** has joined the Family Law Practice Group. Pfaffenberger has been with the firm since 2006 and has worked in the areas of insurance defense and general litigation. Pfaffenberger was previously with

WHO, WHAT, WHEN & WHERE

the Louisville Public Defender's Office and is a 2002 graduate of the University of Louisville Louis D. Brandeis School of Law.



Chelsea L.
Castiglioni

Gwin Steinmetz & Baird is pleased to announce that **Chelsea L. Castiglioni** has joined the firm as an associate. Castiglioni received her B.A. in Political Science from Rhodes College and earned her J.D.,

magna cum laude, from the University of Louisville Louis D. Brandeis School of Law in 2010. She devotes her practice to civil litigation defense.



Emily A. Faith

Fulton & Devlin, LLC, is pleased to announce that **Emily A. Faith** has joined the firm. Faith graduated from the University of Louisville with a B.A. in Political Science and a minor degree, with honors, in

History. She graduated from the University of Louisville Louis D. Brandeis School of Law in 1990. Her practice is concentrated on workers' compensation, insurance defense and subrogation.



Daniel E. Fuchs

Hall, Render, Killian, Heath & Lyman announced the hiring of associate attorney, **Daniel E. Fuchs**. Fuchs will practice in the areas of real estate and construction in the firm's Louisville office. He now repre-

sents public and private construction owners, general and specialty contractors, material suppliers, design professionals, and bonding companies across the country on engineering and construction-related issues. Fuchs graduated *cum laude* from the University of Louisville Louis D. Brandeis School of Law and is a member of several profes-

sional organizations including the American, Kentucky and Louisville Bar Associations.

Napier Gault, PLC, is pleased to announce that **Nicole Willet-Jones** has joined the firm as an associate. Willet-Jones graduated from the University of San Diego in 2001 and earned her J.D. from Northern Kentucky University Salmon P. Chase College of Law in 2008. She will be concentrating her practice in the areas of medical negligence and insurance defense.

Andrew M. Palmer, an associate at **Frost Brown Todd**, practices in the firm's Louisville office in the Insurance and Tort Defense Practice Group. Mr. Palmer graduated from the University of Louisville Louis D. Brandeis School of Law, where he was valedictorian and received several achievements, such as the Kentucky Defense Counsel Award for Torts Law and the L. Leroy Highbaugh, Sr. Award for Property Law. He was also the managing editor for the University of Louisville Law Review.



Courtney L.
Graham

Courtney L. Graham and **David N. Ward** were hired as associates with the firm of **Hectus & Strause PLLC**. Graham received her B.S. from the University of Louisville and J.D. from the University of Louisville Louis D. Brandeis School of Law, where she was a member of the *Journal of Animal and Environmental Law*. Graham is a contributing writer for *Beyond Blue Magazine* and an Educator/Collaborator



David N. Ward

for OCEANS Aware, located in South Africa. Her practice areas include business litigation, environmental, administrative and criminal matters. Ward received his bachelor's degree in finance, *summa cum laude*, from the University of Kentucky in December 2005 and earned his J.D. from the

University of Louisville Louis D. Brandeis School Of Law. Ward's interest is in business and commercial law.

Ricketts Law Offices is proud to announce that **Ashley Gillenwater Eade** has joined as Of Counsel. Eade practices family, civil and criminal litigation.

Baker Hostetler announced the continued expansion of its Cincinnati office with the addition of partner **W. Ashley Hess**. Hess, who was previously a partner at Greenebaum Doll & McDonald, has joined the firm's Business Group. As a member of the Business Group, Hess will continue to focus his practice on mergers and acquisitions, corporate governance as well as general business counseling for entrepreneurs and public and private companies. Hess is active with the Cincinnati Chapter of the Association for Corporate Growth (ACG), and currently serves on the organization's Board of Directors. Hess is also active in the Mergers & Acquisitions Committee of the American Bar Association's Business Law Section.



Bradley J. Sayles

The law firm of **Barnett, Benvenuti & Butler PLLC** is pleased to announce that **Bradley J. Sayles** has joined the firm as an associate. Sayles, a 2010 graduate of the University of Kentucky College of Law, concentrates his practice in the area of health care law and litigation.



Brittany Cross

The law firm of **Stites & Harbison** announced the addition of **Brittany Cross**, a new associate based in the Louisville office. Cross is a member of the Torts & Insurance Practice Service

Group. She graduated *summa cum laude* and Order of the Coif from the University of Kentucky College of Law in 2010. Cross was notes editor of the

WHO, WHAT, WHEN & WHERE

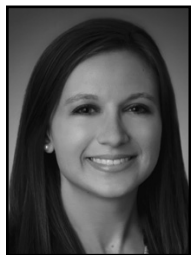
Kentucky Law Journal, Volume 98. Prior to joining the firm, Cross was a summer associate for Stites & Harbison in 2008 and 2009. She is admitted to practice in Kentucky.



Carter Vance

Stites & Harbison welcomes attorney **Carter Vance** to the Louisville office. Vance joins the firm as an associate. Vance is a member of the Business & Finance Service Group. He is a transactional lawyer

focusing on corporate finance, mergers and acquisitions and general corporate law. He has also represented lenders and borrowers in connection with senior secured lending and related matters. Vance graduated from Duke University in 2006, with his J.D., as well as his M.B.A. While attending Duke University, he was an international management exchange student at The London School of Economics and Political Science, London, England, September through December, 2005. Vance earned his B.A. in Physics from the University of Pennsylvania in 1998.



Dana E. Daughetee

The law firm of **Bowles Rice McDavid Graff & Love LLP** is pleased to announce that attorney **Dana Elyse Daughetee** has joined the firm as an associate in the firm's Lexington office.

Daughetee is focusing her practice in the area of business and commercial litigation and insurance defense. She received her law degree from the University of Kentucky College of Law in 2010, where she was a Special Features Editor of the *Kentucky Law Journal* and a Moot Court member. She received her undergraduate degree in English from Eastern Kentucky University in 2007, graduating *summa cum laude*.

Greenebaum Doll & McDonald PLLC is pleased to announce that

Daniel G. Mudd has joined the firm as an associate. Mudd joins Greenebaum as a member of the Tax and Finance Practice Group. He is also a member of the firm's Federal, State and Local Tax Teams. After receiving degrees in Finance and Business Management at the University of Kentucky, Mudd focused primarily on transactional law while pursuing his J.D. at the University of Kentucky College of Law.



Danielle Ravencraft

Reminger Co, LPA, is pleased to announce the addition of attorney **Danielle Ravencraft** to its Fort Mitchell office. Ravencraft focuses her legal practice in the areas of general tort liability, commercial premises liability, employment practices and workers' compensation. She is currently licensed in Kentucky and the Western District of Kentucky. Graduating *magna cum laude* from Northern Kentucky University Salmon P. Chase College of Law in May 2010, Ravencraft served an associate editor for NKU's Law Review and successfully competed in several national trial team and moot court competitions. She received the award for Best Speaker at both the 2009 National Adoption and Child Welfare Moot Court Competition and the 2010 National Moot Court Championship. Upon graduation, Ravencraft was inducted into the Order of Barristers, a national honorary organization recognizing graduating law students excelling in oral and written advocacy. Ravencraft is a member of various professional bar associations, including the American, Kentucky and Northern Kentucky Bar Associations. She also serves as an advisor for Chase College of Law's Moot Court Board, where she coaches law students participating in national moot court competitions.

Don Ridings Jr. has been elected to the partnership of **Covington & Burling LLP** in Washington, D.C.

Stites & Harbison welcomes attorney **Elizabeth "Betsy" Johnson** to the



Elizabeth "Betsy" Johnson

Lexington office. Johnson joins the firm as a member of the Health Care Service Group. Her practice focuses on health care law and regulatory insurance issues. From January 2008 through Sept. 30, 2010, Johnson served as the

Commissioner for the Commonwealth of Kentucky's Department for Medicaid Services. Her career highlights include practicing as a staff attorney for the Kentucky Court of Appeals, as an administrative law judge with the Cabinet for Health and Family Services, as counsel to the Kentucky Department of Insurance, as counsel to the Legislative Research Commission and as Deputy Commissioner for the Kentucky Department for Employee Insurance, prior to becoming Medicaid Commissioner. Johnson earned her J.D. from Temple University School of Law in 1994. She received her B.A., with distinction, in Political Science from the University of Kentucky in 1991. She is a member of the Kentucky Bar Association.



Gary T. Banet

Wyatt, Tarrant & Combs, LLP, is pleased to welcome **Gary T. Banet** to its Estate Planning Group. Licensed to practice in both Kentucky and Indiana, Banet works from Wyatt's Louisville,

Ky., and New Albany, Ind., offices, focusing his practice on estate planning, estate and trust administration, and estate and trust litigation. An active member of the southern Indiana community, Banet is president of the Floyd County Humane Society and serves on the Board of Directors for the Floyd County Youth Services Bureau. Professionally, he is secretary of the Kentuckiana Professionals Networking Association and is on the Southern Indiana Estate Planning Council. Banet is a member of the Louisville Bar Association, the Floyd County, Indiana

Bar Association and the Kentucky Bar Association. Banet received a B.A. from Indiana University. He also received a M.S. from the University of Louisville, and earned his J.D. from the University of Louisville Louis D. Brandeis School of Law.



Jeffrey C. Shipp

Jeffrey C. Shipp has joined **Wallace Boggs, PLLC** as a partner. Shipp practices in the areas of litigation, personal injury, social security, worker's compensation and municipal law. In addition,

Shipp is a trained mediator and accepts mediation cases in the Northern Kentucky area. He is a member of the Kentucky Bar Association, Ohio Bar Association, Northern Kentucky Bar Association, American Bar Association and American Trial Lawyers Association. He earned his law degree from Northern Kentucky University Salmon P. Chase College of Law in 1985 and a B.A. at Northern Kentucky University in 1982.



Kyle M. Vaughn

The law firm of **Schiller Osbourn Barnes & Maloney, PLLC**, is pleased to announce that **Kyle M. Vaughn** has become associated with the firm. Vaughn obtained his J.D.

from the University of Louisville Louis D. Brandeis School of Law, graduating *cum laude*, and was admitted to practice in Kentucky in 2009. He joins the firm as an associate and will concentrate his practice in insurance defense, specifically including the areas of public sector liability, personal injury and employment law.

The law firm of **Goldberg Simpson** is pleased to announce the addition of an attorney in the insurance defense and general litigation areas. **Jayme Hart** joined the firm as an associate of Goldberg Simpson. Hart is originally



Jayme Hart

from Madison, Ind., and graduated *cum laude* from Bryn Mawr College in 2002. Hart earned her Juris Doctor at the University of Pittsburgh School of Law. She was admitted to the Kentucky Bar in October 2008 and began practicing in Louisville handling workers' compensation matters prior to joining Goldberg Simpson. She is a member of the Louisville and Kentucky Bar Associations, as well as the Kentucky Justice Association where she serves as a Young Lawyers' Committee member.



Lori Ross

Lori Ross, a partner at **Strauss & Troy**, has been selected to serve as a mediator for the mediation group at The Center for Resolution of Disputes, LLC. The Center primarily provides mediation services in Greater Cincinnati, Northern Kentucky and in other parts of Ohio, Kentucky and Indiana. Lori will continue her active litigation practice at Strauss & Troy, but will provide mediation services exclusively through the Center. Ross is a graduate of Miami University and the University of Cincinnati College of Law. She is admitted to practice in Ohio and Kentucky.



Mark R. Bush

Since his admission to the Kentucky Bar a decade ago, Bush has developed a diverse litigation practice, representing clients in numerous jury and bench trials, hearings, appellate review, administrative proceedings and extensive

mediation. Bush is also a frequent speaker to professionals and non-professionals in the areas of medical negligence, general tort liability and workers' compensation. He is a member of the Kentucky Bar Association, the Northern Kentucky Bar Association, the Louisville Bar Association and the Defense Research Institute. Bush can be reached by email at

mbush@reminger.com or by calling (859) 426-7222.



C. Jessica Pratt

Ferreri & Fogle, PLLC, is pleased to announce the addition of three new associates to its Ky. offices: **C. Jessica Pratt, Natalie Laszkowski, and Emily Faith Wetmore Oakes**.



Emily F. Wetmore Oakes

Pratt received her B.A. in Political Science from the University of Kentucky in 1998 and her J.D. from the New England School of Law in 2002. Since that time she has practiced in the areas of employment

discrimination, medical malpractice and product liability defense in both New Jersey and New York Courts. She has joined the firm as an associate and will be working out of Ferreri and Fogle's Florence, Ky., office in the practice area of Workers' Compensation defense. Laszkowski received her B.S. in Justice Administration in 2007 and her J.D. from the University of Louisville Louis D. Brandeis School of Law. As an associate, she will be assisting out of Ferreri and Fogle's Louisville and Lexington offices with both workers' compensation and civil matters. Oakes received her B.A. in History from Alice Lloyd College with honors in 2007 and her J.D. from Appalachian School of Law in 2010. She has joined the firm as an associate and will be working out of Ferreri and Fogle's Lexington office in the area of workers' compensation.

WHO, WHAT, WHEN & WHERE

Stoll Keenon Ogden PLLC is pleased to announce that four attorneys, all former SKO summer associates, have joined the firm's Lexington and Louisville offices. **Sarah Sloan Wilson** will practice law from the firm's Lexington office, and **Barry L. Dunn**, **Christopher E. Schaefer** and **Michael G. Swansburg, Jr.**, will work from the Louisville office. Sarah Sloan Wilson earned a J.D. from the University of Kentucky College of Law, a Master of Arts degree in Teaching from City University in Washington and a Bachelor of Arts degree from the University of Kentucky. She joins the firm's Business Entities and Transactions Practice Group, as well as the Real Estate, Finance and Development Practice Group. Wilson was a summer associate in the SKO Lexington office in 2008. Wilson served as a law clerk to The Honorable Eugene E. Siler, Jr., in the U.S. Court of Appeals for the Sixth Circuit from 2009 to 2010. Swansburg was also an SKO summer associate, working in the Louisville office in 2008. He joins the firm's Labor, Employment and Employee Benefits Practice Group, as well as the Business Litigation Practice Group. Swansburg earned a J.D. at the University of Louisville Louis D. Brandeis School of Law and a Bachelor of Arts degree from James Madison University. Christopher Schaefer, who also worked in the SKO Louisville office in 2008 as a summer associate, joins the firm's Business Litigation Practice Group. He earned a J.D. from the University of Kentucky College of Law and a Bachelor of Arts degree from Bellarmine University. Schaefer served as a law clerk to The Honorable John G. Heyburn II in the United States District Court from 2009 to 2010. Barry Dunn, a summer associate in the Louisville office in 2008, joins the firm's Utility and Energy Practice Group and the Business Litigation Practice Group. He earned a J.D. at the University of Louisville Louis D. Brandeis School of Law, a Master of Arts degree in Political Science from the University of Cincinnati and a Bachelor of Arts degree from Lindsey Wilson College.



Scott A. Best

divorce and family law, medical malpractice, nursing home litigation and tractor trailer litigation. Best is a member of the Kentucky Bar Association, Ohio Bar Association, Kentucky Justice Association, Chase Alumni Association and Salmon P. Chase American Inns of Court (2010). He earned his law degree from Northern Kentucky University Salmon P. Chase College of Law and a B.S. at Northern Kentucky University.



J. Brooken Smith

Gregory F. Van Tatenhove in the Eastern District of Kentucky. Prior to law school, he spent more than five years in Washington, D.C., as a legislative aide to Senator Mitch McConnell and, most recently, as the legislative director for former Rep. Anne Northup. Smith is a graduate of Georgetown University and received his J.D. from the University of Kentucky College of Law in May 2009.



John Y. Brown III

regional candidate, is currently the president of JYB3 Group, a public affairs firm headquartered in Frankfort. Brown will

Scott A. Best has joined **Wallace Boggs, PLLC**, as an associate. Best practices in the areas of litigation, personal injury, auto accidents, construction litigation, property damage, corporate representation,

Wyatt, Tarrant & Combs, LLP, is pleased to welcome **J. Brooken Smith** to its Litigation and Dispute Resolution Service Team. Smith joins Wyatt after serving as a law clerk to U.S. District Judge

Miller Wells PLLC has announced that **John Y. Brown III** will be joining its Louisville office as Of Counsel to the firm. Brown, a former two-term Kentucky Secretary of State and lieutenant gubernatorial candidate, is currently the president

head up Miller Wells' Government Relations Practice Group and advise clients with overlapping legal and public affairs needs. Brown graduated from Bellarmine University with a B.A., *magna cum laude*, and an MBA, and from the University of Kentucky College of Law with a J.D., with distinction.

The former Clerk of the United States District Court for the Western District of Kentucky, **Jeffrey A. Apperson**, announced that he will assume the position of Vice-President of the International Division of the National Center for State Courts (NCSC). His headquarters will be in Washington, D.C., where he will manage the international relations portfolio. Apperson is one of the longest serving Clerks of Court in the federal judiciary, having served as United States District Court Clerk for 17 years and United States Bankruptcy Court Clerk for nine years.

IN THE NEWS

Legal Services Corporation (LSC) honored **Wyatt, Tarrant & Combs, LLP**, during its Oct. 18, 2010, reception in Louisville. This honor was in recognition of Wyatt's lawyers who provided assistance to low-income individuals and families through pro bono and other volunteer activities. Wyatt is the only firm in Louisville, Ky., that has established a fellowship program with the Legal Aid Society that fully funds the salary of a staff attorney. LSC grants are distributed to 136 nonprofit legal aid programs across the nation, including four in Kentucky – Legal Aid of the Bluegrass, Legal Aid Society, Appalachian Research and Defense Fund of Kentucky and Kentucky Legal Aid.

Stoll Keenon Ogden PLLC and **Frost Brown Todd** have recently been named two of the Top Eight Best of Louisville™ Employers by *Louisville Magazine*.

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WHO, WHAT, WHEN & WHERE

Greenebaum Doll & McDonald PLLC is pleased to announce that **Robert L. Brown**, a member in the firm's Louisville office, has co-authored the book, *Doing Business in Vietnam, 2010 ed.* (Thompson Reuters/West). This is the second *Doing Business* book Brown has written this year — the first was *Doing Business in South Korea*. Brown is a member of Greenebaum's Corporate and Commercial Practice Group and is the firm's International Team Chair and China Team Chair. He has worked closely with international companies as an investment banker and attorney, serving both in-house and as an outside advisor, and has passed all four parts of the CPA exam. Brown is admitted as an attorney in New York, Washington, D.C., California and Kentucky, and is qualified as a solicitor in England and Wales, and Hong Kong.

Greenebaum Doll & McDonald PLLC is pleased to announce that **Richard S. Cleary**, a member in the firm's Louisville office, has been re-elected to the Council for the American Bar Association (ABA) Section of Labor and Employment Law. Cleary will serve a second four-year term (2010-2014). The Council for the ABA Section of Labor and Employment Law is the leadership group for the 22,000-plus members of the Section. Membership on the Council is a recognition of significant contributions to the profession. Cleary is the Chairman of the firm's Labor and Employment Group. Cleary received his bachelor's degree from Washington and Lee University and his J.D. from Georgetown University Law Center.

John McGarvey, a shareholder of Morgan & Pottinger, PSC, has been named the Southern Region Representative of the Uniform Law Commission's Legislative Council and was named the Chairman of the Visiting Committee for the University of Kentucky College of Law. McGarvey was appointed to Greater Louisville Inc.'s Tax Reform Task Force and named to the Uniform Law Commission Enactment Committee for

the 2010 Amendments to Revised Article 9. McGarvey is also Co-Chair of the ABA's Task Force for the enactment of the 2010 Amendments. He was also elected as a American Law Institute member.



Mark Jordan

Mark Jordan, a partner, and **Verna West**, a paralegal, both with The Drew Law Firm of downtown Cincinnati, volunteered with other area attorneys and paralegals at the "Wills for First Responders" event serving firefighters of the Northeast Fire Collaborative, which consists of Blue Ash, Loveland-Symmes, Mason, Sharonville and Sycamore Township fire departments.



Lori B. Shelburne

Gess Mattingly & Atchison, P.S.C., announced that **Lori B. Shelburne**, shareholder, has been named a Fellow in the American Academy of Matrimonial Lawyers. Shelburne has been practicing with Gess Mattingly & Atchison for the last 13 years.

Greenebaum Doll & McDonald PLLC is pleased to announce that **Margaret E. Keane** was selected president of the Southern Conference of Bar Presidents (SCBP) at their annual meeting on Oct. 9, 2010. The Southern Conference of Bar Presidents is comprised of bar associations from 17 states and the U.S. Virgin Islands. All of the associations (with the exception of the Virgin Islands) are in the Southeastern United States, from Florida to Texas, Kansas to Maryland and states in between. The 2011 annual meeting will be sponsored by the Kentucky Bar Association (KBA) in Lexington, Ky. Keane is a member of Greenebaum's Litigation and Dispute Resolution Practice Group, where she has practiced since 1982. Ms. Keane is a past president of the Louisville Bar Association and is currently president-

elect of the KBA. She will serve as president for the KBA during the 2011-2012 term. Keane received her J.D., *magna cum laude*, from the University of Louisville Louis D. Brandeis School of Law.

C. Edward Hastie has returned to the full-time practice of law at Morgan & Pottinger, PSC, after spending the last seven years as director of development and general counsel for a non-profit independent school in Fayette County. His areas of practice include trusts and estates, probate, and estate planning. Hastie is located in M&P's Lexington office and can be reached at (859) 253-1900 or ceh@morganandpottinger.com.

Greenebaum Doll & McDonald PLLC is pleased to announce that **Mark A. Loyd**, a member in the firm's Louisville office, has been appointed a chair of the Institute for Professionals in Taxation (IPT)/American Bar Association (ABA) Advanced Property Tax Seminar Committee. Loyd is a member of the firm's Tax and Finance Practice Group and is chair of the State and Local Tax Team. Loyd's practice includes acting as an advocate for clients in resolving disputes with tax authorities (such as the Kentucky and Indiana Departments of Revenue, local tax authorities and the Internal Revenue Service) involving income, gross receipts, sales and use, property, franchise/license and excise taxes — whether at the administrative level or through litigation. He also provides advice to clients as to how taxes may or may not apply to existing or contemplated transactions, entities or ownership structures — all with an eye toward tax minimization. Mr. Loyd received his bachelor's degree from Bellarmine College, his MBA from the University of Louisville and his J.D. from the University of Louisville Louis D. Brandeis School of Law.

Joseph L. Fink III, professor of pharmacy law and policy at the University of Kentucky College of Pharmacy, has been selected to serve as vice chair of the Editorial Advisory Board for the *Food and Drug Policy Forum* of the

WHO, WHAT, WHEN & WHERE

Food and Drug Law Institute (FDLI). This is a new bi-weekly periodical about food and drug law policy. Topics related to food, drugs, medical devices, tobacco, cosmetics, animal drugs and biologics are covered as well as discussion of policy related to regulation of such items on the federal, state, local and international levels.

John Rosenberg, retired founder of the Appalachian Research and Defense Fund of Kentucky, was awarded the 2010 Andrus Award for Community Service. The award is the top volunteer honor given by AARP Kentucky.



Michael Davidson

The firm of Davidson and Oeltgen, PLLC, is pleased to announce that **Michael Davidson** has been re-appointed for a second term as the chair of the Domestic Violence Committee of the Family Law Section of the American Bar Association.

Sturgill, Turner, Barker & Moloney, PLLC, is pleased to announce that **Andrew DeSimone**, a partner in the firm, has been elected as chairperson of the Board of Directors for Bluegrass Crime Stoppers, Inc.

The Kentucky Bicycle and Bikeway Commission (KBBC) recently re-elected Stites & Harbison attorney **Bill Gorton** of Lexington, Ky., as chairman. He will serve a four-year term. KBBC, composed of seven members, was established by the Kentucky legislature to represent the interests of bicyclists in advising the Secretary of Transportation on all matters pertaining to bicycles, bikeways, and their use, extent and location. Bill Gorton is a member of Stites & Harbison (www.stites.com). He is a member of the firm's Environmental, Natural Resources and Energy Service Group and the Sustainability and Emerging Technologies Group.

Wm. T. (Bill) Robinson III, current president-elect of the American Bar Association and member-in-charge of



Wm. T. (Bill) Robinson III

the Northern Kentucky offices of Frost Brown Todd LLC, was honored on Oct. 18 by the Legal Services Corporation at its Board meeting in Louisville, Ky.

Robinson, a past-president of the Kentucky Bar Association and of

the Kentucky Bar Foundation, was recognized for his many years of significant contributions to equal justice and access to the courts in Kentucky. On Oct. 26, 2010, Robinson was presented the Metropolitan Award. This award is presented annually by the Metropolitan Club at RiverCenter in Covington to a local citizen who has made significant, life-long, civic contributions toward the unification and enhancement of the Cincinnati/Northern Kentucky regional community. Throughout his career, Robinson has been an active leader in his community and in his profession. Robinson was also reappointed by Governor Steven L. Beshear to serve an additional four-year term on the Kentucky Development Partnership Board. Robinson will continue to represent the Fourth Congressional District.

At its Nov. 18, 2010, meeting, the Kentucky Registry of Election Finance unanimously re-elected **Craig C. Dilger** to serve as its chairman, marking a fourth consecutive term for the Louisville attorney. Dilger, a Republican, was first appointed to the registry by former Gov. Ernie Fletcher from names submitted by organizations demonstrating a nonpartisan interest in fair elections and informed voting. He was re-appointed to the registry by Gov. Steven L. Beshear on Oct. 29, 2008. He previously served two consecutive terms as vice-chair of the registry.

Greenebaum Doll & McDonald PLLC is pleased to announce that **Claude R. (Chip) Bowles Jr.**, a member in the firm's Louisville office, has authored a chapter in Aspatore Books' 2010 edition of *Inside the Minds: Buying and Selling Distressed Businesses*. Bowles' chapter is titled, "Caveat Emptor: The Impact of

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WHO, WHAT, WHEN & WHERE

Recent Decisions on Distressed Business Purchase Strategy.” Bowles is a member of Greenebaum’s Tax and Finance Practice Group. He concentrates his practice in the area of bankruptcy law, distressed asset sales, professional compensation, ethical issues in bankruptcy and workout situations, representation of non-attorney professionals and debtor and creditor rights. Mr. Bowles is a Director of the American Bankruptcy Institute, a member of the ABI Grant Committee, and serves as co-editor of the American Bankruptcy Institute’s Journal Ethics Column. He also has served as chair of the American Bankruptcy Institute’s Chapter 11 Professional Fee Study. Bowles received his B.A. degree from the University of Kentucky and his J.D., with high distinction, from the University of Kentucky College of Law.

Scott White, a shareholder of Morgan & Pottinger, PSC, was appointed to the Board of Directors for Jubilee Jobs of Lexington.

Stoll Keenon Ogden PLLC is pleased to announce that its attorney **David Royse** has been named a 2010 Rising Star by the Lexington Young Professionals Association (LYPA). LYPA’s Annual Rising Star program honors individuals, ages 40 and under, that positively affect the Lexington community through professional and non-professional service and achievement. Royse is a member of the firm’s Business Litigation practice. Royse has been appointed by the governor of Kentucky as a Special Justice on the Kentucky Supreme Court. He was also appointed by the U.S. District Court in the Eastern District of Kentucky as the plaintiffs’ liaison counsel in the aviation litigation arising out of the crash of Comair 5191. Royse serves on the Commerce Lexington Public Policy Committee.

Dick Clay, a partner in Dinsmore & Shohl’s Louisville office, has been recognized for his significant contributions to Kentucky Country Day School (KCD) by being given its Exceptional Service Award. The honor is awarded annually to recognize the efforts of individuals who assist with the ongoing development,



Dick Clay

and quality improvements to KCD. Clay received the honor due in large part to his service as Co-Chair of KCD’s Capital Campaign, which led an \$8 million fundraising campaign for the school’s new

fine arts wing. The campaign also raised an additional \$2.5 million in valuable support for the endowment. Clay is a member of the Litigation Department and serves as the firm’s Kentucky Ethics Partner. He practices in the areas of complex litigation, pharmaceutical and medical device litigation, appellate practice and administrative law. Clay earned his J.D. from the University of Kentucky College of Law and his B.A. from Davidson College.

In recognition of his anti-death penalty work, the Kentucky Association of Criminal Defense Lawyers (KACDL) has given its KACDL Bill of Rights Enforcer Award to **Donald H. Vish** for effectively supporting and vigilantly



Donald H. Vish

protecting the Bill of Rights for all citizens accused of crime and subjected to prosecution and punishment by the government. The award was presented on November 5th at the KACDL annual meeting.

Stoll Keenon Ogden is pleased to announce that firm attorney **Douglas F. Brent** was recognized as an Outstanding Volunteer Attorney by the Legal Aid Society. Brent is Of Counsel with the firm and a member of the Utilities and Energy Practice Group. He was honored for his pro bono work with the Domestic Violence Advocacy Program. Brent received the award on Friday, October 29 at the Louisville Bar Center.

Douglas A. Bozell, a partner of Frost Brown Todd LLC, was recently elected a Fellow of The American College of Trust and Estate Counsel (ACTEC). The

Fowler Measle & Bell PLLC is pleased to announce receipt of the prestigious 2010 Alfred P. Sloan Award for Business Excellence in Workplace Flexibility. The Sloan Award recognizes exemplary employers across the country that embrace workplace flexibility as a business strategy to increase effectiveness, support positive business results, and encourage employee excellence. Honorees represent the top 20 percent of U.S. employers in terms of their innovative and effective work practices and policies. Thirty communities across the country participate in the national awards program.



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College honors those professionals whose sustained performance in the practice exemplifies the highest standards of professionalism and achievement by granting them membership as Fellows. Bozell is the sixth Frost Brown Todd attorney invited to the College.

Jill Meyer, member-in-charge of Frost Brown Todd's Cincinnati office, was inducted into the Hall of Fame and presented with the Cincinnati Champion Award by Working in Neighborhoods (WIN). She received the award at WIN's November 16 event at Paul Brown Stadium for her commitment to improving the Cincinnati community. Meyer is the chair of the board of trustees of Downtown Cincinnati, Inc., a member of the Steering Committee of the Downtown Council of the Cincinnati USA Regional Chamber, and serves on the board of trustees for many local organizations including the Cincinnati Arts Association, BRIDGES for a Just Community and the Cincinnati Bar Foundation. She was recently elected as a special director on the Board of the Cincinnati USA Regional Chamber. Meyer is also a member of the United Way Tocqueville Society and Women's Leadership Council and is a Leadership Giver to Artswave.



Jim Wagoner

Jim Wagoner, of Ferreri & Fogle, PLLC was recognized along with his wife, Ruth Wagoner for their selfless dedication to the students involved in the Mock Trial Program at Bellarmine

University. Students and other sponsors have created an endowment naming it the Ruth and Jim Wagoner Mock Trial Endowment. The endowment, funded by past Alumni who participated in the program, friends and supporters, was for \$83,800. President McGowan of Bellarmine University contributed an additional \$16,200 placing the total endowment at \$100,000. The interest from this endowment will be used to help fund

the program in addition to the support already received from the university and student government.



LaJuana Wilcher

LaJuana Wilcher, former secretary of the Kentucky Environmental and Public Protection Cabinet and former assistant administrator for the Office of Water at EPA, recently facilitated the Clean Water America Alliance's (CWAA) third *National Dialogue, Managing One Water*, in Los Angeles, Calif. Discussions focused on breaking down the silos within the clean water community to better integrate drinking water, wastewater, groundwater, reuse, and stormwater management; improving stakeholder relations; and advancing regional water sustainability. Wilcher served as co-chair and a moderator for the American Law Institute – American Bar Association (ALI-ABA) two-day course of study, *Clean Water Act: Law*

and Regulation, November 4-5, in Washington, D.C.



Wayne F. Wilson

The Louisville law firm of Goldberg Simpson is pleased to announce that one of its partners, **Wayne F. Wilson**, has been elected as a Fellow of the American College of Trust and Estate Counsel (ACTEC).

Wayne is a native of Somerset and leads the Goldberg Simpson Trusts and Estates Practice Group. Established in 1949, ACTEC is a nonprofit association of 2,600 trust and estate lawyers peer-elected to membership based on substantial contributions to the field of trusts and estates law. Wilson can be contacted at wwilson@goldbergsimpson.com

Richard A. Bales, a professor at Northern Kentucky University Salmon P. Chase College of Law, was recently elected as a member of the American Law Institute.

RELOCATION

David Tachau, Dustin E. Meek and Brian F. Haara, members of Tachau Meek PLC (www.tachaulaw.com), are pleased to announce the relocation of their offices to 3600 National City Tower, 101 S. Fifth Street, Louisville, Ky., 40202-3120, where they will continue their practices in commercial and general civil litigation with Jonathan T. Salomon, Katherine E. McKune, James R. Craig and Katherine Lacy Crosby.



David Tachau



Dustin E. Meek



Brian F. Haara



Jonathan T.
Salomon



Katherine E. McKune



James R. Craig



Katherine L. Crosby

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

PRIVATE REPRIMAND

The Judicial Conduct Commission issues this private reprimand to a judge for violation of SCR 4.300, the Code of Judicial Conduct, Canon 3B (5).

The Commission determined after an informal investigation that the judge made inappropriate religious references in open court in discussing wrongful conduct.

Canon 3B(5) provides in pertinent part:

A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon sex, race, religion, national origin, disability, age, sexual orientation or socioeconomic status....

The commentary to Canon 3B(5) states:

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into dispute.

The Commission unanimously finds that the judge's inappropriate religious references violated Canon 3B(5), and the judge is hereby privately reprimanded.

In issuing this private reprimand, the Commission duly considered that the judge fully cooperated in the investigation and admitted the impropriety of the comments.

This order is issued this 12th day of November, 2010.

STEPHEN D. WOLNITZEK
CHAIR

This is to certify that a true copy of this Order has been served on the judge by mail this 12th day of November, 2010.

JAMES D. LAWSON
EXECUTIVE SECRETARY

Kentucky Bar Foundation Welcomes New Fellows

*Our deepest
appreciation goes to
these distinguished
members of the
Kentucky Bar for
their financial
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Charles C. Adams, prior to his death in September 2009, practiced law in Somerset with the law firm formerly known as Adams & Adams. A graduate of Duke University and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1952. Mr. Adams served as Pulaski County Attorney (1958-1962) and served on the state Ethics Committee (1980-1996). Mr. Adams has been enrolled *posthumously* as a Kentucky Bar Foundation Life Fellow by the law firm of Adams & Venters.

Amy Sullivan Anderson of Campbellsville currently serves as District Judge for the Eleventh Judicial District. A graduate of the University of Kentucky and the University of Kentucky College of Law, she was admitted to the Kentucky Bar in 2000.

Jeffrey R. Aylor practices law in Florence. A graduate of Northern Kentucky University and the Salmon P. Chase College of Law, he was admitted to the Kentucky Bar in 1990.

Gerald L. Bell practices law in Murray with the law firm of Haverstock, Bell & Pitman. A graduate of Murray State University and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1986. Mr. Bell currently serves as a member of the Kentucky Bar Foundation Board of Directors.

Bruce R. Bentley practices law in London with the law firm of Zoellers, Hudson & Bentley. A graduate of the University of Kentucky and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1999.

John D. Bertram practices law in Campbellsville with the law firm of Bertram, Cox & Miller. A graduate of Centre College of Kentucky and the Salmon P. Chase College of Law, he was admitted to the Kentucky Bar in 1990. Mr. Bertram currently serves as a member of the Kentucky Bar Foundation Board of Directors.

Frank A. Brancato practices law in Owensboro with the law firm of Bamberger, Abshier & Brancato. A graduate of Ohio University and Capital

University Law School, he was admitted to the Kentucky Bar in 1987 and is also a member of the Ohio Bar. Mr. Brancato is a Life Fellow.

Bradford L. Breeding practices law in London with the law firm of Kelley, Brown & Breeding. A graduate of Morehead State University and the University of Louisville Brandeis School of Law, he was admitted to the Kentucky Bar in 1994.

Ruth Taylor Broderick practices law in Bowling Green with the law firm of Broderick & Davenport. A graduate of the University of Kentucky and Thomas M. Cooley Law School, she was admitted to the Kentucky Bar in 2010. Ms. Broderick is a Life Fellow.

Daniel M. Burlew, II of Owensboro currently serves as District Judge for the Sixth Judicial District. A graduate of Southern Methodist University and the University of Louisville Brandeis School of Law, he was admitted to the Kentucky Bar in 1969.

William T. Cain of Somerset previously served as Pulaski Circuit Court Judge until his retirement. A graduate of the University of Kentucky and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1968. Judge Cain is a Life Fellow.

Charles H. Cassis practices law in Louisville with the law firm of Goldberg Simpson. A graduate of Southern Methodist University and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1991. He currently serves as a member of the Kentucky Bar Foundation Board of Directors. Mr. Cassis is a Life Fellow.

Joseph W. Castlen, III of Owensboro currently serves as Daviess Circuit Court Judge. A graduate of Western Kentucky University and the University of Louisville Brandeis School of Law, he was admitted to the Kentucky Bar in 1977. Judge Castlen is a Life Fellow.

Carl N. Frazier practices law in Lexington with the law firm of Stoll Keenon Ogden. A graduate of Transylvania University and the University of Kentucky College of Law,

he was admitted to the Kentucky Bar in 2007 and is also a member of the KBA Young Lawyers Section where he currently serves as Secretary/Treasurer on the Executive Committee.

Jennifer M. Gatherwright practices law in Crescent Springs with the law firm of Gatherwright Freeman & Associates. A graduate of Northern Kentucky University and the Salmon P. Chase College of Law, she was admitted to the Kentucky Bar in 2002 and is also a member of the Ohio Bar.

John Sale Gordon practices law in Owensboro with Gordon Law Offices. A graduate of the University of Kentucky and the University of Louisville Brandeis School of Law, he was admitted to the Kentucky Bar in 2004. Mr. Gordon is a Life Fellow.

Julia Hawes Gordon practices law in Owensboro with Gordon Law Offices. A graduate of the University of Kentucky and the University of Kentucky College of Law, she was admitted to the Kentucky Bar in 2004. Ms. Gordon is a Life Fellow.

Mark E. Greene practices law in Ashland. A graduate of the University of Kentucky and the University of Louisville Brandeis School of Law, he was admitted to the Kentucky Bar in 1975.

Rhonda Hatfield-Jeffers practices law in Somerset. A graduate of the University of Kentucky and the University of Louisville Brandeis School of Law, she was admitted to the Kentucky Bar in 1999.

Allen W. Holbrook practices law in Owensboro with the law firm of Sullivan, Mountjoy, Stainback & Miller. A graduate of Vanderbilt University and the University of Louisville Brandeis School of Law, he was admitted to the Kentucky Bar in 1975.

David S. Kaplan practices law in Louisville with the law firm of Miller Wells. A graduate of the University of North Carolina and Harvard Law School, he was admitted to the Kentucky Bar in 1997.

Sara B. Klein practices law in Ashland with the law firm of Edwards, Klein, Anderson & Shope. A graduate of Ohio University and the University of Toledo College of Law, she was admitted to the Kentucky Bar in 1996 and is also a member of the Ohio and West Virginia Bars.

Thomas L. Klein practices law in Ashland with the law firm of Edwards, Klein, Anderson & Shope. A graduate of the University of Cincinnati and the University of Toledo College of Law, he was admitted to the Kentucky Bar in 1996 and is also a member of the Ohio and West Virginia Bars.

Sarah Hay Knight practices law in Somerset with the Law Office of Richard Hay. A graduate of Villanova University and the University of Kentucky College of Law, she was admitted to the Kentucky Bar in 2007. Ms. Knight is a Life Fellow.

Marc H. Levy practices law in Louisville. A graduate of Western Kentucky University and the University of Louisville Brandeis School of Law, he was admitted to the Kentucky Bar in 1980.

T. Tommy Littlepage practices law in Owensboro with The Law Offices of Wilson, Hutchinson, Poteat & Littlepage. A graduate of Transylvania University and the American University Washington College of Law, he was admitted to the Kentucky Bar in 2005 and is also a member of the Maryland and District of Columbia Bars.

David A. Nunery practices law in Campbellsville with the law firm of Nunery & Bennett. A graduate of Georgetown College and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1973.

Connie Sullivan Phillips of Campbellsville currently serves as Chief Judge for the Eleventh Judicial District. A graduate of Campbellsville College and the University of Kentucky College of Law, she was admitted to the Kentucky Bar in 1984.

Rebekkah Bravo Rechter currently serves as a staff attorney for the Kentucky Supreme Court. A graduate of Johns Hopkins University and Georgetown

University Law Center, she was admitted to the Kentucky Bar in 2003 and is also a member of the Florida Bar. Ms. Rechter is also a member of the KBA Young Lawyers Section where she currently serves as Chair-Elect on the Executive Committee. She is a Life Fellow.

Jonathan S. Ricketts practices law in Louisville with Ricketts Law Offices. A graduate of Hanover College and the University of Louisville Brandeis School of Law, he was admitted to the Kentucky Bar in 2000. Mr. Ricketts is a Life Fellow.

Elizabeth W. Sigler practices law in Bowling Green with the law firm of Bell, Orr, Ayers & Moore. A graduate of Centre College of Kentucky and the University of Kentucky College of Law, she was admitted to the Kentucky Bar in 1999. Ms. Sigler is a Life Fellow.

Virginia J. Southgate practices law in Newport with the law firm of Patton & Southgate. A graduate of Northern Kentucky University and the Salmon P. Chase College of Law, she was admitted to the Kentucky Bar in 1996. She currently serves as a member of the Kentucky Bar Foundation Board of Directors. Ms. Southgate is a Life Fellow.

David W. Thomas practices law in Nicholasville. A graduate of Brigham Young University and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1981. Mr. Thomas is a Life Fellow.

Lucy Bryans VanMeter, prior to her death in July 2010, resided in Lexington and was the wife of Kentucky Court of Appeals Judge Laurance B. VanMeter. A graduate of Smith College and the University of Kentucky College of Law, she was admitted to the Kentucky Bar in 1987. Ms. VanMeter has been enrolled *posthumously* as a Kentucky Bar Foundation Life Fellow by the judges and staff of the Kentucky Court of Appeals.

James S. Watson practices law in Owensboro with the law firm of Foreman Watson. A graduate of Murray State University and the Cumberland School of Law at Samford, he was admitted to the Kentucky Bar in 1987 and is also a member of the Indiana Bar.

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JANUARY

- 19 Property Tax Update
Cincinnati Bar Association
- 25 The Legislative Ethics Commission
State Government Bar Association
- 25 Video Replay: Substance Abuse Instruction
Cincinnati Bar Association
- 25-26 New Lawyers Program
Kentucky Bar Association
- 27 Social Security: Appeals Council & Federal Court Practice
Cincinnati Bar Association

FEBRUARY

- 2 Family Law Mediation
Cincinnati Bar Association
- 11 Advance Estate Planning Institute
Cincinnati Bar Association
- 15 Video Replay: Professionalism, Ethics & Substance Abuse Instruction
Cincinnati Bar Association
- 16 Social Media and the Law: Facebook, Linked In and Others
Cincinnati Bar Association
- 17-18 13th Biennial Business Associations Law Institute
UK CLE
- 19 Third Party Litigation Finance in the United States
http://chaselaw.nku.edu/spring_symposium.php
Chase College of Law
- 22 The Role of the Chief Justice on the Kentucky Supreme Court
State Government Bar Association

MARCH

- 2 Foreclosure: Lender Perspective
Cincinnati Bar Association
- 15 Professionalism, Ethics & Substance Abuse Instruction
Cincinnati Bar Association
- 16 Foreclosure: Debt Readjustment
Cincinnati Bar Association
- 24 Advocacy Series/Part One – Pre-Trial Practice
Cincinnati Bar Association
- 29 Kentucky's Corrections Crisis: Reforming the Commonwealth's Sentencing Laws
State Government Bar Association
- 30 Healthcare Enterprise: A Primer on the Regulations Affecting the Business of Healthcare
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