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Publisher
John D. Meyers

Editor
Frances Catron Cadle

Managing Editor
Shannon H. Roberts

Design & Layout
Carin Hahn Lovell, By Design
carin@bydesigned.com

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

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

Subscription Price: $20 per year. Members subscription is included in annual dues and is not less than 50% of the lowest subscription price paid by subscribers. For more information, call 502-564-3795.

POSTMASTER
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As the year draws to a close, I am nearing the end of my tour of duty as “captain of the ship” for the Kentucky Bar Association. Rather than captain of the ship, in many ways I feel much more like a sailor crawling down from the crow’s nest. I am thankful that the ship has not run aground on my watch but still concerned about the challenges that lie ahead.

As I try to recall the events of the year, some of our accomplishments come to mind. But also coming to mind, and of more importance, is the work which remains to be done. This year we experienced significant strides forward in improving the efficiency and effectiveness of our discipline system. The KBA has new Bar Counsel and has redefined the role and responsibilities of the Disciplinary Clerk.

The KBA has stepped up our role in promoting the efficiency of the court system by reaching out to the legislature to address issues relating to the funding of the justice system. This is an ongoing project which will continue into the legislature’s budget session in 2014. A broad base of lawyer support is required if this effort to increase funding for the justice system is to be successful. A special thanks to Bill Johnson, KBA Vice President, for his leadership in this effort.

The KBA is evaluating systems of communications and publications as we move into the 21st century. We are looking at the expanded role of electronic communications and how that should interface with print publications sent by regular mail.

Additionally, we are re-evaluating the KBA’s role in regulating advertising. We are trying to strike the delicate balance between protecting the free speech of lawyers and safeguarding the public with respect to lawyer advertising.

Our successes this year are due to the efforts of our staff, our board of governors and our members. In wrapping up this year, I wish I could fully express the gratitude I have to Executive Director John Meyers, Director of Administration Melissa Blackwell and Executive Assistant Elaine Baesler. They are the lifeblood of our association. They work creatively and with enthusiasm to carry out the daily operations of the KBA. To them, I say thank you.

To Mary Beth Cutter, our CLE Director, and Dianna Moore, Program Coordinator, thank you for an excellent year of seminars and for your work on our convention. Also, I want to commend the efforts of Yvette Hourigan, as KYLAP Director, in dealing with the many issues faced by lawyers coping with substance abuse, depression and the host of similar problems that many face in our profession. Congratulations to Todd Horstmeyer for his work on behalf of the Kentucky Bar Foundation.

To our new Chief Bar Counsel, Tommy Glover, I say welcome. Many thanks to Jay Garrett for the work he did as Interim Chief Bar Counsel. Michele Pogrotsky deserves our appreciation for the outstanding job she does in overseeing our finances. Thanks to Amy Carman and Shannon Roberts for the work they do in communications and publications. A special thanks to Ben Swartz for the design support he has provided through this year.

Finally, let me thank Doug Farnsley, John Bilby, Bobby Simpson and Richard Hay, as convention and CLE chairs, for preparing for the upcoming Annual Convention in Louisville. The convention promises to have exceptional programs and memorable social events. Hopefully, you will be there.

As the new KBA year begins, Tom Rouse will be taking the helm as President. He will be leading our efforts at legislative outreach to promote funding for our justice system and other ongoing initiatives, as well as carrying out the many missions of the KBA. Please give him your help. These programs are beneficial to our profession and important to our justice system. Tom is well prepared and will be an excellent leader for the KBA.

As my term ends, I cannot resist the temptation to be philosophical. All past presidents, at any level, aspire to appear as wise statesmen. I am no different. I would like to share a few “rules” to guide you through the future in your practice and your daily living, for that matter:

- People are more important than things.
- Character counts.
- Family matters.
- Never say never.
- Life is simpler when you tell the truth.
- There are no substitutes for fresh air, sunshine and exercise.
- Do the right thing.
- Love someone and let someone love you.

While what we do is very important to us and our clients, never forget that there is more to life than practicing law.

Good luck to our association in the coming year and Godspeed to all of you as you fight the good fight to represent your clients and to promote our profession.
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KBA 2013 Annual Convention

The Kentucky Bar Association proudly invites its members to the 2013 Annual Convention scheduled for Wednesday, June 19, through Friday, June 21, at the Galt House Hotel & Suites in historic downtown Louisville. Convention brochures were mailed to members in early April and online registration is now available.

The 2013 convention promises to be one of the most informative and educational ever, with more than 60 CLE programs planned to address the varied interests of practitioners across the Commonwealth. Featured programs for the convention include famed litigators David Boies and Theodore B. Olson on Wednesday, June 19; national legal analyst and author Jeffrey Toobin on Thursday, June 20; and an in-depth panel discussion entitled “The Hatfields and McCoys: From Filing Suits to Firing Shots,” on Friday, June 21. Panelists will include historical consultant and local expert Bill Richardson; constitutional law professor Paul Salamanca; author and history professor Altina Waller; and Darrell Fetty, producer of the recent award-winning History Channel miniseries, “Hatfields & McCoys.” Additionally, relatives of two key players in the feud -- Jacob P. Cline III, great grandson of Perry Cline, and James B. Ratliff, cousin to “Bad Frank” Phillips – will participate in the panel discussion.

The KBA looks forward to welcoming its members to Louisville! Please mark your calendars now to attend. Visit www.kybar.org/577 for details and registration information.

---

Memorial Service

Tuesday, June 18
3:30 p.m.

Cathedral of the Assumption
433 South Fifth Street

The Kentucky Bar Association will celebrate the lives and legacies of those KBA members who have passed since June 1, 2012, during this 22nd annual Memorial Service. The service will be officiated by representatives of different faiths and will feature a number of musical selections. All KBA members, especially those arriving early at the convention or residing in the Louisville area, are encouraged to attend.

Kick-Off Event

Wednesday, June 19
5:15 p.m. - 7:15 p.m.

Actors Theatre
316 West Main Street

Complimentary with Registration
Pre-Registration required

Sponsor | Stites & Harisson P.A.

Visit with colleagues while exploring this spacious theatre complex that serves as the home of one of the finest acting companies in America. You’ll relish appetizers created especially for the event by Iron Chef America winner Edward Lee, whose new restaurant, MilkWood, is housed downstairs. Enjoy the beautiful lobby area in the main building – a National Historic Landmark dating to 1837 – and tour the stages that helped hone the skills of actors such as Kathy Bates, Ned Beatty and Kevin Bacon. Actors Theatre, which also served as the premiere site for a number of Pulitzer Prize-winning plays, is conveniently located within a short walk of our host hotel, the Galt House Hotel & Suites.

Afternoon Speciality Break

Wednesday, June 19
Grand Ballroom Foyer

Immediately following the Feature CLE

Sponsor | YLD Young Lawyers Division

Young Lawyers Division Luncheon

Thursday, June 20
12:00 p.m. - 1:30 p.m.

$20 per person

Sponsor | YLD Young Lawyers Division

The Young Lawyers Division (YLD) wishes to extend an invitation to all KBA members and guests to attend its Annual Luncheon. The Division will honor recipients of the 2013 Outstanding Young Lawyer Award, Service to Young Lawyers Award, and Young Lawyer Service to Community Award. Immediately following the luncheon program, all YLD members are invited to remain for the annual meeting of the Young Lawyers Division.
Conventional Events

Young Lawyers Division Reception
Thursday, June 20
5:00 p.m. – 6:30 p.m.
Jeff Ruby’s
325 West Main Street
Complimentary with Registration
Pre-Registration Required

Sponsor | YLD YOUNG LAWYERS DIVISION
Enjoy complimentary beverages and hors d’oeuvres with your friends and colleagues at Jeff Ruby’s, located at the northeast corner of Fourth and Main Streets, next to the Galt House. This event is sponsored by the Young Lawyers Division, with generous support from Lawyers Mutual Insurance Company of Kentucky, and is open to all YLD members and friends.

Bench & Bar Reception
Thursday, June 20
5:00 p.m. – 6:15 p.m.
Grand Ballroom Foyer, Suite Tower
Complimentary with Registration
Pre-Registration Required

Sponsor | Dinsmore
Complimentary hors d’oeuvres and beverages will be on the docket during this cocktail reception held just prior to the Annual Banquet in the Grand Ballroom Foyer of the Galt House Hotel’s Suite Tower.

Annual Banquet
Thursday, June 20
at 6:30 p.m.
Grand Ballroom, Suite Tower
$60 per person
Pre-Registration required

“Voices of Kentuckiana,” a celebrated community chorus known throughout the region, will sing songs of inspiration as we gather together to share a delicious dinner and celebrate the KBA’s new officers, Bar Governors and recipients of the 2013 Distinguished Judge, Distinguished Lawyer and Chief Justice’s Special Service awards. Please join us for this enjoyable evening of fellowship and camaraderie.

KBA Membership Awards Luncheon
Friday, June 21
12:00 PM – 1:00 PM
Archibald Ballroom, Rivue Tower
$30 per person

During this annual luncheon event, we’ll honor KBA members whose exceptional contributions have served as a positive example to both the profession and the public. Awards to be presented during the luncheon include the Bruce K. Davis Bar Service Award; the Donated Legal Services Award; and the Nathaniel R. Harper Award.

We’ll also recognize past KBA presidents, present our annual Law Day Awards, and pay homage to the 91 senior counselors who achieved this special status in 2013.

Wills for Warriors – Help Write a Will for a Veteran

Continuing a KBA tradition of community service, the 2013 Annual Convention Planning Committee is encouraging members to work with Kentucky’s legal aid programs that offer services to low-income veterans.

Join the KBA as we demonstrate the “Power of One.” Through this effort, every attorney attending the 2013 Annual Convention is asked to commit to help a needy client through a local legal aid program. That’s one attorney helping one client pro bono. If this effort is achieved, more than 2,000 clients will be helped. We encourage you to “Be One.” On the registration form, or at the registration desk, you can indicate your willingness to help a needy client. At the convention, the legal aid programs will be matching up volunteer attorneys with low-income veterans who need wills, powers of attorney, health care surrogates, and living wills. Be sure to mark your registration form if you will be willing to volunteer to help a veteran either at the convention or in your community. If you have expertise in other areas, representatives from Kentucky’s legal aid programs will match your skills to help needy veterans in your community.
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KBA Environment, Energy & Resources Law Section
KBA Ethics Committee
KBA Family Law Section
KBA Labor & Employment Law Section
KBA Probate & Trust Law Section
KBA Taxation Law Section
KBA Workers’ Compensation Law Section
KBA Young Lawyers Division
Supreme Court of Kentucky

Convention Exhibitors

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Community Foundation of Louisville
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D’s Purses & Accessories, DMH Inc.
Dean Dorton Allen Ford, PLLC
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Hay Consulting LLC
Horizons Web Marketing
Kentucky Assoc. of Independent Land Title Agents
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Kentucky Defense Counsel, Inc.
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Lawyers Mutual Insurance Company of Kentucky
LexisNexis
National Insurance Agency, Inc.
NKU Chase College of Law
Payroll Solutions Inc.
ProTempus
Secretary of State Alison Lundergan Grimes Booth
Sue’s Accessories and Gifts
Young Lawyers Division
**Featured Convention Programs**

**Wednesday June 19**

**David Boies and Theodore B. Olson**

**Thursday June 20**

**Jeffrey Toobin**

**Friday June 21**

**The Hatfield Family***

**WEDNESDAY, JUNE 19** — David Boies and Theodore B. Olson, once adversaries in the case of *Bush v. Gore*, have teamed in recent years to represent the plaintiffs in the historic civil rights litigation concerning California’s Prop 8 same-sex marriage ban. Boies is the founder and chairman of Boies, Schiller & Flexner LLP, in Armonk, N.Y. Olson is a partner in Gibson, Dunn & Crutcher’s Washington, D.C., office.

**THURSDAY, JUNE 20** — Jeffrey Toobin is a staff writer at *The New Yorker*, senior legal analyst at CNN, and the author of such best-sellers as *The Nine: Inside the Secret World of the Supreme Court*, and *100 Close to Call: The Thirty-Six Day Battle to Decide the 2000 Election*.

**FRIDAY, JUNE 21** — Panel members for “The Hatfields & McCosys: From Filing Suits to Firing Shots” will discuss the complex feud along the 1ug River between eastern Kentucky and West Virginia, including the role of coal companies; timber and mining rights; *Mahon v. Justice*; and the portrayal of the feud in the movies and media.

*Hatfield family photo courtesy of West Virginia State Archives.

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WHAT IS KENTUCKY MEDICAID?

Background

Medicaid is a joint federal-state program designed to provide health care to aged, disabled, or low-income persons. It is an entitlement program. An entitlement program is a means-tested public assistance program that allows a person to receive benefits if circumstances, such as medical condition, income and assets, meet certain guidelines.

Medicaid has two major categories of eligibility:

1) categorically needy, including Supplemental Security Income (SSI) recipients and 2) medically needy, including individuals who would be eligible for a government assistance program such as SSI, except income and resources exceed the eligibility limits. Nursing home residents are in the medically needy category.

While exact numbers vary depending on year and statistics used, only about 16,265, or 2 percent, of all Medicaid recipients in Kentucky are nursing home residents. Of the remaining 98 percent of Medicaid recipients, about 430,000 are children and the remaining 330,000 are non-nursing home elderly and others who fall within various Medicaid sub-categories. Given Kentucky’s population of 4,300,000 (2010), the percentage of individuals on Medicaid is staggering, but not drastically different from many other states.

In 2010, Kentucky’s Medicaid budget was $5.6 billion. Of this amount, $836,000,000 (15 percent) went to pay for nursing home care. Kentucky pays about 30 percent of the above amounts; the Federal government pays the other 70 percent.

Since its creation in 1965, the Medicaid program has been regularly revised at the federal and state levels through legislation, administrative regulation, local practice and undocumented changes in interpretation and enforcement of existing regulations. Multiple agencies are involved with the Medicaid eligibility process in Kentucky.

In Kentucky, the program is administered at the county level. These local offices are run by DCBS and contract with DMS to do the Medicaid application intake work. When an individual or an attorney on behalf of a client files a Medicaid application, it is not actually filed with “Medicaid”, but rather with DCBS. Each county office run by DCBS is required to follow the same state regulations, although the application of these regulations may vary among different offices. DCBS does the intake and makes many initial eligibility decisions, but some issues get sent to DMS in Frankfort for review and some end up with CHFS for review. Regardless of claimed rapid turnaround, issues sent to DMS may often take one to six months for a response.
LONG TERM CARE

Dealing with the Kentucky Medicaid program is not science and the same facts presented to different offices may generate different results. In dealing with local offices, it is important to know the rules, be respectful but persistent, and understand how to utilize the appeals process.

MEDICAID PROGRAMS FOR THE AGED, BLIND AND DISABLED

A brief overview of Medicaid eligibility is available at: http://chfs.ky.gov/dms/mnfs.htm. There are basically two types of benefits: 1) in-home and 2) nursing home benefits.

HOME AND COMMUNITY-BASED SERVICES

The Kentucky Medicaid program for the elderly has a Home and Community Based Services program (HCBS) and an Institutionalized Care program (IC). The HCBS has financial requirements similar to the IC and is designed to provide modest help to keep people on the cusp of nursing home care in the home a little longer.

Statewide, however, only limited services for the HCBS exist. Effort is being made at the cabinet level to expand this portion of the Medicaid program, with a goal of maintaining quality of care while shifting some elderly care nursing home costs, the highest-priced option, to home care, a potentially lower-priced option. Medicaid's Home and Community Based Waiver (HCBS) services include personal care assistance, program coordination, homemaker services, respite care and case management. While HCBS services allow more elderly to remain at in-home care, a determination still needs to be made whether expansion of this program would net any cost savings to the state.

HCBS benefit applications are made at the Medicaid office in the county where the applicant lives. The applicant must provide a physician's letter stating that nursing home level of care is needed and that without immediate home-based services, nursing home admittance would be required. In other words, there is currently no home-based support service availability until the wolf is actually at the door.

NURSING HOME CARE

The application process to Medicaid for a nursing home resident is similar but not identical to HCBS's HCBS application process. Approximately 70 percent of nursing home residents on any given day are Medicaid-eligible. Medicaid pays for some portion (though rarely the entire cost) of such residents, amounting to approximately 60 percent of the state's overall daily nursing home revenue. The balance of nursing home revenue comes from residents who pay 30 percent using their assets and income, 8 percent from Medicare and 2 percent from long term care insurance and other sources.

MEDICAID ELIGIBILITY

Who is Eligible for Nursing Facility Services?

A person may be eligible for Nursing Facility services if he or she:

- is a U. S. Citizen, Qualified Alien who has been legally admitted and a permanent resident for at least five years or a Nonqualified Alien
- is age 65 or over, blind (20/200), or disabled
- resides in a facility that participates in the Kentucky Medicaid Program and is placed in a Medicaid certified bed;
- requires and meets the Nursing Facility Level of Care (LoC) criteria giving consideration to the medical diagnosis, age-related dependencies, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or non-institutional services; and
- is income and resource-eligible.

Individuals who are not “65 or over, blind, or disabled” do not directly qualify for Medicaid regardless of how poor or sick they are. They may, however, qualify for other programs, e.g., SSI, which may then automatically qualify them for Medicaid.

THE LEVEL OF CARE REQUIREMENT

Most nursing home residents meet the LoC requirement. Otherwise, they would not be in a nursing home. Essentially, they must need assistance with at least two of the following six Activities of Daily Living (ADLs):

- Eating
- Walking
- Bathing
- Dressing
- Toileting
- Transferring (i.e., bed to chair)

Nursing homes initially assess the LoC required. Be advised that the state contracts with a separate entity, referred to as the Peer Review Organization (PRO), to certify the individual meets LoC criteria. The final decision regarding LoC is the PRO's decision, not that of the nursing home or the individual’s physician.

THE INCOME REQUIREMENT

As a practical matter, nursing home Medicaid eligibility, if the resident’s monthly income is less than the cost of monthly nursing home care, the resident is income-eligible. As Medicaid is the payor of last resort, any other result would leave some nursing home residents who receive small pensions but have no assets, with no means of paying for care despite having followed

<table>
<thead>
<tr>
<th>Year</th>
<th>Population *</th>
<th>Enrolled Count</th>
<th>Total Medicaid Paid</th>
<th>Federal Share Paid</th>
<th>States Share Paid</th>
</tr>
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<td>$4,029,610,426.00</td>
<td>$1,317,922,192.00</td>
<td>$2,712,624.00</td>
</tr>
</tbody>
</table>

Notes:

What is income for Medicaid purposes?

All money received by the Medicaid applicant is income. Do not confuse concepts of taxable income with Medicaid income; they are distinct.

Social Security (gross), pensions (gross), IRA distributions (both traditional and Roth), wages or self-employment income, annuity income (gross), rental income (net income after expenses), interest, and dividends are included as Medicaid income. Also included in the Medicaid income definition are gifts, inheritances and irregular payments such as tobacco quotas and oil royalties. All count as income in the month of receipt, and if not spent, as a resource beginning in the following month. Month indicates calendar month.

Medicaid does not consider as income proceeds acquired by indebtedness of the applicant such as equity loan proceeds, reverse mortgage payments and credit card cash advances. But to the extent that these funds are not spent in the month received, they become countable resources in the following month.

Current Medicaid policy is to consider available credit lines on equity loans and reverse mortgages as available resources, and there is some interesting math in certain circumstances. If a nursing home resident owns a home that is worth $100,000, Medicaid will claim he has $100,000 of assets. If he then takes out a $60,000 equity line (but does not actually use any of it), Medicaid will claim he has $160,000 of assets. It is important to be aware of these nuances when representing your client.

all rules. Such person would be penalized for having worked. When contrasted with citizens who never worked, never paid taxes and are now Medicaid eligible, the system would be building in a negative incentive to work.11

Technically, however, any applicant whose income is in excess of $2,130/month (2013) is ineligible for Medicaid benefits. This situation can be remedied by the use of a Qualified Income Trust (QIT), also known as a Miller Trust.

The QIT is an irrevocable trust that has the specific purpose of diverting an applicant’s income so he becomes technically income-eligible for Medicaid benefits. If the applicant has income exceeding $2,130/month, sufficient income should be put into the QIT to bring gross income below that amount.12 This amount is generally increased every January.

TREATMENT OF INCOME ONCE ON MEDICAID—SINGLE APPLICANT

Medicaid considers anyone who has never married or who is divorced or widowed to be a single applicant. If both spouses are in a nursing home, each is considered single for Medicaid eligibility purposes.

All of a single applicant’s remaining income, after allowable deductions, is paid to the nursing home except for a monthly $40 personal needs allowance. The single individual may receive deductions for verified, paid health insurance premiums, such as the Medicare Part B premium (the state may pay this premium for low-income individuals), Part D Rx, Medicare supplement policy, etc. Medicaid then pays the remaining nursing home charges.

The resident is not allowed to spend money on any home, life insurance premium, car or other expense. Medicaid may – at its discretion – grant an offset to pay prior unpaid medical or nursing home expenses in some cases. This is commonly called a “deviation.”

TREATMENT OF INCOME ONCE ON MEDICAID—MARRIED APPLICANT

The non-institutionalized spouse of a Medicaid applicant is known as a Community Spouse (CS). The law provides some measure of economic protection to the CS. The CS may keep all of her income. In addition, to the extent such monthly income is less than $1,892 (gross), the CS may keep enough of the institutionalized spouse’s (IS) available income to bring total income to $1,892 (2012-13), indexed every July 1st. This is known as the Community Spouse Income Allowance or CSIA, and also known as the Minimum Monthly Maintenance Needs Allowance.

THE RESOURCE REQUIREMENT (ASSETS)

To be Medicaid-eligible for nursing home care, the applicant must have very limited economic resources – countable resources of no more than $2,000, a standard that has not changed since 1989. The relevant phrase is “countable resources.” The eligibility rules vary in part for a single applicant versus a married applicant with a community spouse.

In Medicaid-speak, an asset is called a “resource.” Resources are assets that an individual or a couple owns and can apply, either directly or by sale or conversion, to meet basic needs of food, clothing and shelter. Thus, resources are everything an applicant or his spouse owns or has a legal right to assert a claim upon, including an inheritance (upon receipt) and which under Medicaid, cannot be disclaimed for “resource” purposes. Similarly, all assets in a Revocable Living Trust are resources. It does not matter if the asset was held before the marriage, if it is a lawsuit award, if it is an inheritance or in whose name it was held previously.

Having defined what resources an applicant has, the next inquiry is which of those resources are “countable resources” for Medicaid eligibility purposes.

COUNTABLE RESOURCES FOR A SINGLE MEDICAID APPLICANT

For a single applicant, assets that are countable resources consist of all bank accounts, CD’s, savings bonds, individual stocks, brokerage accounts, mutual funds, real property and life insurance cash values. Most annuities are also countable resources unless they meet the Deficit Reduction Act (DRA) definition of exempt resources. Unless you specifically purchase a DRA compliant annuity, few annuities are exempt.

On the other hand, all “tax-qualified” retirement plans are exempt resources under Kentucky Medicaid regulations, if they are in payout status. This means that IRAs, Roth IRAs, pensions, 401K’s, 403b’s and similar plans are exempt and do not count as available resources. There is no requirement in federal tax law for any withdrawal on a traditional IRA prior to age 70½ and...
MEDICAID TREATMENT OF THE HOME AND OTHER REAL ESTATE

For a single applicant, the home is excluded as a countable resource during the first six months of institutionalization. A resident may have one or more short-term nursing home stays separated by time at home. This six-month period is a rebuttable presumption, and the resident may get additional periods by completing a short letter stating his or her intent to return home. Keep in mind that none of the resident’s income can be used to maintain the house or pay the taxes while he or she is receiving Medicaid benefits. Therefore, it is usually the family who pays the bills to maintain the house, and that money may be lost when the house is sold since all proceeds from the sale of the home must go into Medicaid recipient’s bank account.

Also, most homeowner’s insurance companies void coverage if a home is vacant for an extended period of time and the coverage has not been switched to a vacant home policy. Homestead rules are found in 907 KAR 1:645.

Any other non-homestead real estate, including rental property, is considered an available resource in Kentucky.

Exceptions

There are some exceptions to the requirement that the home be sold. The home can be transferred in certain circumstances to a disabled adult child, a caregiver child, or a sibling, without incurring any transfer penalties. However, keep in mind that just because a home can be transferred to another does not always mean it is a good idea.

An adult child is disabled for Medicaid purposes if he or she meets the SSI definition of disability. This is the same as the Social Security definition. An adult child who is receiving Social Security Disability Income (SSDI) would qualify with proof of an SSDI Award Letter, even if such child does not live in the home.

The home can also be transferred to a “caregiver” of the resident who has lived with the parent in the parent’s home for at least two years immediately prior to institutionalization and provided care such that without that care, institutionalization would have been needed at least two years sooner. Two letters from non-family members attesting to the above are required as proof, including one from the family physician. This exception applies only while the parent is alive.

There is also a little-used exception allowing the home to be entirely transferred to a sibling who lived there for at least one year prior to institutionalization and who has equity in the home. Any amount of equity is sufficient, so long as the sibling and Medicaid recipient’s names both appear on the deed and the deed is recorded.

WARNING — If the property is owned in a Revocable Living Trust, it must be transferred to both parents before any transfer to exempt children. Kentucky applies a very literal interpretation of the law and trusts do not have children.

Life estates in real property are also exempt resources. But remember two things:

1) the life estate is subject to estate recovery upon death; and
2) any remainder interest gifted may create an eligibility problem since it is a gift, just like any other gift.

COUNTABLE RESOURCES FOR A MARRIED MEDICAID APPLICANT

There are a number of protections built into the law to protect the CS from impoverishment.

All assets exempt for a single Medicaid applicant are also exempt for a married couple. In addition, the family home and all adjoining land are also exempt regardless of value, and not just for six months. The home – no matter the value – is exempt as long as the CS is not also institutionalized. Personal property such as furniture, clothing and existing family jewelry is also exempt.

Community Spouse Resource Allowance (CSRA)

The amount of countable resources that a CS is permitted to keep is called the Community Spouse Resource Allowance (CSRA). The CS is allowed to keep half of the countable resources up to a maximum of $115,920 (2013). This figure is determined when a “snapshot” is taken of the couple’s resources. This “snapshot” is called a Resource Assessment (RA).

In Kentucky, you can – and should – do the RA as soon as one spouse enters into nursing home care. The spouse does...
not have to be in a Medicaid-certified bed or even in a facility that participates in Medicaid; however, it must be a verifiable long-term-care facility placement, as opposed to assisted living or otherwise. The RA date in Kentucky is when the family of the institutionalized person physically walks into the Medicaid office. Most elderly couples are unaware they are supposed to go to the Medicaid office for an RA, and many wait years before doing so, which can result in exhausting funds, leaving the CS destitute. The law was specifically written to prevent this situation.

County Medicaid offices are required to perform a written RA, at the time of the initial meeting in their office. If an instance occurs when a Medicaid office refuses to perform a written RA, such could lead to significant economic loss for the CS, even with verbal assurance indicating otherwise. The CS should not make any large expenditure before receiving the RA.

Do not leave the Medicaid office until you have a written RA, form PA-22, in your possession, signed by the caseworker.

Kentucky also takes the unusual position that if a nursing home resident comes home for more than 30 days, a new Resource Assessment is required, which again cuts the Community Spouse’s remaining resources in half for the second time. This discourages families from attempting to provide home care once a family member has entered a nursing home.

Disqualifying Transfers

There are regulations intended to prevent a person from giving money away on Monday to reduce countable resources below the $2,000 maximum eligibility amount, then showing up Tuesday to apply for Medicaid. Such transfers are called “disqualifying transfers” because they will generate a period of Medicaid ineligibility, or disqualification, which period can in some instances last for years.

The penalty period begins to run only when a person has exhausted all of his assets and is otherwise eligible for benefits if not for having made the transfer. Note: It is not the date the transfer was made that starts the penalty period running, but the date the applicant is “otherwise eligible.” In practice, Kentucky requires an actual application to meet the “otherwise eligible” standard, although there is no such requirement in the federal or state law.

Transfers or gifts made more than five years prior to a Medicaid application are outside the look-back period and not subject to Medicaid’s review. It is irrelevant if Medicaid is aware of these prior gifts. Disclosure is not necessary.

“Transfers for less than fair market value” create a disqualification period, or period of time when Medicaid will not pay, equal to the amount of the transfer divided by the Transferred Resource Factor (TRF). The TRF, is $5,883 (2013), or $193.42/day, and is supposed to equal the average cost of a nursing home in Kentucky. The actual average cost is much higher.

It is important to note that calling the gift a “loan” does not relieve the penalty. “Loaning” the money is regarded in Kentucky as gifting unless there is a signed legal note or loan document, a payment schedule, and proof that repayment has been made according to the schedule.

Transferring ownership of the house to someone other than the excepted child or qualified sibling is generally a prohibited transaction subject to the same penalty as the transfer of any other resource. Adding another party to a deed is considered a transfer of resources to the extent of the transferred interest. The value of the home is the Fair Market Value (FMV). Kentucky accepts the tax-assessed, Property Valuation Assessment (PVA) value, prior to application of any homestead exemption, as FMV. If the home is worth less than the PVA value, it is prudent to get a detailed appraisal from a certified appraiser showing why the home is so valued. This is mandatory for a sale to a related party, such as a resident’s child or sibling. It is helpful, but not required, to obtain an itemized cost estimate of the repairs necessary to bring the value of the home back up to the PVA number. For farm property, the accepted value is the Fair Cash Value (FCV) listed on the tax assessment and not the lower agricultural value on which tax is actually paid.

MEDICAID ESTATE RECOVERY

Every state is required by federal law to institute a program to recover from a Medicaid recipient’s estate those Medicaid funds spent on a nursing home or other long-term-care facility place-

ment that if a nursing home is actually paid. Medicaid will want the family to repay the state’s total portion of Medicaid payments made. If any of the above exemptions applies, check the appropriate box, enclose any requested verification and send it back. Keep a copy. This should end the estate recovery process for this estate. Warn the family about this letter as it can be quite frightening. They do not owe any money; only the expanded probate estate is liable.

The Home

A Medicaid recipient may own a home at the time of death. If there is a surviving spouse, there is no estate recovery. However, for single residents, the home is only exempt for the first six months of institutionalization. The family then has another six months to sell the property at FMV. Nevertheless, it is not unusual to see single people in the nursing home for years who still own a home. The recertification process is supposed to spot these situations and eventually deny eligibility, but this does not always occur.

Medicaid will want the family to clean up and sell the home and then send 100 percent of the proceeds to the State. There is little incentive for the family to do this. The State always has the right to open an estate itself, then clean out the house, sell it, and keep the net proceeds, but as an alternative, may be willing to negotiate the transaction within a framework of standards.

If the family wants to keep the property, they, or their legal counsel if applicable, must negotiate an estate recovery settlement with the State and get it in writing. Funds for purchase must be arranged for in order to provide payment to Medicaid. These funds are sent to Medicaid in the form of a check made payable to Kentucky State Treasurer, marked, “Settlement in full for the estate recovery claim of
‘Decedent’s Name.’ ” The Personal Representative should receive a letter within two weeks stating that the claim has been settled in full. If you do not receive the letter, follow up directly with the person with whom you were negotiating.

**Life Insurance**

Medicaid claims entitlement to life insurance proceeds payable to a named beneficiary if the Medicaid recipient was the owner of the policy. They are not presently attempting to enforce this claim because they probably would not succeed. KRS 304.14-300 exempts the proceeds of life insurance from the claims of creditors. Medicaid is a creditor. Life insurance payable to the Medicaid recipient’s estate, as opposed to a named beneficiary, is within Medicaid’s reach.

**IRAs**

Kentucky law does not permit an estate recovery claim against IRAs. They are exempt assets throughout the Medicaid process regardless of the type of investment in which they are held.

**Life Estates**

Medicaid may stake a claim to the value of the life estate at the moment before death and Medicaid may stake a claim to the value of the life insurance proceeds payable to a named beneficiary if the Medicaid recipient was the owner of the policy. They are not presently attempting to enforce this claim because they probably would not succeed. KRS 304.14-300 exempts the proceeds of life insurance from the claims of creditors. Medicaid is a creditor. Life insurance payable to the Medicaid recipient’s estate, as opposed to a named beneficiary, is within Medicaid’s reach.

**NEGOTIATING AN ESTATE RECOVERY CLAIM**

In estate recovery matters, clients may have little expectation of seeing a dime. They already know the decedent was on Medicaid and that estate recovery will come knocking. If Medicaid litigates, make sure you have a legal basis for your position. Our firm limits initial representation to negotiation only. In Kentucky, estate recovery litigation is rare. There is a two-step alternative process: 1. File for a hardship exception 2. Buy a lottery ticket. It is this attorney’s opinion that chances for success are equal. B&B

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7 See generally 8 U.S.C. § 1641(a), (b) (2008).
9 See 907 KAR 1:011.
10 See 907 KAR 1:022, § 4 for detailed LoC requirements.
11 See generally 907 KAR 1:640.
12 Members of the Kentucky Bar are welcome to contact us for a copy of a QIT at misty@kyelderlaw.com. There is no charge for our QIT, and you can use it as many times as you wish.
13 See 42 U.S.C. § 1382c.
14 See 907 KAR 1:650 § 2(11).
15 Id.
16 See 907 KAR 1:650 § 2(13), 14).
17 Please note, the $50,500 estate recovery asset exemption for the home ended quite a while ago, effective September 2003. All Kentucky Administrative Regulations (found at http://www.lrc.state.ky.us/kar) and all other websites referenced in this article were accessed as of March 27, 2013.
18 See generally 8 U.S.C. § 1641(a), (b) (2008).
20 See 907 KAR 1:011.
21 See 907 KAR 1:022, § 4 for detailed LoC requirements.
22 See generally 907 KAR 1:640.
23 See 907 KAR 1:650 § 2(11).
24 Id.
25 See 907 KAR 1:650 § 2(13), 14).
26 Please note, the $50,500 estate recovery asset exemption for the home ended quite a while ago, effective September 2003. All Kentucky Administrative Regulations (found at http://www.lrc.state.ky.us/kar) and all other websites referenced in this article were accessed as of March 27, 2013.
27 See 907 KAR 1:650 § 2(11).
28 Id.
29 See 907 KAR 1:650 § 2(13), 14).
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31 See 42 U.S.C. § 1382c.
32 See 907 KAR 1:650 § 2(11).
33 Id.
34 See 907 KAR 1:650 § 2(13), 14).
35 Please note, the $50,500 estate recovery asset exemption for the home ended quite a while ago, effective September 2003. All Kentucky Administrative Regulations (found at http://www.lrc.state.ky.us/kar) and all other websites referenced in this article were accessed as of March 27, 2013.
NEW KENTUCKY SPECIAL NEEDS TRUST STATUTE BRINGS RELIEF TO THE DISABLED

by Brian Borellis

Effective July 12, 2012, Kentucky has a new statute providing a clear path for practitioners to create a Special Needs Trust and thus obtain Medicaid benefits for disabled clients in cases where, prior to the new legislation, there was uncertainty about how and where to proceed to establish the trust. Although the federal statute, 42 U.S.C. § 1396p(d)(4)(A), (C) (2013), enacted in August 1993, established the substantive basis for the creation of Special Needs Trusts, that statute has been inexplicably constricive in certain respects. On the one hand, the federal law endorses a policy of inviting disabled individuals to protect assets via a trust. At the same time, however, it imposes – despite the unincorporated legislative purpose – counterintuitive limitations on who may create the trust.

This article will examine the framework of the Kentucky statute and how it enables counsel to establish a trust on behalf of clients. The new law also provides greater certainty on certain vexing issues that may arise in this esoteric area of practice.

The solution to the problem is to place the assets that would otherwise disqualify the client from eligibility for long-term care benefits into a Special Needs Trust, or “SNT.” In doing so, the funds available to provide for John’s supplemental support, which means, in essence, anything Medicaid does not cover. So long as the client is under age 65, he or she is a candidate for a SNT.

The problem under the federal statute, as alluded to earlier, is that the federal legislation has narrowly defined the “needle” through which the legal camels could pass on their way to obtaining benefits for the disabled individual. The SNT could only be created by the disabled individual’s parent, grandparent, legal guardian or the court. Thus, where there is no living parent, grandparent or legal guardian, the only recourse has been through the judicial process.

In cases where the disabled individual is already before the court, for example, a personal injury action is pending, counsel routinely moves the court for an order placing the recovery in a SNT. But what about situations where there is no open case? How does counsel get in front of a judge? Who has standing to petition the court? What if family members want to create a trust, but do not want to initiate guardianship for a brother who needs long-term care assistance, and he is not mentally incompetent?

The new Kentucky statute provides a reassuring resolution to this quandary: it greatly broadens the opening of the needle and thus – within the scope of the federal law – allows many more camels to pass through to bring relief to the disabled individual.

Now, under Ky. Rev. Stat. § 387.865, a disabled person’s spouse, sibling, attorney-in-fact, other individuals closely associated with the individual’s care – even the disabled individual — may petition the court.

REQUIREMENTS OF THE PETITION

Who can file a petition

Ultimately, the purpose of the Kentucky statute is to create standing: to broaden the base of individuals who have a relationship to the disabled individual to initiate a petition. The statute, Ky. Rev. Stat. § 387.865(1) grants authority to bring the petition to individuals who generally have a fiduciary relationship with the disabled individual, whereas subsections (2) and (3) focus on those with a familial relationship, including siblings, nieces and nephews, as well as the disabled individual him- or herself and the individual’s spouse. Subsection (4) specifically authorizes an attorney-in-fact acting under a power of attorney (“POA”) to bring the petition, since in many cases the POA is serving more as an agent than a fiduciary. Finally, section 387.865(5) is essentially a catch-all that allows those who have an ongoing care-focused or professional relationship with the disabled individual to petition the court.
What is required

In Ky. Rev. Stat. § 387.870, the contents of the petition are specified. The petitioner is required to advise the court of the particulars of the case. First, the petitioner is to apprise the court of the circumstances of the disabled individual: who is the disabled individual, and what is the nature of the disability. Counsel should set forth sufficient facts with a case history to inform the court how the trust will be in the disabled individual’s best interest. Background information about the disabled individual’s situation should indicate the benefits to be obtained: is the disabled individual applying for Medicaid, or about to lose Medicaid but for the creation of the trust? The court should be advised as to the disabled individual’s current living arrangements – is he or she in a nursing home, group home, residing in a structured living community? Though not specifically required under the statute, at least where the disabled individual is not already before the court and known to the court, prudence would suggest that along with the petition, counsel may wish to attach a narrative from a physician, social worker, care provider or someone familiar with the long-term care needs of the individual.

The court should be informed of the nature of the relationship of the grantor and trustee to the disabled individual, along with whomever else has a familial or other significant relationship with the individual, including other fiduciaries – even potential lienholders if there may be a Medicare or Medicaid lien. The petitioner must allege the facts specific to the disabled individual and must demonstrate to the court that the establishment of the trust is proper. In other words, the court will want assurances that the plan is being submitted in good faith and consistent with the rationale for asset protection under 42 U.S.C. § 1396p.

A draft of the SNT agreement and specific information about any litigation and the expected benefits should be included with the petition. Under Ky. Rev. Stat. § 387.880, the matter will be set for a hearing 14 days in advance with notice – unless waived – given to interested parties in accordance with section 386.665. In my practice, I like to highlight for the Court’s easy reference the important substantive provisions of the trust to show that it complies with the requirements of the federal statute. These essential requirements are that: (1) the trust is for the sole benefit of the disabled individual who must be under age 65; (2) it is irrevocable; and (3) it specifically requires reimbursement to the state for medical expenses upon the death of the disabled individual or termination of the trust during the disabled individual’s lifetime. In the event the individual were to recover and no longer be permanently disabled, I also include provisions that make it clear that while the disabled individual is receiving benefits, the trust is limited to providing only for the disabled individual’s supplemental support and will not supplant available public assistance benefits.

Which court?

For purposes of the SNT statute, jurisdiction depends upon the type of case. Under Ky. Rev. Stat. § 387.860(4), if there are judicial proceedings pending where the disabled individual has or will be acquiring assets, then the court presiding over that case has jurisdiction over the SNT petition. The statute not only vests jurisdiction in open cases, but also addresses the situation where the need for a SNT becomes apparent after the underlying action has closed, and allows the disabled individual or other authorized petitioner to reopen the case.

The term “District Court” may have different applications in different counties. In Jefferson County, for example, which has a separate division for Disability and Probate, it appears to be at the judge’s discretion whether the case should be brought in a particular division. Since typically the Probate

COURT-ORDERED TRUST

Section 387.885 authorizes relief to be granted in the form of a court-ordered SNT. To obtain this relief, counsel is well advised to draft an order creating the trust for the judge’s signature. The court is actually creating the trust, which the new statute allows the court to do. Whereas those individuals referred to in section 387.865 now have standing to get in the courthouse doors, under section 387.885, the court effectively creates the trust.

At the time the order is entered, the court’s attention is directed to various matters requiring resolution. Pursuant to section 387.885, the court may order that the proposed trustee be joined with other trustees, may designate another trustee, other than the one requested in the petition, who is better suited to serve, and may determine what assets – if not all – should be placed in the trust. At the hearing the court should be provided with sufficient information pertaining to any liens and claims against the funds before the trust is established. The court should also consider whether surety can be excused, and whether – under section 387.900 – any ongoing periodic settlements should be submitted to the court.

SUBSEQUENT PROCEEDINGS AND ADDITIONAL MATTERS

The statute addresses the possible need for subsequent judicial proceedings with respect to an existing SNT trust, whether created by a court or otherwise, in Ky. Rev. Stat. § 387.890. The procedure for doing so cross-references the normal procedure for bringing a new petition as discussed for SNT cases de novo under section 387.865. Further, pursuant to section 387.895, the court may permit,
upon petition, the petitioner to add newly-

The statute concludes by enunciating the legislative purpose. Section 387.910 instructs the court that should there be any questions pertaining to the construction or interpretation of the law, the court is to be mindful that in enacting the new statute, the legislature intends to establish a framework by which a disabled individual who qualifies as a special needs person under the statute may either herself or himself - or through family members or others closely connected with the person's care - have access to the courts to obtain the benefits of 42 U.S.C. § 1396p for the disabled individual.

CONFLICTS

As stated at the outset, the new statute opens the doors to broadening the potential petitioners who may create a SNT for a disabled individual. Does this, then, create a potential conflict in cases where there are other individuals who are named as permissible grantors under 42 U.S.C. § 1396p? It appears not to create a conflict. The notice requirements for de novo proceedings under Ky. Rev. Stat. § 387.865, and also under section 387.890 require notice to be given to all “interested parties” within the meaning of section 387.860(5), which is tied to individuals with standing to petition the court for guardianship over the disabled individual. Anyone who seeks to, or has, established a SNT for the individual would be an “interested person” under section 387.510(12); named in section 387.530(1)(f), and would be entitled to notice under section 387.550(2). In all likelihood, the new statute will result in only new proceedings brought by grantors not specified in 42 U.S.C. § 1396p, and will not result in any adversarial interplay or conflict among potential petitioners. If so, the matter will be squarely before the court. Judicial resolution by bringing all interested persons before the court seems to be the outcome envisioned in the new statute.

AN OPPORTUNITY AND A POTENTIAL LIABILITY

The new statute has been enacted under the guardianship sections of the Kentucky Revised Statutes, but is certainly not limited to guardianship cases. The statute begins by providing that in developing a plan to preserve and protect a ward's assets, a guardian or conservator may consider the benefits of establishing a SNT. While the statute is not written in mandatory language, given that the legislature has now enacted 11 new sections to Chapter 387, attorneys who are approached by a disabled or injured client, or his or her family members, should be familiar with the opportunities presented via the open-door policy of the new statute. At the same time, failure to do so may call into question the effectiveness of counsel. B&B

2 Essentially, this means that the individual is totally and permanently disabled to the extent that he or she is unable to engage in substantial gainful activity, which is based on a dollar amount determined by reference to the national wage average. In 2012, the threshold was $1,010 per month. The threshold is higher for blind individuals.
3 See 42 U.S.C. § 1396p(d)(4)(A); see infra note 5.
4 The practitioner should note that the Kentucky statute does not create any alternative course to federal law insofar as the substantive requirements of a SNT are concerned. As such, there is no “Kentucky” SNT alternative to the federal SNT. The purpose of the Kentucky statute is simply to open the Court to petitioners to establish a SNT that comports with the federal requirements.
6 See id. § 387.860.
7 id. § 387.860(6).
8 id. § 387.875.
9 In some states where the Trustee is a non-profit organization, under what is known as a “pooled trust” (in essence an arrangement whereby separate sub-accounts are held and managed by a non-profit organization that handles such funds for disabled individuals on an ongoing basis), the trust may receive funds of an individual over age 65. A pooled trust is not subject to the reimbursement requirement as long as the funds remain in the pool for other disabled individuals upon the disabled individual’s death. Since pooled trusts are non-profit managed and established in and place, they are not a focus of the new statute.
11 See also Ky. CR 60.02(08).
12 Where there is a guardianship, under the federal statute, the legal guardian has the authority to create a SNT. Normally, when one brings a petition before the Disability Division, it is to request the court’s approval of the proposed trust because the guardianship estate will pour over into the trust. Thus, in a legal sense, under 42 U.S.C. § 1396p, if the disabled individual has been adjudicated, it is not the court that is creating the SNT, but rather the guardian. Nevertheless, under Ky. Rev. Stat. §§ 387.860(2), .865, the guardian should comply with the notice and filing requirements of the new statute and bring the matter in the Disability Division.
13 Though the court is creating the trust by virtue of a court order, as a technical matter the “grantor” of the trust under the statute is expected to be the petitioner. Ky. Rev. Stat. § 387.860(2).
14 Typically all assets will go into the trust. In some instances, however, the disabled individual may own a home with a spouse that need not be placed in the trust to gain Medicaid eligibility, or there may be certain exclusions from Medicaid counting rules – typically retirement accounts – that need not be placed in the trust. Further, when the disabled individual has ongoing income, that income should be irrevocably assigned to the trust.

Brian Borellis practices elder law and estate planning in Louisville. It was his draftsmanship in conjunction with the review and sponsorship of the Kentucky Bar Association Trusts and Estates Legislative Committee that gave rise to the new Special Needs Trust statute.

Nonprofit Organization Law Can Be Complex

My Practice Is Limited to Advising Nonprofits and The Professionals Working With Them

Assistance Provided With

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Organizational Policies & Procedures
Assessment of Operations
Continuous Improvement Systems (Quality)
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Complex Tax Matters
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This is an advertisement.
Lawyers are routinely called upon to draft and execute agency agreements, primarily powers of attorney. This article addresses the importance of using specific language in agency appointments and powers of attorney. Specifically, it addresses the unique needs of the elder client and particular clauses which offer protection to the client and latitude in planning.

General practice attorneys may prepare a standard one-page power of attorney document for their client feeling that it is an adequate grant of authority. Alternatively, the client’s child may download a form from the internet. In neither case do those documents satisfy the necessary specificity required and may be counterproductive to the client’s actual needs. These documents may be so brief that they merely grant powers to act for the grantor in the grantor’s name, place and stead and the power to do any act for the grantor which the grantor might do or perform for himself.

A power of attorney is a contract between the “principal” and an “agent” granting the agent specific authority to act on behalf of the principal to the extent shown in the instrument. The common law rules of agency require a specific statement of the scope of the power granted; therefore, although well meaning, general language is insufficient authority for the agent to perform his duties. Specifically stated powers, although essential in every context, are pivotal in relation to asset preservation and Medicaid planning. A power of attorney document for an older client, if the family wishes to engage in asset preservation, should permit the attorney in fact both the authority to execute deeds and enable intra family gifting.

It is important for older clients to name an agent while they have their full faculties because with advancing age comes the likelihood of incapacity or disability possibly rendering them unable to execute such documents. Even the simplest of daily transactions such as paying the utility bill or addressing pharmacy needs may be blocked by the inability of a child or significant other to act on behalf of their loved one. No Kentucky cases address the issue of the level of competency necessary to execute agency documents as exists regarding executing testamentary documents.

It is important to emphasize, however, that since a power of attorney is a contract, there is a standard of capacity required of the parties who enter into such an agreement which reaches above that required for executing testamentary documents. A practitioner should carefully vet a person’s ability to understand the scope, power and implications inherent in the document she/he is signing. The principal should also have a firm and realistic understanding of the capabilities of the agent being appointed as this document is transferring substantial powers to another person either immediately or upon a stated contingency.

Under the common law, incapacity of the principal prevented or extinguished the authority of the agent to act for the principal. To permit the agent of an incapacitated person to continue handling the business affairs of the principal, the Kentucky General Assembly in 1972 enacted KRS 386.093(1). This statute defines “durable power of attorney” to mean a written power of attorney by which a principal delegates another as the principal’s attorney in fact. In order to become “durable,” the instrument must contain words such as, “This power of attorney shall not be
EXTENT OF POWERS GRANTED

The importance of addressing specific powers in the power of attorney instrument was illustrated by the Kentucky Supreme Court's holding last August when it ruled in Donna Ping, executrix of the estate of Alma Calhoun Duncan, deceased v. Beverly Enterprises, Inc., et al., 5 that an agent could only exercise powers specifically enumerated by the principal. In Ping, the plaintiff filed suit alleging negligence by the defendants in providing long term care to her mother, Duncan. The defendants attempted to assert Ping had no right to bring suit as she had executed an agreement, as agent on behalf of Duncan, to take disputes to arbitration. Prior to Duncan's admission to the nursing home, she executed a general durable power of attorney in favor of Ping which listed specific powers and stated that Ping was authorized to generally do any and every further act and thing of whatever kind, nature or type required to be done on Duncan's behalf. The power of attorney instrument also stated that the enumeration of specific items, rights, acts or powers did not limit or restrict the general and full power granted to Ping. 6

The Kentucky Supreme Court found that Ping lacked the actual authority to bind Duncan to the arbitration agreement. The court held that the power of attorney document must specifically grant that authority to the attorney in fact. The court rejected Ping's claim that Duncan's intent to grant a broad scope of authority was indicated by the general language: "Rather, we have indicated that an agent's authority under a power of attorney is to be construed with reference to the types of transactions expressly authorized in the document" 7(emphasis added). The court went on to note that the power of attorney applied to decisions reasonably necessary to maintain Duncan's property, finances and medical care. 8

Of great significance to the court was its characterization that signing a mediation agreement waived a principal's right to seek redress in a court of law. Such a power would need to be specifically enumerated in the power of attorney document for its exercise to be valid.

Based upon the court's language in Ping, specific language needs to authorize or prohibit the actions taken by the attorney in fact.

To address the specific issue in Ping, a practitioner might consider adding a provision in the power of attorney document authorizing the initiation and defense of law suits. For example, "to defend all actions and suits which shall be commenced against me and to compromise, settle and adjust all actions, accounts, dues and demands in such manner as my said attorney-in-fact shall deem appropriate." To ensure that there is no misunderstanding about the rights of the principal to have access to the courts, the power of attorney might state that "this grant of authority does not give my agent the right to waive my constitutional right to a court of law."

CHOICE OF AGENT

Clients often choose the oldest child or the youngest child or the child who lives closest to them. Part of an attorney's job is to help the client to choose the most appropriate person as agent. In our electronic age, the attorney in fact does not have to live in the principal's community to manage the checking account. On-line banking allows a child in Oregon to pay bills for a parent living in Kentucky. Discuss these issues with the client.

It is advisable whenever possible to appoint an alternate attorney-in-fact in case the first named agent is unable or unwilling to serve. In those situations where powers of attorney are being drafted for an elderly couple, the initial appointment may be the capable spouse but an alternate appointment may be crucial to prevent the need for guardianship when the competent spouse dies unexpectedly leaving a spouse with dementia with no alternative agent. The instrument may name multiple co-agents with independent authority, "acting jointly or individually as the case may require." 9

ACCOUNTABILITY OF AGENT TO PRINCIPAL

Kentucky does not have a comprehensive power of attorney statute which addresses the issues of agent/attorney in fact accountability and liability. The attorney in fact is deemed a fiduciary under Kentucky case law but not by statute. 10 The authors believe that to curb financial abuse of the elderly, Kentucky agents should be statutorily classified as fiduciaries.

GIFTS UNDER POWERS OF ATTORNEY

Both the power to transfer real estate and the power to gift are provided for by Kentucky statutes. KRS 386.093 was amended in 2000 to state in relevant part that "a durable power of attorney may authorize an attorney-in-fact to make a gift of the principle's real or personal property to the attorney-in-fact or to others if the intent of the principle to do so is unambiguously stated on the face of the instrument." 11 Shortly after that amendment, the Court of Appeals in Ingram v. Cates 12 upheld the ruling in Wabner v. Black 13 that an agent using "utmost good faith" could make gifts under a power of attorney if there was no specific provision. The Ingram case involved a power of attorney drafted prior to the 2000 statutory amendment, requiring express permission for an agent to make gifts. 14

Many elder law attorneys believe that KRS 386.093 mandates that a written authorization include the following language: "The power to make gifts of my real or personal property or my interest in such property to my agent, children and grandchildren, including any child or grandchild of mine who may be acting as my attorney-in-fact, in such manner as my attorney-in-fact deems appropriate, including, but not limited to, outright gifts, gifts in trust, or gifts to a custodian under a uniform gifts or transfers to minors act, if, in the opinion of my attorney-in-fact, such gifts are advisable."

Some Kentucky attorneys counsel against gifting clauses because of the potential for exploitation by the agent. This concern is valid and raises an important consideration. This selection should be done carefully. If gifting is unwise, completely eliminate the provision.

GIFTING IN THE MEDICAID CONTEXT

Another important area where specifically stated powers are essential relates to asset preservation or Medicaid planning. For aging clients, Medicaid may be a vital consideration because it is the primary source of payment for long term nursing home care. Without a gifting clause in a power of attorney, the only available alternative for a Medicaid applicant to preserve her estate is to subject the principal to guardianship proceedings and petition the court for permission to gift. 15

A practitioner should be knowledgeable enough to understand the effect of gifting in the Medicaid context and have a conversation with his/her client about the consequences of gifting in relationship to gift taxes and the effect gifting has on Medicaid eligibility. Many clients are familiar with the federal annual gift limits. Many power of at-
torney forms contain a gifting clause that limits gifts to the “annual exclusion for federal estate tax purposes.” There is very little benefit to the client, however, to limit gifting to that amount. Effectively the language prevents Medicaid planning. Annual gifting limits in the document only complicates Medicaid eligibility without substantially preserving assets. With the federal unified gift amount now established by the American Tax Payers Relief Act of 2012 at $5,120,000 per person (linked to the annual CPI) and no effective state gift tax in Kentucky imposed on a decedent’s children, an unlimited gifting power, judiciously used, is essential for Medicaid asset preservation. If the attorney is not familiar with the Medicaid limits on gifting, he or she should consult with a qualified elder law attorney.

Where Medicaid is involved, the objective of gifting is often to preserve the family home from Medicaid recovery. As stated above, the instrument must specifically empower the agent to execute a deed. KRS 382.370 and KRS 382.335(1) require that an originally executed power of attorney, executed with a scribner’s signature, be utilized to transfer land, be recorded in the county where the land is located as proof that the agent had the authority to execute a deed as attorney in fact. Statutory language specifically provides: “The power of attorney possesses the power to sell, exchange, quitclaim, convert, partition, grant an option on, abandon, gift or otherwise dispose of all or any part of my real or personal property or my interest in such property, including, but not limited to, automobiles, stocks, bonds, and real estate owned by me individually, as a tenant in common, tenant by the entirety or otherwise, upon any terms and conditions.”

As a practical matter, the attorney should encourage or facilitate the filing of his client’s power of attorney document in any county in which the client owns real estate.

**ADDITIONAL PROVISIONS IN POWER OF ATTORNEY INSTRUMENTS**

The following additional provisions in a power of attorney may also be useful. To facilitate Medicaid applications, a provision allowing the attorney-in-fact to interact with the Medicaid office for the principal is helpful.

In today’s medical privacy environment, a provision to allow the agent access to medical information in compliance with HIPAA is important. Since under present Kentucky law the attorney in fact is held to no standard of performance, it is prudent to state in the document that the agent is required to maintain accounting records and to make those records available to the principal or others as requested.

To permit the agent to be paid for services rendered places this responsibility on a more professional footing and leaves no doubt in anyone’s mind that it is a responsible position.

Another provision which will be important as the “boomer generation” ages will be a provision which allows the agent access to the growing and changing property interests in electronic assets including passwords to a variety of devices. Simply accessing email for an incapacitated client may prove to be impossible without such authority.

Though Kentucky does not require any witnesses to a power of attorney, other jurisdictions may. Thus, for some clients it will be prudent for the power of attorney to be witnessed by two persons to ensure that it may be used to transfer land in foreign jurisdictions.

For additional thoughts in this area, consult the chapter on Powers of Attorney, by Kelli E. Brown in Elder Law.

**ADVANCED DIRECTIVES**

Advanced directives, health care powers of attorney and end of life directives for personal issues relating to health care should have the same specificity as powers of attorney for legal affairs. The issue of health care directives, their expression and implementation has evolved over the years. The current Kentucky Living Will statute, KRS 311.621, was adopted in 1994 and there have been many changes in end of life expressions since its enactment. In each case, the thrust has been to make the decision process more personal.

One of the more recent end-of-life proposals is the Physician Orders for Life-Sustaining Treatment or POLST. The goal of POLST is to develop a program to improve patient care and reduce medical errors. The system would allow the physician and patient to identify a patient’s wishes regarding medical treatment and communicate those wishes by creating portable medical orders. The process is based on conversations between a physician and patient during which the physician completes a medical order detailing the patient’s wishes for treatment. The form of the order states specifically that it is to accompany the patient when the patient is transferred or discharged and is included in the medical record. The order details whether or not to resuscitate the patient if the patient has no pulse and is not breathing. Types of medical intervention, such as comfort-only measures or limited additional interventions or full treatment, are then selected. These orders can also detail whether antibiotics, fluids and nutrition are...
to be administered. Finally, these orders detail the individuals with whom they have been discussed, the basis for the order, and the periodic review of the order.

Kentucky’s living will directive and end of life decision making process need to be revisited or perhaps supplemented by a POLST program. Some states have a state wide register of advanced directives. The issue of mental capacity to execute powers of attorney needs to be reviewed.

CONCLUSION

Our attorney colleagues need to be aware of the importance to their aging clients of powers of attorney documents and be sure that these instruments adequately and specifically address the activities an attorney in fact needs to undertake on behalf of their principal when she/he can no longer act for themselves.

Attorneys need to counsel their aging clients regarding the important functions these documents serve. In today’s financial environment, a power of attorney is often more important than a will. The biggest risk to the estate of a middle class family is end of life expenses rather than inheritance/estate taxes. Rather than asking the client “what do you want to happen when you die,” an attorney’s question to the elder client should be “what will happen if you continue to live?” The issue will be how to accommodate any period of incapacity or simple inability to function. Properly drafted powers of attorney and advanced directives are essential to addressing these issues and managing and conserving family assets.

Robert L. McClelland maintains a private practice in Lexington focusing on counseling families of aging clients and special needs families on legal issues affecting asset protection and public benefits, guardianship, financial exploitation and abuse. McClelland has been published repeatedly on issues familiar to attorneys with older clients and is a frequent speaker at continuing legal education seminars and workshops. He is a graduate of the University of Charleston and received his J.D. from Northern Kentucky University Salmon P. Chase College of Law. He serves as chair of the Kentucky Bar Association’s Elder Law Section, on the Board of Directors for the Kentucky Guardianship Association and is an appointee to the Lexington Fayette Urban County Government’s Senior Services Commission. McClelland is a member of the National Academy of Elder Law Attorneys, Inc.; the Special Needs Alliance, LLC; ElderCounsel, LLC; and the Bluegrass Estate Planning Council.

Monica M. McFarlin is an experienced health-care and tax attorney whose previous employment includes positions as vice president at KCTCS, general counsel at CHA Health and assistant attorney general, Office of Rate Intervention. McFarlin received her B.A. from the University of Kentucky, J.D. from Ohio Northern University College of Law and LLM/Taxation from Emory University Law School and is a member of the Kentucky, Georgia and Ohio Bar associations.

Amy E. Dougherty is a member of Bluegrass Elderlaw, PLLC, where she focuses her practice on elder and disability law. She previously practiced for Legal Aid of the Bluegrass where she assisted older persons with Wills, POAs, Advanced Directives and Trusts to qualify for Medicaid long term care. She also advocated for clients before Social Security, Medicare, and Medicaid agencies and defended against involuntary dismissal from long term care facilities. Prior to Legal Aid, Dougherty worked for Kentucky Public Service Commission advising that agency on matters of in-state utility regulation. She is a graduate of the University of Kentucky where she earned her B.A. (History) and J.D. degrees. She is a member of the Fayette County Bar Association, the Kentucky Bar Association (Elder Law Section) and the National Academy of Elder Law Attorneys. Dougherty is admitted to practice in the Eastern District of KY, the Western District of KY, the Sixth Circuit Court of Appeals and the U.S. Supreme Court.

Carolyn Kenton has been in private practice in Lexington since 1992. She established Bluegrass Elderlaw, PLLC in 2011. This practice focuses on the areas of elder law and Medicaid planning, estate planning and trusts, guardianship, and estate settlement. A lifelong Kentuckian and former State Representative, prior to opening her practice, she served as a trust officer/estate planner for National City/PNC Bank in Lexington, working in estate planning, current asset management and business development. Kenton has been a frequent lecturer on the subjects of elder law, guardianships, Medicaid and the probate process. She is a co-author of Volume 23, Kentucky Practice, ElderLaw, by West Publications. She is a graduate of the University of Kentucky where she earned her B.A., M.A. and J.D. degrees and is a member of the Fayette County Bar Association, the Kentucky Bar Association Elder Law and Probate and Property Sections and the National Academy of Elder Law Attorneys.

1 A power of attorney is an instrument that states an agent’s authority. Restatement of the Law Agency, American Law Institute, Vol I Sec. 1.04(6); Id. At Sec. 3.4(1). A principal must have adequate capacity to understand the instrument’s purpose. The breadth of the authority granted under a general power of appointment requires comprehension of the ability of the agent to bind the principal to an agreement. Id. at Sec. 3.04(1); see also KRS 386.093(1).

2 In planning for unmarried partners, powers of attorney may be the most important component of an estate plan as there is no legal relationship upon which one partner can depend to access information to assist an incapacitated loved one.

3 Couch v. Couch, 824 S.W.2d 65, 71 (Mo. App. 1991).

4 Id.

5 376 S.W. 3d 581 (2012).

6 Id.

7 Id.

8 Note 1, Supra.

9 Id.

10 Note 1, Supra at 1.04(1).

11 Priestly v. Priestly, 949 S.W.2d 594 (Ky. 1997)

12 KRS 386.093(6). Practitioners may advance the argument that a general power of attorney granted prior to the 2000 amendment may not require an express gifting clause. It is recommended, however, that if possible, the attorney have an executed a document with specific gifting language because without it planning for an incapacitated individual may have to be approved through a guardianship proceeding.

13 7 S.W.3d 379 (Ky. 1999).

14 KRS 386.093(6).

15 In a Minnesota Bar Ethics case, the Minnesota Supreme Court publicly reprimanded and placed the license of an elder law attorney on probation for advising his Attorney in Fact to make gifts in a Medicaid plan contrary to the express authority in the instrument. In re: Petition for Disciplinary Action against Donald W. Felt, Minn S.C. A09-1862.

16 Such a clause might indicate in a guardianship context that the respondent wanted to limit gifts, not maximize them.

17 The Health Insurance Portability and Accountability Act provides for specific titles of representatives such as agent and representative.

18 23 Leibson and Faller, KENTUCKY PRACTICE, ELDERLAW (2012).

19 KRS 202A.422; see also KRS 202A.430, Form of advanced directive for mental health treatment.

20 KRS 202A.422.

21 An excellent research report entitled “Improving Advanced Illness Care: The Evolution of State POLST Programs (2011)” is available from the ABA web page. It was co-authored by Charles P. Sabatino of the AVA and Naomi Karp of the AARP Public Policy Institute. It lists all jurisdictions currently cooperating in similar programs. The objective is to provide a specific medical directive from a physician rather than the legal community. Many view this process as a medical rather than a legal matter.
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FUNDING LONG TERM CARE WITHOUT MEDICAID

By Eileen Walsh and Whitney M. Wilson

There is no disputing that ever expanding life expectancy is the new normal for Americans. Data for the year 2010 shows an increased life expectancy for men of 76.2 and an increased life expectancy for women of 81 years.1 With this “new normal” comes the increased likelihood that a person will need some level of long term care at some point in their lives. While everyone expects to live to the age of 75, 80, and older without the need for any long term care assistance, the reality is the odds are against us doing so.

This article will define the term “long term care” and focus on the discussion of how to fund long term care for ourselves, our families, and clients. This article will also highlight some ways people choose to fund long term care without Medicaid. This is only an introduction, because the benefits, complexities, nuances, and strategies of each method cannot be thoroughly addressed in just one article. Moreover, it is important to note that what works for one family may well not work for another, and it is certainly not unusual for a person or family to utilize multiple strategies in tackling the issue of funding long term care.

WHAT IS LONG TERM CARE?

Long term care is really an umbrella term for services needed to meet the medical and nonmedical needs of persons, who due to age or disability have lost some capacity for self-care. Long term care, in simple terms, refers to the assistance we need when our age or health or both, prevents us from functioning 100% on our own. The term long term care is not just limited to residential nursing home care. More and more people are “aging in place” and long term care takes place wherever people are and wherever they live, whether it is in their own home, an assisted living facility, or some other living arrangement.

The assistance offered through long term care may encompass a wide array of healthcare services such as wound care, injections, or medication assistance, as well as personal care assistance with activities of daily living (ADLs) such as bathing, dressing, toileting, feeding, and ambulation. Many people will utilize a variety of care services as their care needs change over time. The goal of long term care is generally not to “cure” an illness or disability, but is to maximize a person’s functioning and independence.

WHY TALK ABOUT LONG TERM CARE?

The Department of Health and Services estimates that 70 percent of people over the age of 65 will need some type of long term care at some point in their lives. Even without the statistics, common sense tells us that with the aging process it is normal to lose some ability to function, and that continues as people continue to age. It is also important to note that many Americans have a family member or loved living with a diagnosis of Alzheimer’s disease.

In view of the statistics and our own life experiences, the topic of long term care planning is an important one that should be discussed and addressed as part of a normal life planning process. We like to say we help clients “plan to live.”

FUNDING LONG TERM CARE WITHOUT MEDICAID

COST OF LONG TERM CARE

The median monthly rate for licensed personal care services and home health aide services in Kentucky in 2012 was $3,241.00 (annual median cost of $38,896). The median monthly rate for an assisted living facility (private, one bedroom) in Kentucky in 2012 was $2,741.00 (annual median cost of $32,892.00). For a nursing home (semi-private room), the median monthly rate was $5,750.00 ($69,000.00 annually).2 It is not unusual for the cost of care to run significantly higher than these reported cost figures.

And what of the significant hidden cost to families where a family member or friend acts as an unpaid caregiver for a loved one? Besides the tremendous emotional and physical toll a caregiver may suffer, there is now evidence that caregivers and their families suffer a devastating financial blow. A Met Life study determined that caregivers lose an average of $659,139.00 in lost wages, pension, and Social Security benefits.3

MEDICARE

Many Americans believe that Medicare will pay for all their long term care needs, when in fact it provides limited coverage. Because of this broad misperception, it is worthwhile to discuss what Medicare is and is not.

In general terms, Medicare is a national health insurance program and persons entitled to Social Security retirement and who are 65 years of age and older and persons entitled to Social Security disability benefits for not less than 24 months are eligible to participate in the program. There are other classes of persons eligible to participate, such as persons receiving railroad retirement benefits and individuals suffering from certain medical diagnoses. Those who are not otherwise eligible for
Medicare, but who are over age 65, may purchase coverage by paying a monthly premium.  

Medicare coverage is similar to that provided through private insurance, in that it covers a portion of the cost of medical care. There may be deductibles and co-payments required of the participant. There are two substantive coverage components in Medicare coverage, referenced as Part A and Part B. Part A provides coverage for inpatient hospital care, hospice care, inpatient care in a skilled nursing facility, and some home health services. Part B is optional and covers doctor provided medical services, durable medical equipment, and some outpatient care and home health services. Part A is largely funded by federal payroll taxes paid into Social Security by employers and employees and Part B is funded through monthly premiums paid by participants and by general revenues from the federal government. Participants also share costs through the deductibles and co-pays required for many services under Parts A and B. Many people use their own funds to purchase Medicare supplemental policies through private insurance companies, which provide additional insurance to cover the costs of the deductibles and co-pays.

Medicare should not be confused with Medicaid, as a person’s income and assets are not a consideration in determining eligibility or benefit amount. Medicare is a national program and procedures should not vary significantly from state to state.

The Medicare skilled nursing care/nursing home benefit has a maximum coverage period of 100 days. If coverage requirements are met, the person is entitled to full coverage for the first 20 days of a nursing home stay and for days 21-100 the person pays a daily co-pay amount that is adjusted annually. Generally, the Medicare home health benefit requires the patient to be homebound and need skilled nursing care on an intermittent basis. The physician must sign a care plan and the care must be provided by a Medicare certified provider.

The homebound requirement can be met if leaving home requires considerable effort, as for example, the needing of personal assistance or the use of a wheelchair. Attendance at an adult day care center will not be an automatic bar to meeting the requirement. There is no co-pay or deductible and home health services may include part-time or intermittent nursing care and physical, occupational or speech therapy.

**LONG TERM CARE INSURANCE**

Long Term Care Insurance is privately contracted health insurance for long term care expenses. The coverage is generally activated when the insured needs assistance with certain activities of daily living as defined by the particular terms of the policy. A long term care policy generally will provide coverage for home health care (not covered by Medicare), care offered where one resides in assisted living, memory care, or personal care facilities, and nursing home care. Additionally, a policy may provide coverage benefits for adult day care, respite care, and hospice care (not covered by Medicare).

This type of private insurance first began gaining popularity in the late 1980s. Unfortunately, these early plans often offered limited coverage by generally only covering skilled nursing care, i.e. nursing homes. Also, there were often low daily benefit rates and there were even exclusions for dementia. These early policies may have been more affordable than those presently available, but they were certainly not always appropriate. A good long term care policy today will offer the insured better choices by not limiting coverage to skilled nursing care and will provide coverage benefits in your home, in an assisted living setting, etc. A long term care policy can be helpful by enhancing one’s options and choice of providers and facilities. Such a policy may result in one preserving assets and avoiding the Medicaid process. When analyzing a long term care policy, factors to be considered would include: 1) whether family members can be paid for services; 2) the number of days of disability required before benefits will begin; 3) how facilities and ADLs are defined; 4) the amount of the daily benefit rate and whether there is a cost of living increase built in the policy benefit; 5) whether there is a waiver of premium when benefits are being paid out; 6) annual cost and what the forfeiture provisions are in the policy; 7) what is the total maximum benefit amount that will be paid out under the policy, i.e. the maximum benefit period, and 8) what services are covered?

The limits of long term care insurance include its affordability and age restrictions, as this option becomes less affordable the longer one waits to purchase coverage. Additionally, persons may be excluded due to certain pre-existing conditions and, such policies may be oversold to those who may otherwise qualify or very easily qualify for Medicaid benefits.

When considering long term care insurance, one should be aware of Kentucky’s Long Term Care Partnership Program. Anyone purchasing a long term care policy would be well advised to make sure it is a partnership policy.

A partnership qualified long term care policy allows you to apply for Medicaid under modified eligibility rules that include a feature called an “asset disregard.” This allows one to keep assets that they otherwise would not be allowed to keep in order to qualify for Medicaid. The basic concept of the Partnership Program is that one purchases a partnership policy, and then when they use it and, then at a later date need to apply for Medicaid, the person may retain one dollar for every dollar actually paid out under their policy, and those funds also will not be subject to Medicaid estate recovery after death. In other words, the amount of assets Medicaid will “disregard” is equal to the amount of benefits one actually has received under their long term care partnership policy prior to applying for Medicaid.

Kentucky’s Partnership Program will allow conversion of existing long term care policies to partnership policies as long as certain requirements are met. Generally, it is recommended that a policyholder convert to a partnership policy, if given the option to do so.

Before a decision to purchase any long term care insurance is reached, there needs to be a careful analysis of multiple factors, beyond the person’s age and health, including the person’s assets, expected sources of income and the expected daily cost of care when it is needed. It may be appropriate to purchase a limited period of coverage, such as for a period of three (3) to five (5) years as part of an overall plan for care.

**VETERAN’S BENEFITS**

There are numerous VA programs and benefits available to veterans and their family members that can help cover the cost of long-term care. This article will focus on VA healthcare, but will also mention or briefly touch other benefits and programs.

The first program to discuss is VA health care. To be eligible for VA health care benefits generally the veteran must be enrolled in the VA health system, unless they meet certain requirements relating to VA disability or VA pension benefits.

Aside from the traditional health care coverage one thinks of, VA health benefits can include Adult Day Health Care, which is an outpatient day program for veterans needing assistance with ADLs. Respite Care is a program that provides short term services to the veteran, in order to give a caregiver time off from...
the demands of caring for an ill or disabled veteran. A veteran may be entitled to other benefits such as home health care benefits or skilled nursing care benefits. There are also special benefits for blind veterans. All of the aforementioned programs have specific eligibility criteria.

Another program offered by the VA is the Home Improvements and Structural Alterations (HISA) Grant. The grant offers up to $6,800.00 to a veteran with a service connected disability, or $2,000.00 to a veteran with a non-service connected disability, to make a veterans’ home more accessible. This generally includes building ramps, widening doorways, raising or lowering sinks or counters, and improving electrical or plumbing for medically sustaining equipment. 7

The VA also has a Pension Program for veterans and their surviving dependents, such as a spouse or disabled child. This pension benefit is often referred to as “Aid & Attendance,” although that is not technically correct. The program pays monthly cash benefits to wartime (as defined by the VA) veterans suffering from a non-service connected disability. If the veteran is deceased, their surviving dependents may be eligible to receive a pension benefit. 8

The Pension Program is a means tested program for persons who have limited income and limited assets. Many elderly or disabled veterans are considered to have low income because their out of pocket medical expenses are more than their income. The cost of assisted living and similar facilities are considered medical expenses.

The VA does not provide a strict dollar amount in order to determine whether a veteran is “over resourced.” Instead, it has a guideline based on age, marital status, income, medical expenses, and other factors. Thus, the amount of assets a claimant is allowed to have and still qualify for the benefit varies.

The benefit amount varies depending on many factors, including the claimant’s income, medical expenses, and level of disability. There are three levels of disability. The first is referred to as the “base level” and is the actual pension. One meets the base level by either obtaining a high enough disability rating through the VA, or by being at least 65 years of age. In addition to the base pension, additional amounts may be added to the benefit for “special monthly compensation” in the form of a Housebound Allowance or an Aid & Attendance Allowance. A claimant is homebound if he/she cannot leave home alone. A claimant is in need of aid and attendance from another person if he/she needs help performing ADLs. The VA pension benefit with an Aid & Attendance Allowance offers the possibility for the largest monthly benefit, up to $2,054 per month.

**REVERSE MORTGAGE**

A reverse mortgage is a special type of home loan for older homeowners. It requires no monthly mortgage payments. The homeowner/borrower is responsible for property taxes and homeowner’s insurance and must live in the home as their primary residence. This type of mortgage allows someone age 62 and older to access the equity they have in their homes and defer payment of the loan until the point in time when they die, sell or move out of the home. Any existing mortgages on the home must be paid off at or before closing on the new reverse mortgage. As there are no required mortgage payments, the interest on the loan is added to the loan balance each month. In view of this, the loan balance can conceivably grow to exceed the value of the home; however, the borrower is generally not required to repay any loan balance in excess of the value of the home. Reverse mortgages generally have higher costs associated with them than a home equity loan or line of credit. The vast majority of reverse mortgages are insured by the Federal Housing Administration (FHA) as part of its Home Equity Conversion Mortgage (HECM) Program.9

The Consumer Financial Protection Bureau conducted a study on reverse mortgages and reported its findings in June 2012. The key findings included that reverse mortgages are complex and difficult for consumers to understand and that borrowers are taking out loans at younger ages than in the past. In fiscal year 2011, nearly half of borrowers were under age 70. Also, borrowers are withdrawing more of their money upfront than in the past. In fiscal year 2011, 73 percent of borrowers took all or most of the available funds upfront at closing. Many used some of the monies to pay off existing mortgages. As of February 2012, 9.4 percent of borrowers were at risk of foreclosure as a result of nonpay-ment of taxes and insurance. Spouses of borrowers who are not listed as co-borrowers may well have no idea they are at risk of losing their home. If the borrowing spouse dies or needs to move, the non-borrowing spouse must sell the home or otherwise pay off the debt.10

The market for reverse mortgages has been small, but that could well change with the millions of baby boomers coming along and reaching the age of eligibility for reverse mortgages. There are concerns with the cost and complexities of these mortgages and with the trend toward persons taking out this type of mortgage before age 70 and taking all available loan money upfront in one lump sum. No doubt, some of these people will outlive their monies. Clearly, there needs to be a careful analysis of the individual’s needs and past spending habits when considering this option.

With the millions of baby boomers entering the senior population, and the 80 and older population growing by leaps and bounds, one can expect changes in the way seniors live and fund their long term care needs.

**OLDER AMERICANS ACT**

The Older Americans Act (OAA) of 1965 is legislation with an expansive vision for helping older Americans. It was the first federal level initiative to focus on the comprehensive needs of older adults, not just medical care.11 The OAA was designed to build an infrastructure for community based services, specifically designed to provide support and care to older adults so they can live independently in their environment of choice for as long as
they can. Since 1965, the building of the infrastructure of community-based services has taken place and is indeed well developed; however the number of people served is limited due to budget constraints. Whether this infrastructure can sustain itself is largely dependent upon future government spending.

The OAA created the National Aging Network, comprising the Administration on Aging at the national level, under the Department of Health & Human Services (HHS), State Units on Aging, and Area Agencies on Aging at the local level. In 2012, the HHS created the Administration for Community Living (ACL), bringing the Administration on Aging, the Office on Disability and the Administration on Developmental Disabilities together into a single agency. In announcing the creation of the new agency, HHS Secretary Kathleen Sebelius stated, “For too long, too many Americans have faced the impossible choice between moving to an institution or living at home without the long term services and supports they need.”

The objective of the new ACL is to work with communities to address support needs that go well beyond health care and include the availability of appropriate housing, employment, education, meaningful relationships and social participation. The ACL has a strong focus on finding the most efficient and cost effective ways to help older adults and those with disabilities. For example, it can be much less expensive for a senior to be at home with some support, as compared to hospitalization and the all too recurrent hospital readmissions.

In Kentucky, the Department for Aging and Independent Living (the state unit under the OAA) oversees the administration of statewide programs and services for seniors and disabled individuals. There are 15 Area Agencies on Aging and Independent Living in Kentucky which coordinate services funded by the OAA, most of the services being provided through a provider network. These programs and services include Senior Citizen Centers, of which there are more than 200 centers located throughout the state.

The Centers provide information and assistance, disease prevention and health promotion programs, elder abuse prevention programs, volunteer opportunities, and social services and activities for persons 60 and older. They also serve as meal sites where seniors can receive a meal addressing nutritional needs, up to five days a week.

The OAA also provides funding for home delivered meals (“Meals on Wheels”). There is also a transportation assistance program providing transportation for seniors to get to the Senior Center or for non-emergency medical transportation needs. Other programs include the National Family Caregiver Support Program that assists families with their roles as caregivers and the Kentucky Long Term Care Ombudsman Program which advocates for the rights of nursing home residents and deals with elder abuse issues.

CONCLUSION

These are interesting times in the world of long term care funding. With the millions of baby boomers entering the senior population, and the 80 and older population growing by leaps and bounds, one can expect changes in the way seniors live and fund their long term care needs. There will in all likelihood be new types of residential and assisted living communities, new programs and changes to existing programs, along with new technology and products geared to assist the senior population. The bottom line seems to be that Planning for Long Term Care needs is here to stay and a well thought out plan can provide safeguards for you and your family. B&B

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3. Id.
6. All benefits available to veterans can be found in Title 38 of the U.S.C.; see also www.va.gov/opapublications/benefits.
7. 38 U.S.C. section 1717(a)(2)(A) and (B).
11. 42 U.S.C. Chapter 35 Programs for Older Americans.
12. Statement from Secretary Sebelius, July 13, 2012; see also http://hhs.gov/ACL.

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Whitney Wilson has practiced law in Louisville since 2004. Her practice at Elder Law of Louisville is focused solely on elder law, which includes wills, powers of attorney, advanced directives, trusts, trust administration, medicaid planning, VA Benefits planning, special needs, guardianship, and probate. She is accredited by the VA to assist veterans with claims for benefits.

In the Louisville area, Wilson is an active member of the Louisville Bar Association (LBA), participating in the Estate & Probate Section and Disability Section. She is also a member of the Greater Louisville Aging in Place Alliance and the Health Services Professionals Network. Statewide, she is actively involved with the Kentucky Bar Association (KBA). She is the current vice-chair of its Elder Law Section. She is also a member of the Kentucky Guardianship Association. Nationally, Wilson is a member of the National Academy of Elder Law Attorneys and Elder Counsel.

Wilson also writes and speaks on Elder Law topics. She is a contributing author of the Elder Law book published by West as part of its Kentucky Practice Series, having contributed the VA Benefits chapter. She also writes Elder Law of Louisville’s blog. She routinely speaks on Elder Law topics, including at the KBA, LBA, UK/CLE, and for national legal seminar companies. She finds speaking with local groups most rewarding.
The KBA Annual Convention is just around the corner, and it’s always an exciting and busy time for the Young Lawyers Division. Did you know that we host our own conference within the convention on the Thursday of the programming? Our conference consists of CLE sessions designed and planned by us and geared toward young lawyers, but open to all registrants whether you are a YLD member or not. This year we are offering 14 programs, easily identified in the convention brochure by our round blue logo. At noon on Thursday, we host a luncheon and our annual meeting and elections immediately follow. This year we have contested elections for secretary/treasurer and for two of the Supreme Court District Representative positions. Over the past year we took steps to modernize our voting process that we hope will continue to increase the interest in participating in the selection of the leadership of our Division.

And finally, on Thursday evening we host an always popular and well attended reception in a convenient location, this year at Jeff Ruby’s restaurant adjacent to the Galt House Hotel convention location in Louisville.

This summer the YLD will host our annual Why Choose Law; Diversity Matters program. This program coincides with convention week and is held in the hosting city. We are particularly proud of this program created by our diversity committee. It targets high school and college-aged students from underrepresented populations in the legal field — whether that be socioeconomic, geographic, race or gender-related — and introduces them to our profession in a hands on environment. This year’s program will be on Tuesday, June 18, 2013 and the students will spend the morning at the Brandeis School of Law and the afternoon at the Gene Snyder Federal Courthouse. At the law school, the youth will participate in a simulated law school class led by Professor Laura Rothstein where they will have an opportunity to participate in the Socratic method of questioning. There will be a panel of local attorneys speaking about their journey through law school and their practices, as well as a panel of local college and law school admissions representatives to explain both the application processes.

Finally, the students will enjoy a tour of the law school led by the admissions staff. At the federal courthouse, the students will hear from a panel of federal court and state court judges and will tour that facility as well. The program would not be possible without the help of the aforementioned volunteer partners. It could be a life-changing experience for a student's interest to be sparked and the idea planted in their head that they could be a part of this rewarding profession!

The convention also marks the changing of the guards in our leadership, as my tenure officially ends on July 1. I have enjoyed the position and have felt honored to be a KBA officer on the Board of Governors. My interest in continued bar service has increased due to this experience and I ask that you look around and ask yourself how you could be more involved. There is so much to do and any help is greatly appreciated. Could you serve as a panel speaker at an alternative career program? Do you have an idea for a CLE program that you could give to the convention planning committee? Could you refer a student to the Why Choose Law; Diversity Matters program?

I hope that I’ve had a part in continuing the long success of the YLD and improving it by getting others interested.

Prior to her election to the Court of Appeals, Justice Keller practiced law for 17 years. She has served the court system, the bar, and the community through a variety of leadership positions, board memberships and volunteer activities. In addition, she has served her alma mater on numerous occasions as a board member, guest lecturer, student mentor, competition judge, and as a founding member of Chase’s Center for Excellence in Advocacy. Among her numerous honors and awards, Justice Keller is a past recipient of the Chase Excellence Award and the Chase Alumni Association’s Exceptional Service Award. Read more about Justice Keller on page 59.

Chase Congratulates Justice Michelle M. Keller ’90

Congratulations to Justice Michelle M. Keller, (1990), NKU Chase College of Law’s first graduate to serve on the Supreme Court of Kentucky. On April 3, Governor Steve Beshear appointed Justice Keller to fill the unexpired term of Justice Wil Schroder, who retired in January. At the time of her appointment, Justice Keller was serving in her seventh year on the Kentucky Court of Appeals. She is chair of the court system’s Technology Governance Committee and is a member of the American Bar Association’s Ethics and Professional Responsibility Judges Advisory Committee.

Chase’s Center for Excellence in Advocacy and Transactional Law Practice Center hosted H. McGuire “Mac” Riley ’86 as the Distinguished Practitioner in Residence on March 4 through 6. Riley is involved in a variety of business and service-oriented interests in and out of the Washington, D.C., area. Among his business interests, Riley is president of BAHR Associates, Inc., a provider of information technology services to the U.S. intelli-
College of Law Welcomes 16th Ray Lecturer

The UK College of Law announces Justice Albie Sachs as our 16th Roy R. and Virginia F. Ray Distinguished Lecturer. Justice Sachs, a former judge on the Constitutional Court of South Africa, spoke before a packed auditorium on April 12. His lecture, The Sacred and the Secular: South Africa’s Constitutional Court Rules on Same-Sex Marriages, dealt in part with Minister of Home Affairs v. Fourie, a South-African Constitutional Court case in which the court ruled that same-sex couples did have the constitutional right to marry. Justice Sachs authored the judgment, and the resulting Civil Union Act was passed in 2006.

Justice Sachs was appointed to the Constitutional Court by Nelson Mandela in 1994 and served through 2009. His career in human rights activism started at the age of 17, when as a second-year law student at the University of Cape Town, he took part in the Defiance of Unjust Laws Campaign. Three years later he attended the Congress of the People at Kliptown where the Freedom Charter was adopted. At age 21, he started practice as an advocate at the Cape Bar, the bulk of his work involving defending people charged under racist statutes and repressive security laws. He himself was raided by the security police, subjected to banning orders restricting his movement and eventually placed in solitary confinement without trial for two prolonged spells of detention.

In 1966 he went into exile. After spending 11 years studying and teaching law in England he worked for a further 11 years in Mozambique as law professor and legal researcher. In 1988 he lost an arm and the sight in one eye from a bomb which had been placed in his car by South African security agents. After recovering from the bomb he devoted himself full-time to preparations for a new democratic Constitution for South Africa. In 1990 he returned home and as a member of the Constitutional Committee and the National Executive of the ANC took an active part in the negotiations which led to South Africa becoming a constitutional democracy. He was appointed to serve on the newly-established court after the first democratic election in 1994.

The Roy R. and Virginia F. Ray Distinguished Lecture Series is the pre-eminent lecture series at UK Law. Established in 1977, the Ray Lecture has featured outstanding jurists and public figures discussing legal topics of current interest for 30 years.

Susan J. Court ’80 Receives Outstanding Chase Alumna Award

Susan J. Court, (1980), was named Chase’s Outstanding Alumna of the Year by the NKU Alumni Association during its annual awards celebration on March 21. Court joined the Federal Energy Regulatory Commission (FERC) in 1982 after clerking for Kentucky Supreme Court Justice Robert O. Lukowsky upon graduation from Chase. At FERC, Court served as associate general counsel for Gas and Oil, Deputy Solicitor, associate general counsel for General and Administrative Law and Designated Agency Ethics Official, chief of staff, and the first director of enforcement. After leaving FERC in 2009, Court was a partner at Hogan Lovells LLP, in Washington, D.C. She is currently principal of SJC Energy Consultants, LLC, and also serves as a hearing officer for Reliability First Corporation. She is a frequent speaker on federal energy topics and issues. During her visit to campus, Court delivered a featured presentation entitled “Practicing Law within the Federal Government” to Chase students, faculty and staff. She also served as a special guest lecturer in the Administrative Law class and met with students and faculty in small group discussions.

Chase Teams are Both National Champion and Runner-Up at Moot Court Competition

The Chase team of Erica Blankenship and Sara Martin won the Championship at the National Moot Court Competition in Child Welfare and Adoption Law on March 15 and 16 in Columbus, Ohio. Blankenship was also named best final-round advocate. In addition, the Chase team of Scott McDorman and Kathleen Shields was National Runner-up in the competition. This was the third Chase championship win in the eight-year history of the competition, and it was the first time in the competition’s history that two teams from the same school met in the final round.
Louis D. Brandeis School of Law Awards

The Louis D. Brandeis School of Law proudly announces the recipients of our annual Alumni/Alumnae Awards. Plan to join us on June 19, 2013, from 6 – 9 p.m. in the Waterford Room at the Galt House. To purchase tickets ($60), contact Becky Wimberg at 502-852-6879 or b.wimberg@louisville.edu.

CHARLES W. HEBEL, JR., 1955
Lawrence Grauman Award

Charles Hebel has set a standard of excellence that colleagues and associates strive to follow, and that clients trust. With over 55 years of experience in real estate law, he has demonstrated best practices in real estate closings, planning and zoning, estate planning, corporate and business organizations, and tax deferred exchanges. A native of Louisville, Hebel attended Brandeis School of Law and graduated cum laude in 1955. He is a member of the Louisville, Kentucky and American Bar associations and serves on various community boards.

JOSEPH GUTMANN
Dean’s Service Award

Joe Gutmann began his law career in the Office of the Commonwealth’s Attorney in November 1982, where he served as an assistant Commonwealth’s Attorney. Gutmann received his BA from University of Louisville and his JD from Northern Kentucky University Salmon P. Chase College of Law. He left the prosecutor’s office in 2005 to teach at Central High School in Louisville when he was asked to serve as the coordinator of Central’s Law and Government Magnet program. He is known for his dedication and commitment to his students ensuring that they have the tools they need to succeed, that they receive his excellent guidance, and that they can attend special educational events.

W. DOUGLAS MYERS, 1974
Distinguished Alumnus

Doug Myers is the current president of the Kentucky Bar Association. He was elected to the KBA Board of Governors (2005-10) and was elected vice-president in 2010. His professional involvement also includes the Southern Conference of Bar Presidents, Kentucky Justice Association, American Justice Association, American Board of Trial Advocates, American Trial Lawyers Association and the Kentucky Bar Foundation. Myers received both his M.S. and B.S. degrees from Murray State University and his J.D. from Brandeis School of Law. Immediately after graduation, he served as a law clerk to Justice Marvin J. Sternberg, Supreme Court of Kentucky. He currently is with the firm of Deatherage, Myers & Lackey, PLLC.

RONALD G. GEARY, 1974
Distinguished Alumnus

Ronald G. Geary has a great love for thoroughbred horses that began when he was in college. Geary is president and owner of Ellis Park Race Track. Geary joined ResCare in 1989 and was instrumental in taking the company public in 1992. Under Geary’s leadership, ResCare grew from serving 1,378 persons in six states and Puerto Rico to offering support to hundreds of thousands in 36 states, Washington, D.C., Puerto Rico, and Canada. ResCare has been named four times as one of Forbes Magazine’s 200 Best Small Companies in America. Geary earned a bachelor’s degree from the University of Kentucky and a J.D. from Brandeis School of Law.

MICHAEL J. STONE, 1977
Distinguished Alumnus

Michael J. Stone serves as president and chief operating officer of RLI Corp’s insurance subsidiaries; RLI Insurance Co., RLI Indemnity Co., Mt. Hawley Insurance Co., and Contractors Bonding Insurance Co. He is responsible for the overall direction of the companies’ insurance operations. Stone joined the company in 1996 as vice-president, claims. He was promoted to executive vice-president in 1998 and was appointed to his current position in 2002. He joined RLI from The Travelers in Hartford, Conn., where he began his employment in 1977. He worked for Crawford & Co. Insurance Adjusters from 1970 to 1977. Stone received a bachelor’s degree from Bellarmine College in Louisville and his J.D., magna cum laude, from Brandeis School of Law.

STEPHANIE MILLER, 1981
Distinguished Alumna

Stephanie Miller has been successfully practicing admiralty law, dealing primarily with inland river traffic, from barges to casinos as well as ocean traffic, for more than 30 years. Miller is legally blind, having lost most of her sight while in college. Undaunted, she completed her undergraduate studies and graduated from Brandeis School of Law in 1981. While obtaining her undergraduate and law degrees Miller raised three daughters as a single parent. Struggling financially, she was able to juggle her school, work and family life successfully. While in law school, she clerked for the U.S. Attorney for the Western District of Kentucky. After graduating from law school, she joined the firm of Miller and Miller, becoming a partner.
ENOCX POON, 1994

Distinguished Alumnus

Enoch Poon is an entrepreneur who was born in China and grew up in Hong Kong. He is the founder and president of Innovative International LLC of Tampa. His company specializes in consumer product design and manufacturing. He is also the founder and manager of Amstn LLC, a company that specializes in commercial real estate investment and development. He was honored as the Business Person of the Year in 2007 during the International Business Summit in Tampa. Prior to starting a career in international business, Enoch was an associate attorney with Ogden, Newell & Welch in Louisville and a systems engineer with Humana. Poon received his B.S. degree in mathematics and computer science from Greenville College, and his J.D. from Brandeis School of Law. He also holds an Executive Certificate in Technology, Operations & Value Chain Management from M.I.T. and is also a licensed U.S. Customs broker and a Certified Commercial Investment Member (CCIM) designee.

JOSHUA D. FARLEY, 2006

Recent Alumnus

At the age of 29, Josh Farley became one of the youngest attorneys ever to appear before the Supreme Court of the United States on their own petition for certiorari and win; securing an 8-1 victory for the Commonwealth of Kentucky in Kentucky v. King, 131 S.Ct. 1849 (2011). He has filed nearly 250 briefs with the Kentucky Supreme Court and the Kentucky Court of Appeals, and has filed various pleadings, memoranda, and briefs in state circuit courts, federal district courts, the Sixth Circuit Court of Appeals, and the Supreme Court of the United States. He currently has a second petition for certiorari pending at the Supreme Court of the United States. Farley currently is practicing criminal defense, personal injury, medical malpractice, and appellate law with Michael Hawkins & Associates in Frankfort. Prior to joining Michael Hawkins & Associates he was employed for five years as an assistant Attorney General for the Office of the Kentucky Attorney General. Farley received his bachelor’s degree from Vanderbilt University and his J.D. from Brandeis School of Law.

LUKE MILLIGAN

Excellence in Teaching

Luke Milligan is an associate professor of Law at Brandeis School of Law. He joined the faculty in 2008. Professor Milligan teaches Criminal Law, Criminal Procedure, Law & Religion, and Jurisprudence. His scholarship centers on how judges make rules regulating the criminal justice system. He is a member of University of Louisville’s Faculty Senate and Kentucky’s Public Advocacy Commission. Prior to joining the faculty at Brandeis, Milligan was a litigator at Williams & Connolly in Washington, D.C., a law clerk to Judge Edith Brown Clement of the U.S. Court of Appeals for the Fifth Circuit, and a law clerk to Judge Martin L.C. Feldman of the U.S. District Court for the Eastern District of Louisiana. Milligan is an honors graduate of Emory Law School, where he was articles editor of the Emory Law Journal. He also worked on antitrust investigations at the U.S. Department of Justice and death penalty matters at the Carter Center.

BARBARA THOMPSON

Outstanding Staff Member

Barbara Thompson is the director of Student Records at Brandeis School of Law. She started working at the law school in 1971 as a faculty secretary and records clerk. Thompson has a passion for giving back to the community through volunteer work. She has dedicated many years of volunteer service to Big Brothers Big Sisters of Kentuckiana, Rockford Lane Youth Sports in Louisville, Canine Companion for Independence (where she helped raise and train service dogs), Spouse Abuse Center and Center for Women & Families, the YMCA, Noe Middle School Sports Club Program, The Family Place, Ormsby Heights Baptist Church, Farnsley Neighborhood Place, Oak Lea Neighborhood Association, and presently with Exit 0 feeding the homeless.

KEVIN MCNALLY, 1976

Gail Robinson Award

The first recipient of the Gail Robinson Award is Kevin McNally, an attorney in private practice in Frankfort. He specializes in capital litigation, particularly at the trial level, having been involved in many death penalty trials in Kentucky and other states. He represented an Arizona client who had spent 14 years on death row before winning an acquittal in June of 1995. In 1997, another client was found not guilty in a cross-racial carjacking/murder, one of the few acquittals in a potential federal death penalty case. McNally formerly headed the capital trial unit for the Kentucky Department of Public Advocacy. McNally serves as a Federal Death Penalty Resource Counsel (FDPRC), a position he has held since 1992. He became the director of the Project in 2006. He received his J.D. from Brandeis School of Law in 1976, magna cum laude.

Visit www.kybar.org
We all know that plagiarism is bad. We also know that the point of legal writing is not originality – in fact, it’s the opposite. As Judge Richard Posner has noted, “originality is not highly prized in law.” A transactional attorney would be crazy to create completely new and original language for every contract he drafts. A litigator who relies on her original ideas rather than on precedent in making her client’s case will lose.

What we don’t always know is where to draw the line between acceptable and unacceptable copying of the work produced by others in the practice of law. In other words, when is an attorney who copies another’s work following accepted practice, and when is that attorney plagiarizing? Sometimes the line is clear, but often it is not.

First, the easy calls:

It is almost certainly OK, and sometimes even preferable, to copy or sign work that is not entirely your own when:

- You’re using language from a form book.
- You’re using boilerplate language from a contract.
- You’re using language from pleadings written by attorneys within your firm or organization.
- You’re looking at pleadings written by attorneys both within and outside of your firm or organization to see how other attorneys have handled similar issues.
- You’re signing pleadings written by other lawyers at your firm or organization.
- Your clerks write your judicial opinions.

It is almost certainly NOT OK to copy or take credit for work that is not your own when:

- You’re copying large amounts of material from a treatise or article without quotation marks and proper attribution. For example, in 2010 an Iowa bankruptcy court sanctioned an attorney who had copied large sections of an article from a law firm website, verbatim and without attribution, into a brief he filed with the court. In 2011, a federal district court in Kentucky deemed “cutting and pasting” from Wikipedia, without attribution, to be plagiarism in violation of Rule 8.4 of the Kentucky Rules of Professional Conduct.

Apart from these relatively clear examples, the question of when copying is OK gets murkier.

It is unclear if copying or taking credit for work that is not your own is OK when:

- You’re using language from pleadings written by attorneys from other firms or organizations, or from judicial opinions. Some authors and attorneys believe that copying from briefs written by attorneys unaffiliated with one’s law firm or organization is ethically questionable. Indeed, courts in numerous jurisdictions have sanctioned attorneys for copying large sections of other attorneys’ briefs. On the other hand, the North Carolina State Bar has given attorneys the green light to copy parts of pleadings. One author has suggested that “it is likely appropriate to borrow ‘structure, rhetorical devices, apt analogies, and perhaps even well-turned phrases’ in preparing a brief. It may even be appropriate in many cases to copy verbatim ‘routine matters involving established law, such as the standard of review or well-estab-
lished points of substantive law.12

However, a federal district court in Pennsylvania rebuked an attorney for verbatim copying at length from court opinions, including a one-page standard of review that “mirrors… with suspicious equivalence” one used by a federal district court judge.13

Similarly, the Sixth Circuit called it “completely unacceptable” when an attorney copied almost 20 pages verbatim, without attribution, from a district court opinion.14 The line seems to be the amount of language that has been copied; when large amounts of a brief or other pleading are copied from other pleadings or judicial opinions without attribution, most legal professions consider it unacceptable.

• You’re using language from non-pleadings written by attorneys from other firms.15 Thirty-seven years ago, the Kentucky Supreme Court wrote in a footnote to an opinion about a mortgage that “[l]egal instruments are widely plagiarized,” and found “no impropriety in one lawyer’s adopting another’s work, thus becoming the ‘drafter’ in the sense that he accepts responsibility for it.”16 However, while copying language from form books is expected, copying documents such as contracts, wills, and trusts from other law firms is not uniformly smiled upon.17

The best practice, then, is to proceed with caution when copying in legal writing. In Kentucky, it is probably acceptable to copy non-litigation documents from other sources, provided you have taken care to modify the documents to fit your clients’ needs.18 On the other hand, when writing pleadings, do not copy large sections from other documents, and always cite your sources. Originality is not prized in legal writing, but professionalism certainly is.

5 Richmond, supra note 2, at 245; Schroeder, supra note 3, at 68-69.
6 E.g., Posner, supra note 1, at 20-23; Bast & Samuels, supra note 2, at 800; Catherine L. Fisk, Credit Where It’s Due: The Law and Norms of Attribution, 95 Geo. L.J. 49, 96 (2006).
7 Iowa Sup. Ct. Attorney Disciplinary Bd. v. Cannon, 789 N.W.2d 756, 759 (Iowa 2010); Strickland, supra note 2, at 925-29. The court in Cannon was particularly irked that the attorney charged his client more than $5000 for preparing the largely plagiarized brief.
9 E.g., Craig, supra note 4; Richmond, supra note 2, at 245-46; Judith D. Fischer, The Role of Ethics in Legal Writing: The Forensic Embroiderer, The Minimalist Wizard, and Other Stories, Scribes J. of Legal Writing, 2003-2004, at 104. In addition to potential charges of plagiarism, an attorney who copies the work of other attorneys could be infringing on copyright, although the law on this issue is not clear. Craig, supra note 4; Scott Moise, Rocket Docket: The Joys and Perils of Online Court Documents, S.C. Law., May 2011, at 48; Bast & Samuels, supra note 2, at 805.
10 E.g., Moise, supra note 9, at 47.
11 Strickland, supra note 2, at 938-39 (citing N.C. Professional Responsibility Ethics Op. 14 (2009)). According to the Ethics Opinion, “[a]lthough consent and attribution are not required, if a lawyer uses, verbatim, excerpts from another’s brief and the lawyer knows the identity of the author of the excerpt, it is the better, more professional practice, [sic] for the lawyer to include a citation to the source.”
12 Strickland, supra note 2, at 947.
14 U.S. v. Bowen, 194 F. App’x 393, 402 n.3 (6th Cir. 2006).
15 Strickland, supra note 2, at 938.
16 Fed. Intermediate Credit Bank of Louisville v. Ky. Bar Ass’n, 540 S.W.2d 14, 16 n.2 (Ky. 1976); Moise, supra note 9, at 47; Bast & Samuels, supra note 2, at 804.
17 Strickland, supra note 2, at 938 n.128 (citing Terry LeClercq, Failure to Teach: Due Process and Law School Plagiarism, 49 J. Legal Educ. 236, 250 (1999)).
18 Fischer, supra note 2, at 68.
Kentucky Bar Association

Resolution

We, the Board of Governors of the Kentucky Bar Association, value and seek diverse and inclusive participation within the legal profession;

That achieving diversity in the legal profession requires the Kentucky Bar Association’s continued effort and commitment;

That Kentucky college graduates from diverse backgrounds may encounter financial and learning barriers and thus need assistance in pursuing a law degree and a career in the Commonwealth of Kentucky;

That those barriers may impair the ability of low income and under-represented students to afford and secure admission to law school;

That the Kentucky Legal Education Opportunity Program (KLEO) and its Summer Institute has significantly helped entering students from diverse backgrounds to succeed in law school and matriculate;

That the KLEO Summer Institute is an important way to combat the growing disparity between diversity in Kentucky’s legal profession and the community the profession serves; and,

That the Kentucky Bar Foundation and the Kentucky Bar Association’s Diversity Committee jointly recommend the passage of this Resolution.

To that end, it is essential that the KLEO Summer Institute have a permanent, identifiable and reliable source of funding each year through the creation of an endowment managed by the Kentucky Bar Foundation;

THEREFORE, the Board of Governors requests that the Kentucky Supreme Court approve a $5.00 voluntary contribution selection on the Kentucky Bar Association’s dues statement for the years 2013-2014 and 2014-2015 to fund the Kentucky Legal Education Opportunity Summer Institute (KLEO);

This Resolution shall be made a part of the minutes of the regular meeting of the Board of Governors held on the 15th day of March, 2013.

/s/ W. Douglas Myers, President

Attest:

/s/ John D. Meyers, Executive Director
Supreme Court of Kentucky

Proposed Amendments to the Rules of Civil Procedure (CR)

Proposed Amendments to the Rules of the Supreme Court (SCR)

The following Proposed Rules Amendments will be considered in an open session beginning at 8:30 a.m. on Wednesday, June 19, 2013. The hearing will be conducted in the Grand Ballroom at the Galt House Hotel in Louisville.
PROPOSED AMENDMENTS TO THE RULES OF CIVIL PROCEDURE (CR)

I. CR 4.01(1)(b) and (c) Summons; issuance; by whom served

The proposed amendments to subsection (b) and new subsection (c) of section (1) of CR 4.01 are:

1. (b) Cause the summons and complaint (or other initiating document), with necessary copies, to be transferred for service to any person authorized, other than by paragraph (a) [1] of this Rule, to deliver them, who shall serve the summons and accompanying documents, and his or her return endorsed thereon shall be proof of the time and manner of service.

2. (c) At the request of the initiating party, return the summons and complaint (or other initiating document), with necessary copies, to that party for service.

II. CR 5.02(1) and (2) Service; how made

The proposed amendments to sections (1) and (2) of CR 5.02 are:

1. (1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, which shall not include a warning order attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Except as provided in paragraph (2) of this rule, service upon the attorney or a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the last known address of such person; or, if no address is known, by leaving it with the clerk of the court. Service is complete upon mailing unless the serving party learns or has reason to know that it did not reach the person to be served. Delivery of a copy within this rule means handing it to the attorney or to a party; or leaving it at the office of the attorney or party or to the person in charge; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or, sending it by electronic means if the attorney or a party consents in writing. The attorney or a party consents to accept electronic service by filing and serving a notice that the attorney or party accepts electronic service.

2. (2) An attorney or party may elect to effectuate and receive service via electronic means to and from all other attorneys or parties in the action by filing a notice of such election with the clerk and serving a copy of such election by personal delivery or by mail as provided for in paragraph (1) of this rule, except that such notice may be sent electronically to any other party or attorney who has already filed and served a notice of election of electronic service hereunder. The notice must include the electronic notification address at which the attorney or party agrees to accept service. Methods of electronic service that may be elected under this rule include electronic mail or telecopy (facsimile). Documents sent through electronic mail shall be sent as an attachment in PDF or similar format unless otherwise agreed by the parties. Once an attorney or party files a notice of election of electronic service and serves the notice on all other attorneys or parties in the case, all other attorneys or parties shall promptly provide the requesting party or attorney with an electronic notification address at which the other attorneys or parties may be served, and shall thereafter serve the requesting attorney or party through electronic means whenever service of a document is required by these rules. Upon motion of an attorney or party and for good cause shown, the court may relieve the attorney or party of the obligation to make or receive service by electronic means. Unrepresented parties who are unable to utilize electronic service methods may continue to serve all other attorneys or parties through any method permitted by these rules. Electronic service of documents that are filed with the clerk shall be made on or before the day they are filed. Service is complete upon mailing or electronic transmission, but electronic transmission is not effective if the serving party learns or has reason to know that it did not reach the person to be served. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or electronic service, 3 days shall be added to the prescribed period. This provision shall not apply to the service of summons by mail under Rule 4.01(1)(a).

IV. CR 7.03 (1)(a) Privacy protection for filings made with the court

The proposed amendments to subsection (a) of section (1) of CR 7.03 are:

1. (1) Unless the court orders otherwise, in a civil filing with the court, excluding domestic violence matters, that contains certain personal data, including an individual’s social security number or taxpayer-identification number, or birth date, or a financial-account number, an attorney or party making the filing must redact the document so the following information cannot be read:

(a) all but the last four digits of the social-security number or taxpayer-identification number;

V. CR 23.05(6) Disposition of Residual Funds

The proposed new subsections (a) and (b) to new section (6) of CR 23.05 are:

(a) “Residual Funds” are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys’ fees, and other court-approved disbursements to implement the relief granted. Nothing in this rule is intended to limit the parties to a class action from agreeing to, or the trial court from approving, a settlement that does not create residual funds.

(b) Any order entering a judgment or approving a proposed compromise of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than twenty-five percent (25%) of the residual funds shall be disbursed to the Kentucky Access to Justice Foundation to support activities and programs that promote access to the civil justice system for low-income residents of Kentucky. The court may disburse the balance of the residual funds beyond the minimum percentage to the Kentucky Access to Justice Foundation or to any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.
I. SCR 2.018(1), (3) and (4) Application packets

The proposed amendments to sections (1), (3) and (4) of SCR 2.018 are:

(1) All applications for admission to the Kentucky Bar shall be electronically submitted on forms approved by the Board and Committee. Application forms are available on the Kentucky Office of Bar Admissions website, www.kyoboa.org, and accompanied by a fee of $10.00 made payable to the Kentucky Office of Bar Admissions.

(3) Any application received that is incomplete shall be returned to the applicant and a fee of $20.00 shall be submitted along with the complete application prior to said application being acted upon. If an applicant fails to return the requested information within 30 days, the application will be held in abeyance and no further action will be taken and no fees shall be refundable. If the requested information is submitted after the 30 days, the Committee will determine whether or not the applicant is permitted to take the forthcoming examination. Any applicant who submits an incomplete application will be notified of the error, and given an opportunity to upload a completed application within 30 days after the notification, and paying therewith a non-refundable fee of $20.00. No action will be taken by the Office of Bar Admissions upon an incomplete application. The Office of Bar Admissions may, in its discretion, act upon a completed application that is submitted after the said 30 day period.

(4) The application is to be signed by the applicant and notarized. All answers on the application form must be completely candid. Lack of candor could result in possible denial of character and fitness certification. An applicant is required to submit in writing any circumstance or occurrence that may reflect on their character or fitness. Before the applicable deadline, the applicant shall, by USPS mail or hand delivery, submit to the Office of Bar Admissions a signed, notarized signature page for the Application at the applicant’s request to the Kentucky Office of Bar Admissions, on the form provided for application for admission, such information as shall be requested thereon accompanied by a fee ($1500) (twelve hundred dollars ($1200)), no part of which shall be refunded. An applicant shall file with the Character and Fitness Committee such other affidavits, certificates, documents and materials as shall be required to satisfy the Committee of the applicant’s good moral character and fitness to be a member of the bar of this state. With respect to character and fitness, the Character and Fitness Committee shall process such applications pursuant to Rule 2.040.

II. SCR 2.022(2) and (7) Application for admission by examination

The proposed amendments to sections (2) and (7) of SCR 2.022 are:

(2) ATTORNEY APPLICANT: An attorney applicant who is admitted in another jurisdiction must file a complete Application for Admission By Examination form along with a fee of $675.00 ($675.00) (cashier’s or certified check or money order). The filing deadline is October 1 for the February Bar examination and February 1 for the July Bar examination.

(7) An applicant who wishes to withdraw from the Bar examination must notify the Kentucky Office of Bar Admissions, in writing, not later than five (5) days prior to the examination date or have a verified excuse, otherwise, the Bar examination fee of $675.00 shall be forfeited.

III. SCR 2.110(2) Admission without examination

The proposed amendments to section (2) of SCR 2.110 are:

(2) An attorney applying for admission under this Rule shall file with the Kentucky Office of Bar Admissions, on the form provided for application for admission, such information as shall be requested thereon accom-

IV. SCR 2.111(1)(b)(iv), (2), (4)(a) and (c) and (5) Limited certificate of admission to practice law

The proposed amendments to subsection (b)(iv) of section (1), section (2) and subsections (a) and (c) of section (4), and section (5) of SCR 2.111 are:

(1)(b)(iv) He/she will perform legal services in this Commonwealth solely for his employer, its parent, subsidiary, or its affiliated entities, or on a pro bono basis as permitted under paragraph (4)(c) below.

(2) Such applicant shall pay to the Kentucky Office of Bar Admissions, at the time of submission of such application a fee of $1,500 ($1,500) and shall make payment of the current annual dues or fees to the Kentucky Bar Association, as authorized under SCR 3.040.

(4)(a) Such attorney shall perform legal services in this Commonwealth solely for his employer, its parent, subsidiary, or affiliated entities, and shall not provide legal services in this Commonwealth, to any other individual or entity, except as permitted under paragraph (4)(c) below.

(c) An attorney admitted with a limited practice certificate under this rule is authorized to donate legal services in Kentucky through: (i) a duly organized legal aid program offering pro bono representation to indigent individuals within the Commonwealth of Kentucky, or (ii) a local bar association legal pro bono program or initiative. No fee can be accepted by the attorney with a limited practice certificate for the rendering of any legal services in connection with items (i) and (ii) above. An attorney donating legal services under this rule is subject to all duties and obligations of members admitted under SCR 2.110, SCR 2.120 and SCR 3.661.

(5) The performance of legal services in this Commonwealth solely for such attorney’s employer, its parent, subsidiary, or affiliated entities, or in connection with a pro bono program contained in paragraph 4(c) following admission to the Kentucky Bar on a limited certificate shall be considered to be the active engagement in the practice of law for all purposes.

V. SCR 2.112 Limited Admission For Attorney participants in a public defender, [or] legal services programs, or Office of a Commonwealth’s or County Attorney

The proposed amendments to SCR 2.112 are:

(1)(a) Scope. This rule applies to an attorney who is not a member of the Bar of this Commonwealth but who, after having completed the study of law in a law school approved by the American Bar Association or by the Association of American Law Schools and having been admitted to practice in the highest Court of another state, wishes to become an employee of an organized public defender program, the office of a Commonwealth’s Attorney or County Attorney, or an organized legal services program in this Commonwealth providing legal assistance to indigent persons.

(b) General Rule. An attorney to whom this rule applies shall be admitted to practice before the Courts of this Commonwealth in all matters (in which the attorney is associated with an) within the professional responsibility of an organized public defender program, the office of a Commonwealth’s or County Attorney, or an organized legal services program which program is sponsored, approved or recognized by the Kentucky Bar Association.
Bar Association. Admission to practice under this rule shall be limited to the matters specified in the preceding sentence. An application for admission to practice under this rule shall include or be accompanied by:

(a) A certificate of the highest Court or agency of any other state having jurisdiction over admission to the bar and the practice of law stating that the applicant is in good standing at the bar of such Court or in such state.

(b) A statement signed by the Commonwealth’s or County Attorney, or a representative of an organized public defender program or legal services program, that has employed the attorney, showing compliance with paragraph (1)(a) of this rule. Any such statement shall also contain an undertaking to acknowledge the duty of the office or by the program to notify the Clerk of the Supreme Court immediately whenever the attorney ceases to be an employee of such program.

(c) Such other affidavits or materials as shall be deemed necessary by the Character and Fitness Committee in order to satisfy the Committee of the applicant’s moral character and fitness to practice before the Courts of this Commonwealth.

(d) Payment of a fee of ($100.00) made payable to the Kentucky Office of Bar Admissions (cashier’s or certified check or money order).

(3) Subscription and Action. The application for admission shall be subscribed to by a member of the bar of this Commonwealth in good standing, if the application and related documents are in proper or-der and if the Character and Fitness Committee finds that the applicant has the moral character and fitness to practice before the Courts of this Commonwealth, the Clerk of the Supreme Court shall enter the name of the applicant upon the docket of persons specially admitted to the bar of this Commonwealth subject to the restrictions of this rule and shall issue an appropriate certificate in evidence thereof.

(4)(d) Expiration of Admission. When an attorney admitted under this rule ceases to be [associated] employed in [a] the program or office for which limited admission was granted [as set forth in the motion previously filed, a written statement to that effect shall be filed with the Clerk of the Supreme Court by] a representative of the public defender program or legal services program or office of Commonwealth’s or County Attorney shall immediately and in writing, notify the Clerk of the Supreme Court. Admission to practice under this rule shall expire after [eighteen] (18) months, or upon termination of the attorney’s employment with the program or office [when the attorney ceases to be an employee of the program], whichever shall first occur.

(5) Rules Governing the Practice of Law. Except for Rules 2.100 and 3.030(2), the Rules governing the practice of law shall be applicable to an attorney admitted under this rule.

VI. SCR 2.300(1)(e) and (5) Reinstatement of persons to practice law S{s}cope and P{urpose of Re{instatement} G{uidelines}

The proposed amendments to subsection (e) of section (1) and section (5) of SCR 2.300 are:

(1) Initial Reinstatement Application Process:

(e) Upon receipt of a Reinstatement Application from the Kentucky Bar Association, the Kentucky Office of Bar Admissions, Character and Fitness Committee will [immediately] instruct the applicant to electronically file a Character and Fitness Certification for Reinstatement Form in accordance with the instructions contained on it from the Office of Bar Admissions website, www.kyoba.org [send the applicant an Application for Admission to the Bar. The applicant must complete that form and return it to the Character and Fitness Committee with documentation specified in instructions accompanying the application].

(5) Formal Recommendation:

Following the Formal Hearing if there are material factual disputes, the Character and Fitness Committee must resolve them by making findings of fact. Such findings of fact must be supported by the existence or absence of clear and convincing evidence. Such findings will be set forth in a formal recommendation. A formal recommendation will be issued within (60) [thirty (30)] days of the date of receipt of the hearing transcript.

VII. [SCR 3.026 Local divisions of the Kentucky Bar Association]

The proposed deletion of SCR 3.026

VIII. SCR 3.030(1), (3), (4) and (5)(a) and (b) Membership, practice by nonmembers and classes of membership

The proposed amendments to sections (1), (3), (4) and new subsections (a) and (b) of new section (5) of SCR 3.030 are:

(1) All persons admitted to the practice of law in this state shall be, and they are, members of the association. [Upon the completion of the prerequisites under Rule 2.100]

(3) The association, by its bylaws, may create honorary memberships. [All other attorneys shall be active members.]

(4) A [new] class of membership is established to be known as “Se-nior Retired Inactive Member.” Any member who reaches the age of 70 years and no longer is actively practicing law and who has met the necessary CLE requirements for inactive status pursuant to SCR 3.666(2), shall upon notification to the Executive Director be classified as Senior Retired Inactive and shall not be required to pay annual dues.

(5) (a) A class of membership is established to be known as “Dis-abled Inactive Member.” An attorney admitted to practice in this state who has been, because of a mental or physical condition, judicially declared to be a person under a legal disability, or for whom probable cause exists to believe that the attorney has a mental or physical condition that substantially impairs his or her ability to practice law shall provide to the Court a detailed written report from a licensed qualified health care provider who has examined the attorney setting out the findings of the health care provider, including the results of all tests made, diagnoses and conclusions. The Court may enter an order transferring the attorney to Disabled Inactive Status. An attorney classified under this subsection is not required to pay dues or obtain the annual CLE requirement pursuant to SCR 3.661. This status shall be reflected on the attorney’s membership record. No attorney classified under this status may engage in the practice of law in this state until restored to active status by the Court. Any disciplinary proceedings against the attorney may be stayed while he/she is on disabled inactive status. Any report and supporting records from a health care provider regarding the treatment of the attorney shall be confidential and sealed.

(b) An attorney transferred to disabled inactive status may file a petition with the Court for restoration to active status. A copy of the petition shall be served on Bar Counsel, who shall have (20) days to file a response to the petition. If Bar Counsel objects to the petition, the matter shall be referred to the Character and Fitness Committee to conduct proceedings under SCR 2.300. If Bar Counsel has no objection to the petition the Court may enter an order restoring the attorney to active status with
or without conditions. If an attorney is restored to active status, any disciplinary proceedings that have been stayed will be resumed.

IX. SCR 3.040(4) Dues: date of payment and amount

The proposed amendments to section (4) of SCR 3.040 are:

(4) Unless the member has been classified under Senior Retired Inactive Member pursuant to SCR 3.030(4) or Disabled Inactive Member pursuant to SCR 3.030(5), [Any] the member or the bar may apply in writing to the Kentucky Bar Association to be relieved of the payment of dues by reason of undue hardship arising from disability, sickness or financial condition. The application shall be copied to the Governors from the district in which the attorney lives, who may or may not recommend in writing to the President that such relief be granted, giving the reasons therefor. Thereupon the President shall have the authority to rule on the application and to notify the Treasurer by written order that the attorney is relieved of the payment of dues. The President shall file the order with the registrar along with the recommendation of the Governor(s).

X. SCR 3.060(1)(h),(i) and (j) Records to show status of members

The proposed amendments to subsections (h), (i) and (j) of section (1) of SCR 3.060 are:

(1)(h) Disciplinary complaints filed with the director pursuant to Rule 3.160(1) against attorneys that have been dismissed by the Inquiry Tribunal Commission shall be maintained by the director for a period of [one] (1) year after final disposition of the complaint.

(i) Those records which are disciplinary complaints against attorneys that have resulted in discipline of attorneys shall be maintained by the director until [five] (5) years after the death of the attorney.

(j) At the end of the period stated in paragraphs (h) and (i) of this rule, the director shall destroy the described complaints and/or records shall be destroyed.

XI. SCR 3.070 The board; functions and membership

The proposed amendments to SCR 3.070 are:

The Board is the governing body of the Association and the agent of the Court for the purpose of administering and enforcing the Rules. It shall consist of the President, the President-Elect, the Vice President, the immediate Past President, the Chair of the Young Lawyer’s Section Division, and [two] (2) attorneys elected from the membership of the Association in each appellate district of the state as presently existing or hereafter created.

XII. SCR 3.120(1) and (10) Fiscal provisions

The proposed amendments to section (1) and deletion of section (10) of SCR 3.120 are:

(1) The dues and bar registration fees prescribed in Rule 3.040 shall constitute a general fund to provide for the ordinary and necessary expenses of the operation of the Kentucky Bar Association, including, as appropriate, compensation of employees; expenses of the Board and officers; publications; maintenance of the client’s security fund and the bar center fund and the discharge of the disciplinary, educational and other functions specified by these rules. Other fees, subscriptions, and contributions authorized by these Rules or approved by the court shall constitute a special fund or funds to provide for the specific purpose or purposes of each such collection including the annual (and midyear) conventions and other undertakings for which specific collections are authorized. Excesses in the special fund may be transferred to the general fund on order of the Board. Voluntary section or division funds or contributions may be retained by the sections or divisions annually with the approval of the Board.

[(10) Printing and purchasing shall be regulated by procedures established through the Administrative Office of the Courts.]

XIII. SCR 3.130(1.15)(b) and (c) Safekeeping property

The proposed amendments to sections (b) and (c) of SCR 3.130(1.15) are:

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client, the third person, or both in the event of claims by each to the property. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, or both in the event of a claim by each to the property, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) have an interest and are not in agreement regarding those interests, the funds or other property in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property in (as to) which the interests are not in conflict (dispute).

XIV. SCR 3.130(3.4)(g)(1) Fairness to opposing party and counsel

The proposed amendments to subsection (1) of section (g) of SCR 3.130(3.4) are:

(1) the person is a relative or agent who supervises, directs or regularly consults with the client concerning the matter or has authority to obligate the client with respect to the matter; and

XV. SCR 3.130(7.02)(1)(a) and (f) Definitions

The proposed amendments to subsections (a) and (f) of section (1) of SCR 3.130(7.02) are:

(a) A professional card of a lawyer identifying the lawyer by name and giving the lawyer’s address(es), telephone number(s), fax number(s), e-mail address(es), website, jurisdictions in which the lawyer is licensed to practice, foreign language skills, office hours, additional office location(s), length of time practicing, photograph of lawyer with no accompanying scene in the background, and the designation of a law firm as a “debt relief agency” as required by the Bankruptcy Abuse Prevention and Consumer Protection Act (11 USC §528(b)(1)(a)(b)), but no other information. A professional card of a law firm may also give the names of members and associates, and jurisdictions in which the lawyers are licensed to practice.

(f) A letterhead of a lawyer or law firm containing addresses, telephone numbers, fax numbers, email addresses, website, the name of the law firm, associates, and the jurisdictions in which the lawyers are licensed to practice. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer may be designated “Of Counsel” on a letterhead if there is a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated “General Counsel” or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.
**XVI. SCR 3.130(7.06)(2) Advisory opinions**

The proposed amendments to section (2) of SCR 3.130(7.06) are:

(2) If a lawyer has received an advisory opinion that an advertisement complies with the Advertising Rules and Advertising Regulations, that lawyer shall not be disciplined for any use of that advertisement, except as otherwise provided in SCR 3.130(7.06)(6)(4).

**XVII. SCR 3.130(7.09) Comment (3) Direct contact with potential clients**

The proposed amendments to section (3) of the Supreme Court Commentary to SCR 3.130(7.09) are:

**Supreme Court Commentary**

(3) The rule’s subsection (3) permits solicitations otherwise prohibited by the rule where the solicitation is not significantly motivated by the lawyer’s pecuniary gain, in compliance with In re Primus, 436 U.S. 412 (1978); Ohralan v. Ohio State Bar Ass’n, 456 U.S. 447 (1978); and NAACP v. Button, 371 U.S. 415 (1963). There is far less likelihood that a lawyer would engage in abusive practices in situations in which the lawyer is motivated by considerations other than the lawyer’s pecuniary gain. Also, subsection (3) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

**XVIII. SCR 3.130(7.20)(3), (5) and Comment (6) Advertising**

The proposed amendments to sections (3) and (5) of SCR 3.130(7.20) and new section (6) of the Supreme Court Commentary of SCR 3.130(7.20) are:

(3) Any communication made pursuant to these Rules shall include: the name of at least one [one] lawyer licensed in Kentucky[,] or the name of a law firm any of whose members partners, or lawyers with an ownership interest are licensed in Kentucky[.]. The lawyer or lawyers licensed in Kentucky shall be responsible for (it’s the content[s] of the advertisement).

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

**Supreme Court Commentary**

(6) Pursuant to SCR 3.130(5.1), it is the responsibility of partners, lawyers with an ownership interest in the firm and lawyers who possess managerial authority in the firm, to ensure that the firm has measures in place to assure conformance with the Rules of Professional Conduct.

**XIX. SCR 3.130(8.2)(a) and (b) and Comments (1), (2) and (3) Judicial and legal officials**

The proposed amendments to sections (a) and (b) of SCR 3.130(8.2) and sections (1), (2) and (3) to the Supreme Court Commentary of SCR 3.130(8.2) are:

[(a) A lawyer shall not make a statement that the lawyer knows to be
false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b)] A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

**Supreme Court Commentary**

(1) Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

(2) When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

(3) To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

**XX. SCR 3.160(3)(C) Initiation of disciplinary cases**

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

(3)(C) After review and such preliminary investigation as may reasonably be necessary, the Office of Bar Counsel may attempt informal resolution and subsequently close the Complaint. If the acts or course of conduct complained of merit referral under 3(A)(iii)-(vii)(viii), and do not warrant a greater degree of discipline, the Office of Bar Counsel may issue a warning letter, which will be maintained in the investigative file of the Office of Bar Counsel but not be considered as discipline, or it may recommend remedial ethics, related legal or management education programs, fee arbitration, or KYLAP, completion of which would result in the complaint being dismissed.

**XXI. SCR 3.175(1)(b), (c), (d), (e) and (3) Efficient enforcement; notice of attorney’s address**

The proposed amendments to subsections (b), (c), (d) and (e) of section (1) of SCR 3.175 are:

(1) (b) maintain with the Director a valid email address and shall upon change of that address notify the Director within (30) days of the new address.

(c) [d] include his or her [five] (5) digit member identification number in all communications to the Association including, but not limited to, any and all communications relating to his or her membership status, membership record, dues obligations, compliance with continuing legal education requirements or disciplinary proceedings in which he or she is a respondent.

(d) [e] If the member provides a Post Office address, he or she must also provide a current address for service of process.

(e) [f] Failure to maintain a current address which allows for physical service of process with the Director may be prosecuted in the same manner as a violation of the Rules of Professional Conduct.

(3) After July 1, 2004, the Association may reject any communication to the Association which fails to comply with paragraph (1)(b)(c) of this Rule 3.175, provided that a member’s failure to include his or her member identification number in a document shall not result in a default in any disciplinary proceeding.
XXII. SCR 3.210(2), (3) and (4) Processing cases of default, admissions of violations or answers raising only issues of law

The proposed amendments to sections (2), (3) and (4) of SCR 3.210 are:

(2) After entry of the order of submission, the Board may rule on Motions to file late answers for good cause shown as set forth in CR 6.02. The Office of Bar Counsel shall have an opportunity to file a response. The entire Board shall rule on the Motion. If the Motion is granted, the Board shall return the entire record to the Disciplinary Clerk for further proceedings. If the Motion is overruled, the matter shall stand submitted to the Board.

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

(4) The Board, by a vote of a majority of the Board present and voting, may return the entire record to the Disciplinary Clerk for appointment of a Trial Commissioner pursuant to SCR 3.230 to conduct an evidentiary hearing, which proceeding will be confidential pursuant to 3.150.

XXIII. SCR 3.225 Appointment of Trial Commissioner

The proposed amendments to SCR 3.225 are:

The Chief Justice shall appoint, subject to the approval of the Supreme Court, from among the membership of the Bar Association, a Trial Commission and shall designate a chair from the Commission. The Trial Commission shall consist of no more than (15) members. Members of the Trial Commission shall be lawyers licensed in the Commonwealth who possess the qualifications of a Circuit Judge. To the extent practicable, the Chief Justice shall, with the consent of the Court, appoint Trial Commissioners from each appellate district. Such Trial Commissioners shall (be authorized to) serve (1) or more (4) year terms (of two (2) years).

XXIV. SCR 3.240(1) and (2) Notice of appointment of Trial Commissioner and hearing

The proposed amendments to sections (1) and (2) of SCR 3.240 are:

(1) Upon the appointment of a Trial Commissioner, the Disciplinary Clerk shall notify the parties of his/her name and address. The Trial Commissioner shall fix the time and place of the hearing and the Disciplinary Clerk shall give notice thereof to the parties. Such hearing shall occur [be held] not less than [thirty] (30) days, nor more than [sixty (60)] (180) days, after the date of the notice, but for good cause shown, [or by agreement] said time may be extended by the Trial Commissioner for a period not to exceed an additional (180) days.

(2) Any time, not later than (20) [ten (1)] days after the appointment of a Trial Commissioner or at such point in the proceeding that facts become known sufficient for such challenge, the Respondent or Bar Counsel may, by motion, challenge for cause the Trial Commissioner. If the challenge is such as might disqualify a Circuit Judge, the Chief Justice shall relieve the challenged member and direct the Disciplinary Clerk to immediately fill the vacancy.

XXV. SCR 3.320 Procedure where an attorney has been convicted of a misdemeanor or a felony

The proposed amendments to SCR 3.320 are:

[When] Any member of the Association [has been] who is convicted of a felony or class “A” misdemeanor, [a copy of the judgment] shall be filed by the Respondent and the attorney prosecuting the case to a plea of guilty or conviction by judge or jury, within (10) days following the plea of guilty, finding of guilt by a judge or jury, or upon the entry of judgment, whichever occurs first, file a copy of the judgment with Bar Counsel. The prosecuting attorney shall also file a copy of said judgment with Bar Counsel for action under SCR 3.160. Bar Counsel shall submit copies of the judgment to the Inquiry Commission which may take action under SCR 3.165.

XXVI. SCR 3.330 Order of proceedings and burden of proof

The proposed amendments to SCR 3.330 are:

The Trial Commissioner shall determine and regulate the order of proceedings at the hearing. Upon the application of a party or upon direction of the Trial Commissioner, the Disciplinary Clerk shall issue subpoenas for the attendance of witnesses or the production of evidence at the hearing. Prehearing discovery shall proceed in accordance with this rule as directed by the Trial Commissioner rather than by the Kentucky Rules of Civil Procedure. If reasonably necessary to prepare the case for hearing, the Trial Commissioner may allow the taking of depositions and require the production of documents. The burden of proof shall rest upon the Association in a disciplinary proceeding, and the facts must be proven by a preponderance of the evidence. In reinstatement hearings the burden shall rest upon the Applicant, and the Respondent must demonstrate by clear and convincing evidence his/her suitability for reinstatement. Before submission the Trial Commissioner may direct such oral argument as he/she deems appropriate and may allow (receive) briefs, not to exceed (30) pages, from all parties [on such terms as he/she may impose], which shall be filed simultaneously within (30) days after the record is filed with the Disciplinary Clerk. The trial commissioner shall have discretion to extend the page limit of briefs.

XXVII. SCR 3.350 [Transcript of evidence] Electronic Record

The proposed amendments to SCR 3.350 are:

The proceedings before the Trial Commissioner shall be electronically reported and immediately filed with the Disciplinary Clerk. [Reported by videotape, where possible, or if not possible, by a reporter appointed by the Trial Commissioner. If a transcript must be prepared, it shall be completed within sixty (60) days of the hearing.]

XXVIII. SCR 3.360(2), (4) and (5) Trial Commissioner to file report with Disciplinary Clerk

The proposed amendments to sections (2), (4) and (5) of SCR 3.360 are:

(2) The Trial Commissioner's report shall constitute a part of the record in the case. The report shall be advisory.

The Trial Commissioner shall file the report with the Disciplinary Clerk within [thirty (30)] days after the [transcript of evidence or videotape] record has been filed with the Disciplinary Clerk or after any briefs have been filed with the Disciplinary Clerk, whichever is later. Said deadline may be extended by agreement of the parties or by the President upon verified motion by the Trial Commissioner. If an extension is sought by the Trial Commissioner, a verified motion stating with particularity the grounds for the extension of time shall be filed with the Disciplinary Clerk, with service on parties. The President may grant up to a sixty (60) day extension of time for the Trial Commissioner to file the report. If the Trial Commissioner fails to timely file the report or a verified motion for extension of time, the Board shall request the Supreme Court to issue a show cause order to the Trial Commissioner.
(4) Within [thirty] (30) days after the filing with the Disciplinary Clerk of: (a) the report, (b) an order ruling on a motion under SCR 3.360(3), or (c) an amended report, whichever is later, either party may file a notice of appeal with the Disciplinary Clerk. If no notice of appeal is timely filed, the entire record shall be forwarded to the Court for entry of a final order pursuant to SCR 3.370(9)(10).

(5) Upon finality of the report, the Trial Commissioner shall return to the Disciplinary Clerk the entire transcript of the proceeding, the transcript of testimony record and such papers as may have been filed and are in the possession of the Trial Commissioner.

XVIII. SCR 3.370(1) and (5)(c) Procedure before the Board and the Court

The proposed amendments to section (1) and subsection (c) of section (5) of SCR 3.370 are:

(1) Thirty [(30)] days after the filing of the notice of appeal, the Appellant shall file a brief supporting his/her position on the merits of the case. Fifteen [(15)] days thereafter, the Appellee shall file his/her brief. Briefs shall not exceed (30) pages. No reply brief shall be permitted.

(5)(c) Each roll call vote under (5)(a) or (b) shall be agreed upon by [eleven] (11) or [three-fourths] (3/4) of the members of the Board present and voting on the proceeding, whichever is less.

XXX. SCR 3.450(1), (2) and (3) Recovery of [appropriate] Costs

The proposed amendments to sections (1), (2) and (3) of SCR 3.450 are:

(1) In any case to be submitted to the Court, the Disciplinary Clerk shall file with the Court the entire record of the proceeding together with a certified bill of the costs incurred in connection with the investigation and prosecution of the matter, which shall include the expenses incurred by the Kentucky Bar Association in connection with the investigation and prosecution of the matter, including the expenses associated with the trial commissioner's hearing.

(2) Every final order of the Court which adjudges the Respondent guilty of unprofessional conduct shall provide for the recovery of [appropriate] costs, which shall include the costs and expenses that a prevailing party in a civil action may recover pursuant to CR 54.04, and such other costs, including postage, certified mailing fees, service of process fees, and videographer charges, as may be ordered by the Supreme Court. Immediately upon the effective date of the order, the Clerk shall furnish a bill for said costs to the Respondent. If the bill is not satisfied within [ten] (10) days thereafter, upon which date the order is final, the Clerk shall notify the Director of the Association. The award set forth in the order and any costs shall bear interest at the judgment rate set forth in KRS 360.040.

(3) An order of the Court assessing costs as referenced above shall be enforceable in the same manner and by the same means as any civil judgment.

XXXI. SCR 3.480(2) Withdrawal from the association; negotiated sanctions

The proposed amendments to section (2) of SCR 3.480 are:

(2) The Court may consider negotiated sanctions of disciplinary investigations, complaints or charges [if the parties agree] prior to the commencement of a hearing before a Trial Commissioner under SCR 3.240. Any member who is under investigation pursuant to SCR 3.160(2) or who has a complaint or charge pending in this jurisdiction, and who desires to terminate such investigation or disciplinary proceedings at any stage of it may request Bar Counsel to consider a negotiated sanction. If the member and Bar Counsel agree upon the specifics of the facts, the rules violated, and the appropriate sanction, the member shall file a motion with the Court which states such agreement, and serve a copy upon Bar Counsel, who shall, within [ten] (10) days of the Clerk's notice that the motion has been docketed, respond to its merits and confirm its agreement. The Disciplinary Clerk shall submit to the Court within the [ten] (10) day period the entire disciplinary file to which the motion applies. The Court may approve the sanction agreed to by the parties, or may remand the case for hearing or other proceedings specified in the order of remand.

XXXII. SCR 3.500(2)(d), (3)(d) and (4) Restoration to membership

The proposed amendments to subsection (d) of section (2), subsection (d) of section (3) and section (4) of SCR 3.500 are:

(2)(d) Upon the filing of the foregoing items, the Office of Bar Counsel shall present the matter to the Board at its next meeting, or, if not contested, at any time by mail or electronic means. Within [(thirty) (30)] days of its review of the complete application materials, the Board may restore the applicant to membership or refer the matter to the Character and Fitness Committee of the Kentucky Office of Bar Admissions for proceedings pursuant to SCR 2.040 and SCR 2.011, and subsequent review by the Supreme Court. If the matter is referred to the Character and Fitness Committee, the applicant shall pay a fee of ($450.00) [two hundred fifty dollars ($250.00)] to the Kentucky Office of Bar Admissions. Upon completion of its review, the Character and Fitness Committee or the Board shall submit its recommendation to the Board for its action and recommendation to the Court.

(3)(d) Upon the filing of the foregoing items, the Director shall refer the application to the Character and Fitness Committee of the Kentucky Office of Bar Admissions for proceedings pursuant to SCR 2.040 and SCR 2.011. An additional fee of ($750.00) [five hundred dollars ($500.00)] shall be paid to the Kentucky Office of Bar Admissions. Upon completion of its review, the Character and Fitness Committee shall submit its recommendation to the Board of Governors for its action and recommendation to the Court.

(4) All costs incurred in excess of the filing fee shall be paid by the Applicant. Upon referral to the Character and Fitness Committee, a cash [or corporate surety] bond in the amount of [two thousand five hundred dollars] ($2500.00) to secure the costs to be incurred shall be paid to the Office of Bar Admissions by the Applicant.

XXXIII. SCR 3.505(3) Character and Fitness Committee; reinstatements

The proposed amendments to section (3) of SCR 3.505 are:

(3) The Applicant or Bar Counsel shall have the right to a hearing before the Character and Fitness Committee prior to issuance of its decision. The hearing shall be held within [sixty] (60) days from the request. The formal recommendation [report] of the Committee shall be filed within [sixty] (60) days of receipt of the transcript of hearing [the filing of the record].

XXXIV. SCR 3.510(1), (2), (3) and (4) Reinstatement in case of disciplinary suspension

The proposed amendments to sections (1), (2), (3) and (4) of SCR 3.510 are:

(1) No former member of the Association who has been suspended for a disciplinary case for more than [one hundred eighty] (180) days shall resume practice until he/she is reinstated by order of the Court. Application for reinstatement shall be on forms provided by the Director and Continuing Legal Education Commission, filed with the Director, and...
shall be accompanied by a filing fee of ($250.00) which shall be made payable to the Kentucky Bar Association. An additional filing fee of ($1500.00) ($1250.00) shall be made payable to the Kentucky Office of Bar Admissions. The Director shall not accept an application for filing unless all costs incurred in the suspension proceeding have been paid by the former member, the Office of Bar Counsel has certified to the Applicant that there is no pending disciplinary file, and the costs in the reinstatement proceeding (whether costs of the Association or of the Character and Fitness Committee or of the Kentucky Office of Bar Admissions) have been secured by the posting of a cash (or corporate surety) bond of ($2500.00). Any additional costs will be paid by Applicant. The Director shall refer the application to the Continuing Legal Education Commission within ten (10) days of receipt for certification under Rule 3.675. The Continuing Legal Education Commission shall make its certification within twenty (20) days of the referral which shall be added to the record in the reinstatement proceedings.

(2) If the period of suspension has prevailed for one hundred eighty (180) days or less, the suspension shall expire by its own terms upon the filing of the character and Bar Counsel of an affidavit of compliance with the terms of the suspension, which must include a certification from the CLE Commission that the Applicant has complied with SCR 3.675. The Registrar of the Association shall make an appropriate entry in the records of the Association reflecting that the member has been reinstated; provided, however, that such suspension shall not expire by its own terms if, not later than ten (10) days preceding the time the suspension would expire, Bar Counsel files with the Inquiry Commission an opposition to the termination of suspension wherein Bar Counsel details such information as may exist to indicate that the member does not, at that time, possess sufficient professional capabilities and qualifications properly to serve the public as an active practitioner or is not of good moral character. A copy of such objection shall be provided to the Character and Fitness Committee, to the member concerned, and to the Registrar. If such an objection has been filed by Bar Counsel, and is not withdrawn within thirty (30) days, the Character and Fitness Committee shall conduct proceedings under SCR 2.300. In cases where a suspension has prevailed for one hundred eighty (180) days or less and the reinstatement application is referred to the Character and Fitness Committee, a fee of ($1500.00) ($1250.00) shall be made payable to the Kentucky Office of Bar Admissions.

(3) If the period of suspension has prevailed for more than one hundred eighty (180) days, the matter shall be referred to the Character and Fitness Committee for proceedings under SCR 2.300. The Character and Fitness Committee shall determine whether the application of a member who has been suspended one hundred eighty (180) days or less but whose termination of suspension has been objected to, or a member who has been suspended for more than one hundred eighty (180) days, should be approved. The Character and Fitness Committee shall file with the Director and the Clerk the entire record, including a written report and recommendation by the Character and Fitness Committee. Thirty days after the filing of the report, Bar Counsel and the applicant may each file briefs, not to exceed thirty (30) pages in length. No further briefs may be filed. Upon motion of the parties or upon the Board's own motion, oral arguments may be scheduled before the Board. The Board shall review the record, and report and briefs and recommend approval or disapproval of the application to the Court. If the Board approves the application, the Committee shall refer the application to the Board of Bar Examiners for processing in accordance with Rule 3.500(3) and shall file the entire record with the Clerk, including the written report and recommendation of the Committee. The Board of Bar Examiners shall certify the results of the examination to the Director and the Court. If the Applicant successfully completes the examination, the Court may, at its discretion, enter an order reinstating the suspended member to the practice of law. However, if the Applicant fails to pass the examination, the Court shall enter an order denying the application.

XXXV. SCR 3.600 Continuing legal education definitions

The proposed amendments to SCR 3.600 are:

As used in SCR 3.610(605) to 3.690(695), the following definitions shall apply unless the context clearly requires a different meaning:

(1) “Approved activity” is a continuing legal education activity that meets the requirements set forth in SCR 3.650 and has been approved for credit by the CLE Commission.

(2) “Attorney Identification Number” is the five (5) digit number assigned to each member of the Association upon admission.

(3) “Award” is the Continuing Legal Education Award.

(4) “Commission” is the Continuing Legal Education Commission.

(5) “Continuing legal education,” or “CLE,” is any legal educational activity or program which is designed to maintain or improve the professional competency of the practicing attorneys and is accredited by the Commission.

(6) “Credit” is a unit for measuring continuing legal education activity.

(7) “Educational year” is the reporting period for mandatory continuing legal education and runs from July 1st each year through June 30th of the successive year.

(8) “Ethics, professional responsibility and professionalism” is the category by which “ethics credits” shall be earned and includes, but is not limited to, programs or seminars or designated portions thereof with instruction focusing on the Rules of Professional Conduct independently or as they relate to law firm management, malpractice avoidance, attorneys fees, legal ethics, and the duties of attorneys to the judicial system, the public, clients and other attorneys.

(9) “In-house activity” is an activity sponsored by a single law firm, single corporate law department, or single governmental office for lawyers who are members or employees of the firm, department or office.

(10) “Legal writing” is a publication which contributes to the legal competency of the applicant, other attorneys or judges and is approved by the Commission.

(11) “Non-compliance” means not meeting continuing legal education requirements set forth in Rule 3.610(645) and Rule 3.650(640) and includes both lack of certification and lack of completion of activities prior to established time requirements.

(12) “Technological transmission” is a CLE activity delivery method other than live seminars and includes video tape, DVD, audio tape, CD-ROM, computer on-line services, or other appropriate technology as approved by the Commission.
XXXVI. SCR 3.[610]605 The commission; functions and membership

The proposed deletion of SCR 3.610 and new rule SCR 3.605 is:

The Continuing Legal Education Commission shall consist of [seven] [7] attorneys, [one] [1] of whom shall be from each appellate district of the [state] Commonwealth as presently existing or hereafter created. Under the policy direction of the Court and the Board, the Commission shall be responsible for the administration and regulation of all continuing legal education programs and activities for the members of the Association.

XXXVII. SCR 3.[620]610 Selection and tenure of the Commission; filling vacancies on the Commission

The proposed deletion of SCR 3.620 and new rule SCR 3.610 is:

The Court shall appoint all members of the Commission from a list consisting of [three] [3] times the number to be appointed submitted to the Court by the Board. A chairman shall be designated by the Court for such time as the Court may direct. Of the members first appointed, [three] [3] shall be appointed for [one] [1] year, [two] [2] for [two] [2] years and [two] [2] for [three] [3] years. Thereafter, appointments shall be made for a [three]-[3] year term. Members may be reappointed but no member shall serve more than [two] [2] successive [three]-[3] year terms. Each member shall serve until a successor is appointed and qualified. Vacancies occurring through death, disability, inability or disqualification to serve or by resignation shall be filled for the vacant term in the same manner as initial appointments are made by the Court. Members of the Commission shall serve without compensation but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. The Association shall have the responsibility of funding the Commission and any necessary staff who shall be employees of the Association.

XXXVIII. SCR 3.[630]615 Commission member[s] qualifications

The proposed deletion of SCR 3.630 and new rule SCR 3.615 is:

Each Commission member must be a citizen of the United States, licensed to practice law in the courts of this Commonwealth and have been a resident in the appellate district from which nominated for [two] [2] years immediately preceding the appointment.

XXXIX. SCR 3.[635]620 Commission quorum

The proposed deletion of SCR 3.635 and new rule SCR 3.620 is:

A quorum consisting of at least [four] [4] Commission members is required for conducting the business of the Commission.

XL. SCR 3.[640]625 Commission staff

The proposed deletion of SCR 3.640 and new rule SCR 3.625 is:

The Commission shall be provided with a Director for Continuing Legal Education and sufficient administrative and secretarial assistants as are from time to time required. Selection and qualifications of the Director for Continuing Legal Education shall be determined by the Board except that the person selected shall be an attorney licensed to practice law in the courts of this Commonwealth. The Director for Continuing Legal Education shall be responsible to the Commission for the proper administration of the rules applying to the Commission and any regulations issued by the Commission.

XLI. SCR 3.[650]630 Commission duties

The proposed deletion of SCR 3.650 and new rule SCR 3.630 is:

The Commission shall be responsible for the administration of these continuing legal education rules, subject to policy approval and other direction by the Board and the Court. In discharging this responsibility, the Commission shall:

1. Encourage and promote the offering of high quality continuing legal education.

2. Conduct, sponsor, or otherwise provide high quality continuing legal education, specifically including, but not limited to, [one] [1] twelve and one-half (12.5) [12] credit seminar in each Supreme Court District each year.

3. Encourage and promote quality legal writing.

4. Approve or deny promptly all applications provided for by these rules.

5. Establish standards, procedures, and forms to evaluate applications made pursuant to these rules.

6. Promulgate rules and regulations for the administration of the mandatory continuing legal education program subject to approval of the Board and the Court.

7. Report annually, on or before September 15, and as otherwise required, to the Board and the Court on the status of continuing legal education in the Commonwealth. Such report shall include recommended changes to these rules and regulations and their implementation.

8. Submit to the Board annually, on or before November 1, a recommended budget for the succeeding year with any recommended changes in annual membership dues to cover costs of administering these rules.

9. Perform such other acts and duties, not inconsistent with these rules, as are necessary and proper to improve the continuing legal education programs within the Commonwealth. When in the course of undertaking the duties set forth above, the Commission receives information which may raise questions regarding a member’s competence to represent clients or to otherwise practice law as defined at SCR 3.020, or which may raise any of the issues covered at SCR 3.165(b), the Commission has an affirmative duty to report such information to the Office of Bar Counsel for review by the Inquiry Commission.

XLII. SCR 3.[651]635 Kentucky Law [u]Update seminars in each appellate district

The proposed deletion of SCR 3.651 and new rule SCR 3.635 is:

1. Each educational year, the Commission shall conduct a [twelve and one-half (12.5)] [12] credit continuing legal education seminar in each Supreme Court District.

Subjects taught at each seminar shall include the latest Kentucky Supreme Court and Court of Appeals decisions, procedural rule changes, Federal Court decisions, legal ethics, professional responsibility and professionalism, Kentucky statutory changes and other subjects relating to improvements in basic legal skills. Each program shall include a minimum of [two] [2.0] credits for subjects specifically addressing legal ethics, professional responsibility and professionalism.

2. Registration for the Kentucky Law Update seminars shall be free to all members in good standing [of] with the Association.

3. Members may attend Kentucky Law Update seminars in any location. The maximum credit that may be earned for attending any [one] [1] Kentucky Law Update seminar is [twelve (12. 5)] [12] credits. However, if different tracks of programs are attended at different locations, addition-
al credit may be approved by the Commission. Pursuant to Rule 3.664 (11) (d) duplicate credits shall not be earned by attending the same program at a different location.

XLIII. SCR 3.652(2) New Lawyer Program requirement

The proposed deletion of SCR 3.652 and new rule SCR 3.640 is:

(1) Within (12) months following the date of admission as set forth on the certificate of admission, each person admitted to membership in the Association shall complete the New Lawyer Program requirement.

(112) At least twice each educational year, the Commission shall provide or cause to be provided a New Lawyer Program of not less than [twelve and one-half (12.5)] 12 credits. The Commission may in its discretion, accredit a New Lawyer Program proposed by other CLE providers.

(273) Continuing legal education credits for the New Lawyer Program shall be awarded in a number consistent with the award of credits for other continuing legal education programs.

(314) The New Lawyer Program shall include at least two (2) hours of ethics, a course on law practice management and other subjects determined appropriate by the Commission.

(445) The Commission or other provider accredited under SCR 3.652(1)(c) 640(2) may charge a reasonable registration fee approved by the Court for the New Lawyer Program.

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

(6) Each individual attending the New Lawyer Program shall certify to the Director for CLE the completion of the Program on the attendance certificate provided for that purpose. Such certification shall be submitted to the Director for CLE upon completion of the program and no case shall the certification be submitted later than thirty (30) days after completion of the Program. Continuing legal education credits awarded for the program shall be applied to the educational year in which the program is attended, and if applied to a year in which the individual so attending is otherwise exempt from CLE requirements under SCR 3.666(1)(b) 646(5)(6), said credits shall carry forward in accordance with SCR 3.666(1)(5) and (6) 645(13).

(7) A member required to complete the New Lawyer Program pursuant to paragraphs (5)(1) of this Rule may, upon application to and approval by the Commission, be exempted from the requirement if the member is admitted to practice in another jurisdiction for a minimum of five (5) years, and will certify such prior admission to the Commission, or if the member has attended a mandatory new lawyer training program of at least [twelve and one-half (12.5)] 12 credits, including ethics credits, offered by the state bar association of another jurisdiction and approved by the Director for CLE.

(8) The time for completion and certification set forth in paragraphs (5)(1) and (6) of this Rule may, upon written application to and approval by the Commission or its designee, be extended. Written applications for an extension under this paragraph must be received by the Commission no later than thirty (30) days after the member's deadline to complete the Program as set forth in paragraph (5)(1) of this Rule. All applications must be signed by the member. The Commission may approve extensions for completing the Program under the following circumstances:

(a) Where the member demonstrates hardship or other good cause clearly warranting relief. Requests for relief under this subsection must set forth all circumstances upon which the request is based, including supporting documentation. In these circumstances, the member shall complete the requirement set forth in paragraphs (5)(1) and (6) as soon as reasonably practicable as determined by the Commission or its designee;

(b) Where the member fails to demonstrate hardship or other good cause clearly warranting relief, the member must pay a fee of two hundred fifty dollars ($250.00) and complete the requirement set forth in paragraphs (5)(1) and (6) at the next regularly scheduled New Lawyer Program.

(9) Non-compliance with the New Lawyer Program requirement: Failure to complete and certify attendance for the New Lawyer Program pursuant to paragraphs (5), (6), or (8) of this Rule shall be grounds for suspension from the practice of law in the Commonwealth or other sanctions as deemed appropriate by the [Court] Board.

(a) Ninety (90) days prior to the end of the [twelve (12)] 12 month period all individuals not certifying completion of the New Lawyer Program pursuant to paragraphs (5), (6), or (8) of this Rule shall be notified in writing that the program must be completed before the end of the [twelve (12)] 12 month period, indicating the date.

(b) Names of all individuals not submitting certification of completion of the New Lawyer Program within the [twelve (12)] 12 month period or not being granted an extension of time, pursuant to paragraph (8) of this Rule, shall be submitted to the [Court] Board by the Director for CLE, certifying the member's failure to comply with the New Lawyer Program requirement.

(c) [The Clerk shall docket the matter and] The [Court] Board shall cause to be sent to the member a notice of delinquency by certified mail, return receipt requested, at the member's bar roster address. Such notice shall require the attorney to show cause within thirty (30) days from the date of the mailing why the attorney's license should not be suspended for failure to meet the New Lawyer Program requirement set forth in this Rule. Such response shall be in writing, sent to the attention of the Director of CLE, and shall be accompanied by costs in the amount of ($50.00) payable to the Kentucky Bar Association. Issue each such member a rule returnable within twenty (20) days thereafter to show cause why the member should not be suspended from the practice of law or otherwise sanctioned as deemed appropriate by the Court. The Commission shall be permitted to file a reply within ten (10) days following the filing of a response by a member.

(d) Unless good cause is shown by the return date of the [rule] notice, or within such additional time as may be allowed by the [Court] Board, the lawyer will be stricken from the membership roster as an active member of the KBA and will be suspended from the practice of law or will be otherwise sanctioned as deemed appropriate by the Board. An Order shall be entered suspending respondent from the practice of law or imposing such other sanctions as may be deemed appropriate by the Court. A copy of the suspension notice shall be delivered by the Director of CLE. An attested copy of the Order shall forthwith be delivered by the Clerk to the member, the [Director for CLE] Clerk of the Kentucky Supreme Court, and in the case of suspension, to the Circuit Clerk of the district wherein the member resides for recording and indexing as required by SCR 3.480.

(e) A member suspended under this Rule may apply for restoration to membership under the provisions of SCR 3.500.

(f) A member may appeal to the Kentucky Supreme Court from such suspension order within thirty (30) days of the effective date of the suspension. Such appeal shall include an affidavit showing good cause why the sus-
pension should be set aside.

XLIV. SCR 3.[661]645 Continuing legal education requirements: compliance and certification

The proposed deletion of SCR 3.661 and new rule SCR 3.645 is:

(1) Each educational year, as defined by SCR 3.600(7), every person licensed to practice law in this Commonwealth, not specifically exempted pursuant to the provisions of [Rule] SCR 3.[666]665, shall complete and certify a minimum of twelve and one-half (12.5) (2) credit hours in continuing legal education activities approved by the Commission, including a minimum of two (2) credits devoted to [continuing legal education specifically addressing the topics of legal ethics, professional responsibility or professionalism] “ethics, professional responsibility and professionalism” as defined by SCR 3.600(8). All continuing legal education activities must be completed [not later than] by June 30 of each educational year.

(a) Integration of legal ethics, professional responsibility and professionalism issues into substantive law topics is encouraged, but will not count toward the (2) credit minimum annual requirement.

(b) It is the obligation of the attorney seeking credit to ensure the activity has been approved. Completion of a non-accredited activity shall be at the risk of the attorney.

(2) Certification of completion of approved CLE activities must be received by the Director for CLE no later than August 10th immediately following the educational year in which the activity is completed.

(a) Certification shall be submitted to the Director for CLE by the sponsor of the accredited activity or by individual attorneys on approved KBA forms, uniform certificates, or other format adopted by the Commission.

(b) Any certification submitted after the August 10th deadline shall be deemed past due. All past due reports shall be accompanied by a late filing fee of ($50.00) per certificate to cover the administrative costs of recording credits to the prior year. All past due reports must be received by the Commission with the fee no later than the close of the educational year (June 30th) immediately following the year during which the activity was completed. This deadline will not apply in instances where the member or former member is in the process of removing an exemption per SCR 3.665 (2) or attempting certification per SCR 3.685.

(c) Sponsors submitting certifications to the Director for CLE shall comply with all requirements set forth in SCR 3. [665]660(6).

(3) Programs or seminars or designated portions thereof devoted to legal ethics, professional responsibility or professionalism include but are not limited to programs or seminars, or designated portions thereof, with instruction focusing on the Rules of Professional Conduct independently or as they relate to law firm management, malpractice avoidance, attorneys fees, legal ethics, and the duties of attorneys to the judicial system, the public, clients and other attorneys.

(4) Integration of legal ethics, professional responsibility or professionalism issues into substantive law topics is encouraged, but shall not count toward the (2) credit minimum annual requirement.

(5) A member who accumulates an excess over the twelfth and one-half (12.5) (2) credit requirement may carry forward the excess credits into the two (2) successive educational years for the purpose of satisfying the minimum requirement for those years. Carry-forward credits are limited to a total of twenty-five (25) (24) credits, including (4) ethics credits. All excess credits above a total of twenty-five (25) (24) credits will remain on the member’s record but may not be carried forward.

(6) Carry-forward credits shall be allowed to satisfy the two (2) credit annual requirement for continuing legal education addressing the topics of legal ethics, professional responsibility and professionalism, and may be carried forward into the two years immediately succeeding the year in which the hours were earned. Carry-forward credits for ethics, professional responsibility and professionalism are limited to a total of four (4) credits.

(7) Certification may be submitted by sponsors or by individuals on approved Association forms, uniform certificates, or any other format adopted by the Commission.

(8) Failure to acquire a minimum of (12) credits, including (2) ethics credits, to meet the minimum, annual continuing legal education requirement and/or the associated certification requirements set forth herein, shall be grounds for suspension by the Board from the practice of law.

(8)[5] Compliance and certification requirements concerning the New Lawyer Program requirement are set forth at SCR 3. [652]640(151) and (6).

XLV. SCR 3.[662]650 Qualifying continuing legal education activity and standards

The proposed deletion of SCR 3.662 and new rule SCR 3.650 is:

(1) Credit for completing qualifying continuing legal education activities, as set forth below in paragraphs (2) and (3) of this Rule, shall be calculated, reported and subject to the limitations set forth in SCR 3.655.

(112) A continuing legal education activity qualifies for accreditation if the Commission determines that the activity conforms to the following standards:

(a) The activity is organized program of learning (including a course of study, workshop, symposium or lecture) which contributes directly to the legal competence of an attorney.

(b) The activity deals primarily with substantive legal issues directly related to the practice of law, or law practice management, and includes consideration of any related issues of ethics, professional responsibility, or professionalism.

(c) The activity has significant intellectual or practical content which is timely.

(d) The activity has as its primary objective to increase the participant’s professional competence as an attorney. Activities designed primarily for non-lawyers do not qualify for accreditation.

(e) The activity must be offered by a sponsor having substantial, recent experience in offering continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction and supervision of the activity.

(f) The activity itself must be taught and conducted by an individual or group qualified by practical or academic experience.

(g) The activity, including the named advertised participants, must be conducted substantially as planned, subject to emergency alterations.

(11g) Thorough, high-quality, readable, timely, useful and carefully prepared written materials must be made available to all participants at or before the time the activity is presented [unless the absence of such materials is recognized as reasonable and approved by the Commission].
A brief outline without citations or explanatory notations is will not be sufficient.

(ih) At the conclusion of the activity, each participating attorney must be given the opportunity to complete an evaluation questionnaire addressing the quality of the particular activity.

(ii) The cost of the activity itself to participating attorneys must be reasonable considering the subject matter and instructional level.

(iii) The activity may be presented live or by technological transmission as defined in SCR 3.600(12). If presented by technological transmission, the transmission must be produced from an activity submitted and approved by the Commission pursuant to SCR 3.665. Activities including audio components must have high quality audio reproductions so that listeners may easily hear the content of the activity. Activities including video components must have high quality video reproductions so that observers may easily view the content of the activity. (If activities are presented by technological transmission and an attorney facilitator is available for purposes of answering questions and leading discussions, that activity is considered a live seminar.)

(k) In cases of an in-house activity, as defined in SCR 3.600(9), such activities may be approved if all standards set forth herein for accreditation are met. (A maximum of six (6.0) credits per educational year earned at in-house activities may be applied to meet the annual twelve and one-half (12.5) credit requirement. The following additional requirements must also be met for accreditation of in-house activities.) In addition, at least half the instruction hours must be provided by qualified persons having no continuing relationship or employment with the sponsoring firm, department or agency.

(i) At least half the instruction hours must be provided by qualified persons having no continuing relationship or employment with the sponsoring firm, department or agency. For technologically transmitted activities, the activities must meet all standards for qualifying continuing legal education activities as set forth in SCR 3.662 and must be included as part of the application as set forth at SCR 3.662(1)(k).

(ii) Members of the Court, the Commission or a Commission designee may attend or participate in any such program to observe compliance without payment of registration or other fees.

(l) In cases of law school classes attended by members, the member may receive continuing legal education credit provided the following requirements are met:

(i) The member registers for the class with the law school.

(ii) The member completes the course as required by the terms of registration, for credit or by audit.

(iii) Credit is calculated pursuant to Rule 3.663.

(3) Continuing legal education credit may be earned as set forth in Rule 3.663 for the following additional activities subject to the limitations set forth in SCR 3.655:

(a) Teaching or participating as a panel member or seminar leader in an approved activity. No credit may be earned for teaching or participating as a panel member or seminar leader for activities that do not meet standards set forth in Rule 3.662. A maximum of twelve and one-half (12.5) credits earned under this Rule per educational year may be applied to meet the annual minimum requirement.

(b) Researching, writing or editing material to be presented at an approved activity. No credit may be earned for researching, writing, or editing materials for activities that do not meet the standards set forth in Rule 3.662. A maximum of twelve and one-half (12.5) credits earned under this Rule per educational year may be applied to meet the annual minimum requirement.

(c) Publication of a legal writing as defined by SCR 3.600(10). A legal writing is a publication which contributes to the legal competency of the applicant, other attorneys or judges and is approved by the Commission. Writing for which the author is paid shall not be approved. A maximum of six (6.0) credits earned under this Rule per educational year may be applied to meet the annual minimum requirement.

(d) Public speaking. Upon application, CLE credit may be earned by teaching or participating as a panel member, mock trial coach or seminar leader for law-related public service speeches to civic organizations or school groups. A maximum of two (2.0) credits earned under this Rule per educational year may be applied to meet the annual minimum requirement. Speaking for which the member is paid shall not be approved. Written copies of presentations must accompany such applications; provided, however, that, where appropriate, a narrative summary of the material presented may be sufficient.

(e) Law school classes attended by a member, provided that the member registers for the class with the law school and completes the course as required by the terms of registration, for credit or by audit.

(f) The following categories of activities shall not qualify as a continuing legal education activity:

(a) Activities designed primarily for non-lawyers.

(b) In-house activities for which less than half the instruction is provided by qualified persons outside the firm, department or agency, and for which members of the Court, the Commission or Commission designee are prohibited from observing for compliance without charge of fees.

(c) Seminars or meetings sponsored by law firms or other organizations which are determined by the Commission to be in the nature of client development and do not meet the requirements set forth in SCR 3.650.

(b) Passing a bar exam for licensure to practice law in a state or jurisdiction.

(d) Technological transmissions as set forth at SCR 3.662(1)(j) which do not meet the standards set forth in SCR 3.662 and which have not been submitted and accredited pursuant to SCR 3.665, or which are of such poor audio and video quality that participants cannot see or hear the content under reasonable circumstances.

(e) Home study or self-study which does not meet the standards set forth in SCR 3.662 and which has not been submitted and accredited pursuant to SCR 3.665.

(f) Bar review courses taken in preparation for bar examinations for admission to the highest court in a state or jurisdiction.

(g) Correspondence classes.

(h) Any activity completed prior to admission to practice in Kentucky except the program required pursuant to SCR 3.661(8) and 3.652(5); or

(i) Undergraduate law or law-related classes.

(j) Programs taken in preparation for licensure exams for non-lawyer professionals.
(1)(b) Business meetings or committee meetings of legal and law-related associations.

((3)(e))(3) Seminars designed for non-lawyer professionals which in, case-by-case situations, will benefit the lawyer by allowing clients improved services in unique areas of practice. Credits earned for this category of seminar or activity shall not count toward the [twelve and one-half (12.5)] 12 credit annual minimum requirement but may count toward continuing legal education award credits as determined by the Commission.

(4)(b) Accreditation of activities may be withdrawn by the Commission in cases where there is evidence that any of the above standards and criteria have not been met or that circumstances surrounding the actual content or transmission of the activity are not as originally represented to the Commission during the application process such that withdrawal of accreditation is warranted.

XLVI. SCR 3.663|655 Calculation and reporting of continuing legal education credits: formulas and limits

The proposed deletion of SCR 3.663 and new rule SCR 3.655 is:

((1)) (1) All certifications and applications for credits shall be claimed on KBA forms, uniform certificates approved by the Commission, or other mechanism adopted by the Commission and shall be forwarded to the Director for CLE.

((2)) (2) Credits granted for continuing legal education activities vary depending on the nature of the activity. Credit will be granted, or is calculated, and in some instances limited, as set forth below.

((1)1a) (1) Members completing or participating in [the course of study of] an activity shall be granted [one (1)] credit for each [sixty (60)] minutes of actual instructional time. Instructional time shall not include introductory remarks, breaks, or business meetings held in conjunction with a continuing legal education activity. (For activities involving technologically transmitted programming, actual instructional time may be deemed inappropriate for assigning credit hours. In such circumstances credits claimed will be limited by the total assigned by the Commission. The Commission's assignment of credit hours for such activities will include consideration of the sponsor's estimates of average completion time, volume of material, opportunities for interaction, duration of program and other factors as deemed appropriate. No additional credit is given for completing or participating in duplicate activities at different times or locations. Duplicate completion of or participation in any course of study of any accredited activity shall not result in duplicate continuing legal education credits awarded. Continuing legal education credit shall be claimed on forms provided by the Association, or any uniform certificate adopted by the Association, and shall be forwarded to the Director.)

((b)) (b) Members completing or participating in an accredited technologically transmitted, non-live activity shall be granted credit as set forth in [Rule][SCR 3.663|655(2)(a)](a). A maximum of [six (6)] credits may be applied to meet the annual minimum CLE requirement set forth in [Rule][SCR 3.661|645]. Credits earned by completing a non-live activity will be applied to the educational year in which such activity is completed. Activities presented by technological transmission with an attorney facilitator available for purposes of answering questions and leading discussions are considered “live.” Live webinars and teleseminars are also considered “live” programs and are not subject to this limitation.

((2)e) (2) Members teaching or participating as panel members or seminar leaders in an approved activity will be granted [one (1)] credit for each [sixty (60)] minutes of actual instructional time. [Credit shall be claimed on forms provided by the Association, or any uniform certificate adopted by the Association, and shall be forwarded to the Director.]

((3)d) (3) Members may be granted preparation credit as follows:

((a)d) (a) One [(1)] credit for each [two (2)] hours spent in preparation for teaching or participating as a panel member or seminar leader in an approved activity, up to a maximum of [twelve and one-half (12.5)] 12 credits per educational year.

((b)d) (b) One [(1)] credit for each [two (2)] hours spent researching, writing or editing material presented by another member at an approved continuing legal education activity, up to a maximum of [twelve and one-half (12.5)] 12 credits per educational year.

((4)e) (4) Credit for attending a law school class as set forth in [Rule][SCR 3.662|650] will be granted a maximum of six (6.0) credits per year. One [(1)] credit is granted for each [two (2)] hours of actual educational time including research, writing, and editing. Any excess credits, up to [20] hours, will be applied toward the credit established in [Rule][SCR 3.650|650]. The Commission may grant up to twenty (20) credit hours for published legal writing toward the award, but may only grant up to six (6.0) credits to meet the annual minimum requirement. Applications for continuing legal education credit for a published legal writing shall be made as set forth in SCR 3.663|655(1) on forms provided by the Association, and shall be accompanied by a copy of the published legal writing for which credit is sought. [Said application shall be forwarded to the Director.]

((5)j) (5) Members may earn credits for publication of qualified legal writing pursuant to SCR 3.650(3)(c), up to a maximum of [six (6)] credits per year. One [(1)] credit is granted for [one (1)] hour for each [six (6)] minutes of actual instructional time. [Credit shall be claimed on forms provided by the Association, or any uniform certificate adopted by the Association, and shall be forwarded to the Director.]

((6)) (6) Members completing or participating in an accredited in-house activity will be granted credit as set forth in Rule 3.663(1). A maximum of six (6.0) credits may be applied to meet the minimum requirement set forth in Rule 3.661.

((7)) (7) Members completing or participating in an accredited technologically transmitted activity, as set forth in SCR 3.662(1)(j) will be granted credit as set forth in Rule 3.663(1). A maximum of six (6.0) credits may be applied to meet the minimum requirement set forth in Rule 3.661.

((8)) (8) The Commission shall grant a maximum of six (6.0) credits to meet the annual minimum requirement for any combination of credits earned pursuant to SCR 3.663(6) and (7).

((9)) (9) The Commission shall grant a maximum of [two (2)] credits to meet the annual minimum requirement for public speaking [credit earned] pursuant to SCR 3.662|650(3)(d).

XLVII. SCR 3.665|660 Procedure for accreditation of continuing legal education activities and obligations of sponsors

The proposed deletion of SCR 3.665 and new rule SCR 3.660 is:

((1)) (1) Educational activities may be approved for credit upon application to the Commission. Application for accreditation may be made by a member or former member without involving the sponsor, or application for accreditation may be made by an activity sponsor. Application for accreditation shall be made to the Director not less than thirty (30) days in
advance of the scheduled date of the activity. Sponsors failing to submit the application for accreditation as set forth in this rule shall result in an application fee double the amount set forth in Rule 3.665(2)(a)-(c). It is the obligation of the attorney seeking credit to ensure the activity has been approved. Completion of a non-accredited activity shall be at the risk of the attorney.

(2) Application for accreditation of continuing legal education activities shall be made by members, former members or activity sponsors using forms provided by the Association or using uniform applications adopted by the Association. Applications must provide all information required by the form in order to be reviewed. All applications shall be accompanied by the appropriate application fee as follows:

(a) For applications submitted by sponsors for activities greater than [two] (2) hours in length [and submitted at least (30) days in advance of the activity, the fee is ($50.00) per activity. If such application is submitted less than (30) days in advance of the activity, the fee is ($100.00) per activity. [Activities repeated on different dates or at different locations are separate activities and require separate applications and separate fees.]

(b) For applications submitted by sponsors for activities [two] (2) hours or less in length [and submitted at least (30) days in advance of the activity, the fee is ($20.00) per activity. If such application is submitted less than (30) days in advance of the activity, the fee is ($40.00) per activity. [Activities repeated on different dates or at different locations are separate activities and require separate applications and separate fees.]

(c) For applications submitted by members or former members, regardless of length of activity and when submitted, the fee is ($20.00) per activity. [Each separate activity submitted for accreditation is a separate application requiring a separate fee.]

(d) Activities repeated on different dates or at different locations are separate activities and require separate applications and separate fees.

(3) To receive accreditation the application must include evidence that the activity for which accreditation is sought will meet the standards set forth in Rule 3.662.

(4) Activity sponsors [which] apply for accreditation and receive approval prior to the activity may announce in advertising materials, “This activity has been approved by the Kentucky Bar Association Continuing Legal Education Commission for a maximum of XX.XX credits, including XX.XX ethics credits.” Sponsors who have made application for accreditation of activities that have not yet been approved may announce in advertising materials, “Application for approval of this activity for a maximum of XX.XX credits, including XX.XX ethics credits, is PENDING before the Kentucky Bar Association Continuing Legal Education Commission.” Sponsors may not advertise accreditation if accreditation has not been granted by the Commission and notice of such accreditation received by the sponsor.

(5) Technologically transmitted activities produced from live programs or studio productions must be accredited separately from the live or studio activity from which they were produced [and applications for accreditation must include a copy of the tape or the other instructions for prior access to the activity by the Commission for evaluation purposes in addition to other information as required by the application provided by the Association].

(6) Sponsors of accredited activities shall comply with the obligations and requirements set forth below.

(a) Ensure that all education activities comply with [Rule] SCR 3.1662(650).

(b) Permit Commission members and staff or [one] their designees to monitor without payment of registration or other fees, any approved activity.

(c) Utilize the activity code provided by the Kentucky Bar Association in its notification of accreditation in identifying the activity in all correspondence regarding the activity and provide the activity code to members for use in reporting [their] credits.

(d) Provide to each Kentucky attorney completing an approved activity a[n] [Association] Commission approved credit reporting form and activity code. Credit reporting forms and activity numbers shall be made available to sponsors upon request from the [Association] Commission for use at approved activities.

(e) Collect credit reporting forms from Kentucky attorneys and submit to the Commission all forms received within [thirty] (30) days of completion of the program. Failure to submit completed credit reporting forms within [thirty] (30) days of the activity shall be accompanied by a late filing fee from the sponsor of [ten dollars] ($10.00) per form or certificate. Submit all attendance forms or certificates for activities held during the month of June no later than July 10th, immediately following the end of the educational year on June 30th. For programs held during June this provision of the rule supersedes the [thirty] (30) day submission deadline provided above. [Failure to submit forms or certificates pursuant to this schedule will result in the sponsor’s obligation to pay a late filing fee of ten dollars ($10.00) per form or certificate.]

(f) Sponsors may submit member activity certifications to the Director of CLE as required by SCR 3.666(665), via electronic means so long as the sponsor maintains the member’s original certification, or a copy thereof, of the completion of the activity on file for two (2) subsequent educational years following the year in which the activity was completed.

XLVIII.SCR 3.666(665) Exemptions and removal of exemptions

The proposed deletion of SCR 3.666 and new rule SCR 3.665 is:

(1) [With respect to] For each educational year, the following members of the Association shall be exempt from the requirements of [Rule] SCR 3.661(645):

(a) In recognition of their positions, which prohibit the practice of law and have significant continuing education requirements by statute or rule of court as a result of the positions they hold, [members who, during any portion of that educational year, are serving as:

(i) Justices, Judges, or Magistrates of the Commonwealth or Court of the United States; or

(ii) full-time administrative law judges for an agency of the United States or Commonwealth of Kentucky executive branch, I, and because of such positions are prohibited from practicing law and have significant continuing education requirements by statute or rule of court as a result of the position they hold.]

(b) Justices and Judges of the Commonwealth leaving the bench will be allowed to use accumulated Continuing Judicial Education credits toward the required CLE minimum, up to (12) credits, including (2) ethics, for the first year they are subject to the CLE requirement after leaving the bench.
(b) New lawyers who have been admitted less than [one (1)] full educational year as of the June 30th deadline. Such members shall be subject to the provisions of SCR 3.652 New Lawyer Program requirement, as set forth in SCR 3.640.

(c) Members who are at least 75 years of age or at least [50] year members, including members who will become [75] years of age and those who become [50] year members within the educational year.

(2) Upon application to the Commission, the following members may be exempted from the requirements of [Rule] SCR 3.661(b):

(a) Non-practice exemption: Members who do not practice law, as defined in [Rule] SCR 3.020, within the Commonwealth and agree to refrain from such practice until the Commission approves an application for removal of the exemption.

(i) Non-practice exemptions shall not be effective retroactively unless the applicant certifies that he or she has not practiced law, as defined in SCR 3.020, within the Commonwealth, for all time periods covered by such exemption.

(ii) Practice of law as defined in SCR 3.020, within the Commonwealth, during the effective period of this exemption pursuant to SCR 3.665(2)(a) shall constitute the unauthorized practice of law. Information known by the Commission regarding the practice of law during any period for which a member has certified non-practice status pursuant to SCR 3.665(2)(a) is not confidential as provided by SCR 3.695 and shall be provided along with the member's continuing legal education transcript by the Director for CLE to the Office of Bar Counsel and the Inquiry Commission in writing.

(iii) A member seeking removal of a non-practice exemption shall be required to file a written application with the Commission, addressed to the Director for CLE, for the removal of said exemption. Required as an attachment to the application for removal of said exemption shall be certification of completion of sufficient continuing legal education credits to meet the minimum annual continuing legal education requirement for each educational year during which he or she was exempt, excluding the current educational year. In no case shall a member be required to certify completion of more than twelve credits, including applicable ethics credits, as a condition of removal of the exemption. Timely certification shall include only continuing legal education credits earned during the current educational year and two prior educational years. This Rule in no way affects the member's responsibility to complete the current year minimum annual education requirement by June 30th. The current year minimum educational requirement must be completed as set forth at SCR 3.645. The member shall be notified in writing, via certified mail, of the commission's action on the application for the removal of the exemption.

(iv) Application for removal of an exemption granted pursuant to SCR 3.665(2)(a) may not be made within 30 days of the granting of the exemption.

(b) Hardship exemption: Members who practice law within the Commonwealth, but demonstrate that meeting the requirements of [Rule] SCR 3.661(b) would work an undue hardship by reason of disability, sickness, or other clearly mitigating circumstances.

(c) Military exemption: Any member who, for any portion of an educational year, was on active duty in the United States armed forces.

(3) Every member seeking an exemption from the mandatory continuing legal education requirement of [Rule] SCR 3.665(2) shall submit an application on forms provided by the Association or shall make other such written request providing information necessary for determination by the Commission of circumstances warranting exemption.

(4) Exemptions granted pursuant to Rule 3.666(2)(a) shall not be effective retroactively unless the applicant certifies that he or she has not practiced law, as defined in SCR 3.020, within the Commonwealth, for all time periods covered by such exemption. Members shall not practice law as defined in Rule 3.020 while said exemption is in effect. Practice of law as defined in SCR 3.020, within the Commonwealth, during the effective period this exemption pursuant to SCR 3.666(2)(a) shall constitute unauthorized practice. Information known by the Commission regarding the practice of law during any period for which a member has certified non-practice status pursuant to SCR 3.666(2)(a) is not confidential as provided by SCR 3.690 and shall be provided along with the member's continuing legal education transcript by the Director for CLE to the Office of Bar Counsel and the Inquiry Commission in writing.

(5) Exemptions granted pursuant to [Rule] SCR 3.665(2)(b) and SCR 3.666(2)(d) (g) based on hardship (including) or military service are considered temporary in nature unless specifically designated otherwise. In order to maintain an exemption based on a temporary hardship or military service, annual application is necessary. Failure to so certify will result in loss of the exempt status.

(6) A member seeking removal of a non-practice exemption granted pursuant to Rule 3.666(2)(a) shall be required to file a written application with the Commission, addressed to the Director for CLE, for the removal of said exemption. Required as an attachment to the application for removal of said exemption shall be certification of completion of sufficient continuing legal education credits to meet the minimum annual continuing legal education requirement for each educational year during which he or she was exempt, excluding the current educational year. The member shall be notified in writing, via certified mail, of the commission's action on the application for the removal of the exemption. In no case shall a member be required to certify completion of more than [twenty-five] (25) credit, including applicable ethics credits, as a condition of removal of the exemption. Timely certification shall include only continuing legal education credits earned during the current educational year and two prior educational years. This Rule in no way affects the member’s responsibility to complete the current year minimum annual education requirement by June 30th. The current year minimum educational requirement must be completed as set forth at SCR 3.661.

(7) Application for removal of an exemption as provided in SCR 3.666(6) shall be made by completion of forms provided by the Association. The application shall include certification of completion of such continuing legal education activities as required by these rules including SCR 3.661(3), SCR 3.662, SCR 3.663, SCR 3.665, or as otherwise specified by the Commission.

(8) The Commission shall approve the application for removal of a non-practice exemption if it appears that the member has satisfied the requirements of this Rule.

(9) Application for removal of an exemption granted pursuant to SCR 3.666(2)(a) may not be made within thirty (30) days of the granting of the exemption.

XLIX. SCR 3.667 Extension of time requirements

The proposed deletion of SCR 3.667 and new rule SCR 3.670 is:

(1) The time requirements associated with completion of continuing legal education and certification thereof, as set forth in [Rule] SCR 3.666(1) and (8)645(1), may be extended by the Commission in case of hardship or other good cause clearly warranting relief. Requests for time extensions for completion of activities or certification thereof shall be made to the Commission in writing. All requests for time extension must be received by the Commission no later than the September 10th following the end of the ed-
cational year for which the time extension is sought. Requests must set forth all circumstances upon which the request is based, including supporting documentation. Applications for time extensions for completion of the New Lawyer Program may be submitted pursuant to SCR 3.661.640(8).

(2) A member who fails to complete the requirements of Rule SCR 3.661.645 for any educational year, and who cannot show hardship or other good cause clearly warranting relief, may submit an application for a non-hardship extension of time in which to earn the annual minimum requirement. The application, which shall be made on KBA forms or by such other appropriate method approved by the Commission, must meet the following requirements. (a) a plan for making up his or her delinquency, provided that the Commission has not approved such a plan for the member for either of the two preceding educational years. The plan must be received by the Commission no later than the September 10th immediately following the end of the educational year for which the time extension is sought. The plan will be approved only if the member pays a filing fee of two hundred fifty dollars ($250.00) and the plan lists activities which would provide, by the September 10th immediately following the end of the educational year, the credit hours needed to make up the deficiency. Such plan shall be deemed accepted by the Commission unless within fifteen (15) days after receipt of the compliance plan and filing fee, the Commission notifies the applicant to the contrary.

(a) Each application must contain a detailed plan for completing the annual requirement;

(b) All required credits must be completed and reported by the September 10th deadline for the educational year for which an extension is sought;

(c) The application must be submitted to the Director for CLE and received by the September 10th deadline for the educational year for which an extension is sought; and

(d) The application must include the required application fee as set forth below:

(i) ($250.00) for the first year for which a non-hardship time extension is sought; or

(ii) ($350.00) for the second year for which a non-hardship time extension is sought; or

(iii) ($500.00) for the third year and all years thereafter for which a non-hardship time extension is sought.

(iv) If a member does not seek a non-hardship time extension for (3) consecutive years, a subsequent non-hardship time extension thereafter sought will be considered the first such application and the fee schedule will begin again at the ($250.00) level.

(3) Failure to comply with extended time requirements granted by the Commission pursuant to Rule SCR 3.667.645 (i) or (2), including both completion of continuing legal education activities and certification thereof, shall subject the member to the sanctions of Rule SCR 3.669.675. Suspension for Non-Compliance.

L. [SCR 3.668 Non-compliance, definition]

The proposed deletion of SCR 3.668 is:

(1) Delinquency of Certification. Any certification of continuing legal education activity for an educational year (July 1-June 30) which is submitted after the August 10th immediately following the close of that educational year, shall be deemed past due in non-compliance. All past due reports shall be accompanied by a late filing fee of fifty dollars ($50.00) per certificate or report to cover the administrative costs of recording credits to the prior year. All past due reports for completion of an activity in the immediately preceding educational year must be received by the Commission with the late fee of fifty dollars ($50.00) per certificate or report no later than the close of the current educational year (June 30). Past due reports shall be accepted only until the end of the educational year (June 30) immediately following the year during which the activity is completed. This deadline (June 30) will not apply in instances where the member or former member is in the process of removing an exemption per SCR 3.666.632 or attempting certification per SCR 3.675, but the late fee of fifty dollars ($50.00) per certificate or report shall be applied if the report is received after the August 10th reporting deadline described above.

(2) Delinquency of Credits. Failure to acquire a minimum of twelve and one-half (12.5) credits, including two (2.00 ethics credits, to meet the minimum continuing legal education requirements of Rule SCR 3.661 and associated certification requirements shall be grounds for suspension by the Court from the practice of law.]

LI. SCR 3.669.675 Non-compliance: procedure and sanctions

The proposed deletion of SCR 3.669 and new rule SCR 3.675 is:

(1) As soon as practicable after August 20th of each year, the Commission shall notify a member in writing of existing delinquencies of record. The writing may consist of a computer generated form setting forth said delinquency. If any statement incorrectly reflects the continuing legal education status of the member it shall be the duty of the member to promptly notify the Commission of any claimed discrepancy in the education statement.

(2) If, by the first day of November immediately following, a member has neither certified completion by the June 30th immediately prior, of the minimum continuing legal education requirements set forth in Rule SCR 3.661.645, nor applied for and satisfied the conditions of an extension under Rule SCR 3.667.670 or exemption under Rule SCR 3.666.665, the Commission shall certify the name of that member to the Board.

(3) The Board shall cause to be sent to the member a notice of delinquency by certified mail, return receipt requested, at the member’s bar roster address. Such notice shall require the attorney to show cause within [thirty] (30) days from the date of the mailing why the attorney’s license should not be suspended for failure to meet the mandatory minimum CLE requirements of SCR 3.661.645. Such response shall be in writing, sent to the attention of the Director for CLE, and shall be accompanied by costs in the amount of [fifty dollars] ($50.00) payable to the Kentucky Bar Association.

(4) Unless good cause is shown by the return date of the [rule notice], or within such additional time as may be allowed by the Board, the lawyer will be stricken from the membership roster as an active member of the KBA and will be suspended from the practice of law or will be otherwise sanctioned as deemed appropriate by the Board. A copy of the suspension notice shall be delivered by the Director to the member, the Clerk of the Kentucky Supreme Court, the Director of Membership, and to the Circuit Clerk of the district wherein the member resides for recording and indexing as required by Rule SCR 3.480.

(5) A member suspended under this Rule may apply for restoration to membership under the provisions of Rule SCR 3.500.

(6) A member may appeal to the Kentucky Supreme Court from such suspension order within [thirty] (30) days of the effective date of the
suspension. Such appeal shall include an affidavit showing good cause why the suspension should be set aside.

II. SCR 3.670 Appeal of Commission actions

The proposed deletion of SCR 3.670 and new rule SCR 3.680 is:

(1) The Commission shall state the reason or reasons for any adverse Commission decision and shall notify the person or organization affected.

(2) Any person or organization may request in writing reconsideration of an adverse decision within fifteen (15) days of the notice of the decision. The Commission shall consider any pertinent material submitted and shall permit the aggrieved party the opportunity to appear at a meeting of the Commission for oral presentation of information to be considered.

(3) Any person or organization may appeal to the Board from an adverse decision of the Commission by filing a written notice in the Office of the Director within thirty (30) days of the notice of the decision or of a refusal to reconsider a decision. The review of the Board shall be limited to the record considered by the Commission. The entire record, including a transcript of Commission proceedings, shall be submitted to the Board, with costs born by the unsuccessful party.

(4) Any person or organization may appeal to the Supreme Court of Kentucky from an adverse decision of the Board by filing a written petition, together with ten (10) copies, in the office of the Clerk of the Court, accompanied by a certificate of service on the Director and a filing fee of $100.00, within thirty (30) days of the notice of the decision. The review of the Court shall be limited to the record considered by the Commission and the Board.

(5) Commission certification of non-compliance filed with the Board pursuant to SCR 3.669 may not be appealed under Sections (3) and (4) of this Rule.

III. SCR 3.675 Continuing legal education requirements for restoration or reinstatement to membership: procedures

The proposed deletion of SCR 3.675 and new rule SCR 3.685 is:

(1) Every former member, applying for or otherwise seeking restoration or reinstatement to membership pursuant to Rules 3.500 or 3.510, shall be required to have completed the minimum annual continuing legal education requirement for each year during which he or she was not a member in good standing, including any year prior to disbarment, suspension or withdrawal under threat of disbarment or suspension, during which the minimum annual continuing legal education requirement was not fulfilled. Completion of such credits shall be certified to the Commission as a condition precedent to reinstatement or restoration. In no case shall a member be required to attend more than sixty-two and one-half (62.5) credits in a period separate and distinct from the period for which a prior award was issued.

(2) The application or affidavit of compliance submitted for restoration or reinstatement shall include certification from the Director for CLE of completion of continuing legal education activities as required by these Rules, or otherwise specified by the Commission or Court. Applicants or affiliates shall request said certification from the Director for CLE in writing and shall submit with said written request a fee of $50.00 to cover the expense of the record search and certification. Applications or affidavits of compliance submitted for restoration or reinstatement which do not include the required certification of continuing legal education credits, including verification of fee payment for the certification, shall be considered incomplete and shall not be processed.

(3) The requirements for completion of continuing legal education as a condition to restoration or reinstatement as set forth above may only be satisfied with credits earned in the current educational year during which the application is submitted and the preceding two (2) educational years. Credits so earned shall be applicable to requirements imposed by the Commission upon application or other actions undertaken in pursuit of restoration or reinstatement.

(4) The Commission shall approve such applications if it appears that the former member has satisfied the requirements of this Rule.

(5) Approval of the application or provision of a certification for an affidavit of compliance shall satisfy the requirement of the applicant under Rule SCR 3.681 for the current educational year.

(6) In the event that a new educational year begins after approval of the application or certification for an affidavit of compliance by the Commission, but prior to Supreme Court entry of an Order of Reinstatement or Restoration, or Registrar's certification of member's name to the active roster of membership the new year minimum continuing legal education requirement must be completed and the application updated before the reinstatement or restoration can proceed to the Board of Governors or to the Court, unless a maximum of sixty-two and one-half (62.5) credits have been completed.

IV. SCR 3.680 Continuing Legal Education Award

The proposed deletion of SCR 3.680 and new rule SCR 3.690 is:

(1) Any member who completes a minimum of sixty-two and one-half (62.5) credits hours approved by the Commission within a period of three (3) or fewer educational years, is eligible for a Continuing Legal Education Award which shall consist of a dignified certificate issued by the Association attesting to the educational accomplishment.

(2) The Commission shall notify the member and issue the award.

(3) Approved awards are valid for one (1) year, beginning on the first day of July of the year of application award notification.

(4) The validity of an award may be renewed for an additional year following the initial award(s) date, in which the member who holds the award completes a minimum of twenty (20) approved credits.

(5) Failure to earn twenty (20) credits in any educational year following the initial award date shall disqualify the member from renewal of that award. The member may only become eligible for another award by earning sixty-two and one-half (62.5) credits approved credit hours in a period separate and distinct from the period for which a prior award was issued.

(6) Each member who holds a valid, unexpired award shall receive a 25% discount from the normal registration fee for the Kentucky Bar Association Annual Convention.

(7) Application for renewal of a Continuing Legal Education Award shall be made by members following the same procedure required for initial award application pursuant to this Rule.

(8) Each member who holds a valid, unexpired award shall receive a 25% discount from the normal registration fee for the Kentucky Bar Association Annual Convention.

The Association may publish annually in leading daily newspapers of general circulation throughout the Commonwealth an announcement of the members who during the preceding educational year have earned the Continuing Legal Education Award. The announcement shall describe the
LVII. SCR 7.030(2) and (4) Nomination and election – regular elections

Election of Bar Representatives to Judicial Nominating Commissions

The proposed amendments to sections (2) and (4) of SCR 7.03 are:

(2) On or before June 1 of the years in which regular elections are to be held under this rule the board shall by majority vote nominate candidates for election to the various commissions as specified in [paragraph (c)] subsection 3 of this rule. The board shall immediately certify the names of its nominees to the director. On or before July 1 the director shall publish by appropriate means to the members specified in [paragraph (c)] of this rule a list or lists of the candidates so nominated.

(4) Any other qualified member may file a written petition for candidacy for the commission for the Supreme Court and the Court of Appeals, signed by himself and not less than [ten] (10) other members residing in the Commonwealth of Kentucky, or may file a written petition for candidacy for the commission for a judicial circuit, signed by himself and not less than [two] (2) other members residing in the circuit. In his petition the member shall state that he does not hold any other public office or any office in a political party or organization. All such petitions shall be filed with the director on or before August 15 of the year in which the regular election for members of the commissions is to be held. The director shall acknowledge receipt of each candidate's petition by return mail. All petitions shall be considered public records and shall be available for inspection at reasonable hours. On or before September 1 the director shall publish by appropriate means to the members specified in [paragraph] of this rule a list or lists of the candidates, including those nominated by the board and those nominated by petition.

LVIII. SCR 8.030 Staff for Commission

The proposed amendments to SCR 8.030 are:

The Manager of the Division of [Education Services] Judicial Branch Education of the Administrative Office of the Courts or designee as appointed by the Chief Justice of the Supreme Court shall serve as Executive Secretary to the Commission.

LVIX. SCR 8.070 Continuing judicial education requirements

The proposed amendments to SCR 8.070 are:

(a) Every appellate judge and justice and every trial judge, not exempted, shall attend a minimum of [twenty-five] (25) hours in continuing judicial education courses approved by the Judicial Education Commission each educational biennium.

(b) At least once every [two] (2) years, a portion of the [required] continuing judicial education provided for judges by the Administrative Office of the Courts shall consist of programs which focus on the dynamics and effects of domestic violence including the availability of community resources, victims services, and reporting requirements. The minimum hours of judicial education credits need not include domestic violence programs.

(c) A[n] An educational biennium shall begin on July 1 and end two years later on June 30 of each even-numbered year.

(d) To satisfy the minimum attendance requirement for any educational biennium a judge is authorized to carry forward any excess attendance over [twenty-five] (25) hours that was earned in the immediately preceding biennium.

LX. SCR 8.110 Sanctions

The proposed amendments to SCR 8.110 are:

As soon as practicable after July 31st of the educational biennium, the Commission shall request the Executive Secretary to notify a judge in writing of their delinquency unless prior to July 1st the judge has requested an exemption which has not been ruled on by the Commission. If such judge remains delinquent on the 30th day of August, the Commission Chair (Executive Secretary) shall forthwith, in writing, report the judge’s name to the Chief Justice. [Certify the judge’s name to the Judicial Retirement and Removal Commission.]

LXI. SCR 8.120 Expenses

The proposed amendments to SCR 8.120 are:

Judges attending judicial education programs sponsored by the Administrative Office of the Courts shall be reimbursed for their expenses in accordance with Court of Justice Travel Regulations. Expenses for attendance at any other education program shall be borne by the judge unless prior approval is obtained from the Manager of [the Education Services Unit] Judicial Branch Education of the Administrative Office of the Courts.
The Board of Governors met on Friday, Jan. 18, 2013. Officers and Bar Governors in attendance were, President D. Myers; President-Elect T. Rose; Vice President B. Johnson; and Immediate Past President M. Keane and Young Lawyers Division Chair J. Wright. Bar Governors 1st District – S. Jaggers; Bar Governors 2nd District – T. Kerrick, R. Sullivan; 3rd District – R. Hay, G. Wilson; 4th District – D. Farnsley; 5th District – A. Britton, W. Garmer; 6th District – S. Smith; and 7th District – M. McGuire, B. Rowe. Bar Governors absent were: D. Ballantine, J. Freed and D. Kramer.

In Executive Session, the Board considered two (2) discipline cases and three (3) discipline default cases. Malcolm Bryant of Owensboro, Roger Rolfes of Florence and Dr. Robert Strode, 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 2013-2014 Budget & Finance Committee and Rules Committee.
- Farnsley reported that the plans for the 2013 Annual Convention were well underway. He reported that the Memorial Service this year would be held on Tuesday, June 18, beginning at 3:30 p.m., at the Cathedral of the Assumption. Farnsley reported that while the memorial service in recent years has been held on Thursday during convention week, its move to Tuesday should encourage more participation and prevent a conflict for members who are busy attending CLE activities later in the week. Farnsley reported that CLE Program Chair Richard Hay had done a great job with the CLE program this year with Ted Olson and David Boies as the featured speakers on Wednesday, Jeffrey Toobin on Thursday and the Hatfields and McCoys program on Friday.
- Legislative Outreach Chair William Johnson reported that on February 21 the KBA will host their Legislative Outreach Project. Johnson reported that a substantial number of attorneys, judges, clerks and other key community lay people will meet with the General Assembly for the purpose of stressing to them the dire situation relative to inadequate funding for the judiciary.
- Young Lawyers Division Chair Jackie Sue Wright addressed the following YLD activities and projects: Brief Insights, New Lawyers Program, CLE Programs, Kentucky Bar Foundation, Diversity Committee, Law Student Outreach Committee, Outstanding Awards and U@18.
- Approved the appointment of Robert I. Cusick, Jr. of Louisville to the Ethics Hotline Committee for the 4th Supreme Court District for a three-year term.
- Approved the creation of a Task Force on Attorney Advertising to review generally the advertising structure, the rules and the need for an Attorneys’ Advertising Commission. The Board also approved the appointment of the following members: Bruce K. Davis, to serve as chair, Donald Cox, Amy Cubbage, Douglas Ballantine, David Latham, Steven Pulliam, Mike McMann, Anita Johnson and J. Stephen Smith.
- Approved publishing a one-page version of the KBA Audit summarizing basic information and providing at the bottom of the summary an electronic link to the KBA’s website where the full version of the audit can be reviewed.
- Approved publishing a photo of the current Board of Governors on the front cover of the Bench & Bar.
- Executive Director John D. Meyers reported that the KBA has renewed its contract with Casemaker for a one-year term which is automatically renewable unless terminated by the KBA.
- Meyers reviewed with the Board the administrative suspensions for dues non-payment and CLE non-compliance. Following discussion, the Board suspended 54 members for non-payment of dues and imposed a fee on seven (7) members for CLE non-compliance.
- Approved Bobby Rowe of Prestonsburg as their nominee for the 31st Circuit on the Judicial Nominating Commission for the special election.
- Approved a Resolution to commemorate the 50th Anniversary of the Gideon case, which recognizes an individual’s right to legal counsel in criminal matters even in the case of indigency.
- Accepted the Fiscal Year ending June 30, 2012 Audit Report presented by Larry Boschert of Rudler & Associates, Inc.
- Approved the recommendation of the Ethics Committee to update all KBA formal ethics opinions. A synopsis of the process regarding the opinions and referencing the number of the opinions to be withdrawn and directing the members to the KBA’s website for full text of the opinions will be published in the May issue of the Bench & Bar.
CERTIFICATION OF CANVASSING BOARD FOR BAR MEMBERS

SPECIAL ELECTIONS FOR THE 18TH JUDICIAL CIRCUIT AND 31ST JUDICIAL CIRCUIT NOMINATING COMMISSIONS

Dear Chief Justice Minton and Mr. Meyers:

Pursuant to the provisions of Section 118 of the Kentucky Constitution and SCR 7.040(6), a duly appointed canvassing board, on March 8, 2013, met in the Office of the Executive Director of the Kentucky Bar Association, and tabulated ballots for the special election as reflected above. Pursuant to the provisions of SCR 7.030(11), the following candidates for the designated commission received the indicated number of votes.

18TH JUDICIAL CIRCUIT

C. Donald Wells,
217 W. Shelby St., Falmouth, KY ......................................4

31ST JUDICIAL CIRCUIT

Robert Allen Rowe, Jr.,
1507 US 23 N, Prestonsburg, KY .....................................11

Certified as true and correct Election Results Pursuant to SCR 7.030(11), this 8th day of March 2013.

/s/
Karen Cobb, Chairman

PRIVATE REPRIMAND

COMMONWEALTH OF KENTUCKY JUDICIAL CONDUCT COMMISSION

The Commission issues this private reprimand to a judge for violation of SCR 4.300, the Code of Judicial Conduct.

The Commission received information during an informal investigation that in a confidential juvenile matter pending before the judge, the judge contacted a third party not involved in the case about a matter related to the case.

Canon 3(B)(7) prohibits ex parte communications, except under limited circumstances, which are not applicable here. The Commentary to Canon 3(B)(7) notes that the proscription extends to communications from lawyers and other persons who are not participants in the proceedings. The Commentary also indicates that a judge must consider only the evidence presented.

In issuing this private reprimand, the Commission duly considered that there was no evidence of a pattern of such conduct and that the judge fully cooperated in the investigation.

/s/
Stephen D. Wolnitzek, Chair

TERMS EXPIRE ON THE KBA BOARD OF GOVERNORS

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

Any such petition must be received by the KBA Executive Director at the Kentucky Bar Center in Frankfort prior to close of business on the last business day in October.

The current terms of the following Board members will expire on June 30, 2014:

1st.................Jonathan Freed
2nd ..........Thomas N. Kerrick
3rd..............M. Gail Wilson
4th..........Douglas C. Ballantine
5th ...........Anita M. Britton
6th ............David V. Kramer
7th..............Bobby Rowe
The Judicial Branch has cleared a major hurdle in its plans to develop a sophisticated court case management system and bring eFiling to Kentucky with the signing of House Bill 238. The bill authorizes the Judicial Branch to issue $28.1 million in bonds to replace Kentucky's aging court case management system. The General Assembly passed HB 238 on March 12 and Gov. Steve Beshear signed it into law on March 22.

“A new case management system will transform the way Kentucky courts do business,” Chief Justice of Kentucky John D. Minton Jr. said. “With our courtrooms handling nearly 1 million cases each year, almost every citizen is affected by the work of the Judicial Branch. I can’t think of any other capital technology project that will have such a positive impact on so many people statewide.”

Chief Justice of Kentucky John D. Minton Jr.

The Judicial Branch's current case management system is running on 25-year-old technology and 10-year-old programming and is at risk for failure. The current system maintains separate databases for the trial courts in 120 counties and both appellate courts.

“The system is functionally and technically obsolete,” Chief Justice Minton said. “The tools used to maintain it became unsupported in 2008, leaving the entire state court database in a precarious situation. Replacing the system becomes even more urgent when you consider that our current technology cannot accommodate electronic filing and electronic records. That leaves Kentucky falling further and further behind the mainstream of court technology.”

The new system will consolidate databases and give them the ability to interact with each other. This will reduce errors, eliminate manual and redundant processes, and provide the ability to track a person through the court system. The Judicial Branch will be better able to secure current and historical court data and provide information that the Executive and Legislative branches, state agencies and justice partners rely on to carry out their daily business. The new system will also make it possible for Kentucky to institute eFiling.

“Kentucky is ready to join other state courts and the federal courts in adopting eFiling,” Chief Justice Minton said. “We’ve been laying the groundwork for this project for months and are ready to move quickly now that bonding has been approved. Our goal is to begin testing eFiling in several parts of the state before the end of the year.”

The Judicial Branch will use $3.23 million annually in agency funds to pay the 10-year debt service on the new case management system.

“Under the HB 238 plan, payment on the debt service will not require any new tax dollars or a direct appropriation,” Chief Justice Minton said. “Issuing bonds will let the Judicial Branch replace its case management system in a way that will have the least negative impact on the state budget.”

The Kentucky Bar Association was an important supporter of HB 238, he said.

“We want to give attorneys and justice partners better access to court case information,” Chief Justice Minton said. “The Administrative Office of the Courts recently began offering a new application called CourtNet 2.0 to KBA members. It provides online access to Kentucky civil and criminal cases and is a huge improvement from what we provided before.

CourtNet 2.0 is a technological milestone for the practice of law in Kentucky and one of the first of many advances we’ll be making in court technology.”

To read Chief Justice Minton’s invitation to KBA members regarding CourtNet 2.0, please see the following page.

The chief justice of Kentucky is the administrative head of the Judicial Branch and responsible for its operation. The AOC provides administrative support to the state court system, which includes nearly 3,300 employees and 403 elected justices, judges and circuit court clerks. The AOC also executes the Judicial Branch budget.
Kentucky Bar Association Members:

**KBA members invited to subscribe to CourtNet 2.0, a new application for accessing court cases**

For the first time in a decade, the Administrative Office of the Courts is offering a completely overhauled application to replace the existing CourtNet KBA. CourtNet 2.0 provides real-time, online access to Kentucky civil and criminal cases and is a huge leap from what CourtNet KBA offers now.

When CourtNet KBA rolled out in 2002, attorneys no longer had to make a trip to the courthouse to access pending court cases statewide. While remote access was a breakthrough at that time, the information was limited and confined to active cases only. CourtNet 2.0 has none of these limitations. In addition to being intuitive and easy to use, it offers:

- Consolidated, detailed case information
- Active and closed cases
- Citation images
- Visual flags for warrants, summonses and failure to appear
- Search results grouping for quick reference
- Case cart
- Ability to re-execute last 10 searches

To make sure we could meet your needs, we based many of these improvements on feedback from attorneys who tested CourtNet 2.0 during a KBA pilot project. We believe longtime users of CourtNet KBA will benefit from the application’s features and new users will find CourtNet 2.0 to be an indispensable tool. A training manual and videos will help users get off to a fast start. To learn more, take a few minutes to watch the CourtNet 2.0 Overview at http://kcourtnet2.blogspot.com/search/label/Training-Videos.

**Subscription Fee.** While CourtNet KBA has been provided free for the last decade, the AOC will charge a nominal monthly subscription fee for access to CourtNet 2.0. The subscription fee will support ongoing product development so that attorneys can continue to benefit from upgrades in court technology.

Subscribers can choose from five payment plans, starting at only $15 a month. Each plan offers a specific number of cases for a monthly fee. Attorneys can subscribe to the plan that best meets their needs, whether it’s the Personal Plan for basic users or the Enterprise Plan for high-volume users. Watch CourtNet 2.0 Service Plans at http://kcourtnet2.blogspot.com/search/label/Training-Videos for more information. Please note that the existing CourtNet KBA application will no longer be available as of midnight EST on Dec. 31, 2013. Attorneys who have not subscribed to CourtNet 2.0 by Dec. 31 will have access only to the public version of CourtNet.

**How to Subscribe.** To become a user of CourtNet 2.0, attorneys must submit a request to subscribe at https://kcourtnet2.blogspot.com/search/label/CourtNet/User/Invitation. The AOC will process subscriptions based on the order in which requests are received. Please keep in mind that CourtNet 2.0 subscriptions are being offered to all 17,000 KBA members and the time it takes to process subscriptions may vary depending on the volume of requests at any given time. KBA members who request an invitation to CourtNet 2.0 by May 31, 2013, can use the application **free for 30 days** (excluding images). You will be notified by email when your subscription has been activated. You must sign a user agreement and select a plan before using the application. For more information, contact the AOC Service Desk at 800-860-4262 or CourtNetHelp@kycourts.net.

We are proud of CourtNet 2.0 and believe it represents a technological milestone for the practice of law in Kentucky. I hope you will take advantage of its many benefits.

John D. Minton Jr., Chief Justice of Kentucky
231 Capitol Building, 700 Capitol Avenue
Frankfort, Kentucky 40601
Taylor's CARE presentation was unique among the dozens being offered by volunteer attorneys across the Commonwealth this spring — it involved several different forms of communication in one classroom setting and is believed to be one of the first nationwide to be offered at a school for students who are deaf and hard of hearing.

"It took several interpreters to make this CARE program presentation possible and accessible to all of the students since some of them were Oral and signed English like me," she said. "Others were American Sign Language (ASL), some were Signing Exact English (SEE). Several different communication methods all came together smoothly thanks to the excellent interpreters on hand that day. I am especially thankful to interpreter Tina Savelyev who personally assisted me and who continues to be my greatest asset in the court room as well."

Offered primarily to high school seniors, the CARE program focuses on the legal consequences of credit abuse, while emphasizing the importance of sticking to a budget, saving money and paying bills on time. Sponsored by the Kentucky Bar Foundation, the program is in its sixth year in Kentucky and has grown to include volunteer attorneys in about 50 counties with an expected outreach to more than 20,000 students.

Taylor said she learned about the CARE program through the Kentucky Bar Association's publications and was inspired to make the presentation to the KSD.

"Children are my passion, which is why I ended up in family law," Taylor said. "Any opportunity I get to have a positive influence on the next generation, I jump at, whether it be through custody and adoption proceedings, special education advocacy, juvenile defense, or presentation of information that can make a difference in their futures."

Taylor said the KSD was the first state-supported school of its kind in the United States and enjoyed "much popularity" in its early years.

"Most Kentucky residents do not realize that Kentucky is blessed with such a large deaf population and that this under-acknowledged population is such a culturally rich one," she said.

Like most residential schools for the deaf, Taylor said, enrollment at KSD has seen a decline since passage of the American Disabilities Act made mainstreaming students in public schools more accessible.

"Too often, these schools are overlooked for things like CARE, simply because people forget they exist," she said. "KSD has many bright young students who will have a hard enough time getting the type of information CARE offers because they cannot pick it up in the traditional way most kids pick up this type of information and that's by simply overhearing people talk over the years. These are the students who would most benefit from such a presentation."

Taylor said the CARE presentation helped the KSD students focus on the financial decisions they will be making in the near future.
They asked intelligent questions that showed they were thinking ahead and wanting to ‘do it right,’ not only in the immediate future but also long term,” she said. “As I discussed how a negative credit rating could affect job prospects, housing options, and so on, I could tell they saw it as a reality that was actually applicable to them and not just an abstract idea.”

Raised in Jackson County, Taylor received her bachelor’s degree in sociology from Eastern Kentucky University in 1994 and her juris doctorate from Ohio Northern University in 1999. Taylor was admitted to the Kentucky Bar in May 2000 and the United States Supreme Court in 2006. She said she practices general civil law with an emphasis on family matters and works mainly with low income clients across the state. Out of more than one million licensed attorneys in the United States, about 200 self-identify as deaf attorneys, Taylor said, with two residing in Kentucky.

“I am the only one actively practicing in Kentucky courts,” she said. “I have had some difficulties with my colleagues regarding communication barriers since phones are not an option for me. For the most part, most judges I appear before have gone out of their way to accommodate my needs. I simply could not practice without the assistance of my interpreters. AOC has provided me with excellent interpreters. But, I can self-advocate and have no qualms making my own needs known.”

Important financial lessons aside, Taylor said her presentation was also important to her personally.

“I thought it may be good for the students to see a fellow ‘deafie’ as an attorney and see that they can do and be anything they choose, just as their hearing counterparts, so long as they are willing to work hard toward their goals,” Taylor said. “At the end of the day, my personal satisfaction comes, not from how many hours I billed or how much money I made, but in how I was able to help someone of limited means and how I was able to make a difference in a child’s life.”

For more information on CARE, visit www.careinky.org or contact Todd Horstmeyer, executive director for the Kentucky Bar Foundation, at thorstmeyer@kybar.org. B&B

Amy Carman serves as communications director for the Kentucky Bar Association.
Since 1962, the Board of Governors of the Kentucky Bar Association has approved nearly 440 formal ethics opinions. The earliest opinions were decided under the Canons of Professional Ethics, which were in effect from 1946-1971. In addition, some 300 opinions were rendered under the old Code of Professional Responsibility in effect from 1971 to 1990. More recently, there are approximately 100 opinions rendered under the Rules of Professional Conduct, which became effective in 1990 and were substantially amended in 2009. Because these opinions were decided using different codes, many do not reflect the current minimum standards of professional practice mandated by the Kentucky Rules of Professional Conduct. Some opinions are obsolete, some are misleading, some are just plain wrong - a few are even amusing.

The Ethics Committee thought it was important to update the opinions, to the extent reasonably practicable, short of completely rewriting each one. Over the course of 18 months, the committee reviewed all of the existing opinions in an effort to identify those that no longer provide useful guidance to members of the bar. The committee’s recommendations were presented to the Board of Governors late last year and ultimately approved in March.

Changes to the existing opinions fall into one of several categories:

- Opinions that are clearly wrong or seriously misleading have been withdrawn.
- Opinions that are obsolete have been withdrawn.
- Retained opinions, rendered under the Code of Professional Responsibility, contain a note cautioning lawyers against relying on an old opinion without checking the requirements of the current rules. The note provides a link to the current rules. In the case of advertising opinions, the note refers not only to the rules, but also to the Attorneys’ Advertising Commission Regulations.
- Opinions rendered under the Rules of Professional Conduct (approximately 100) contain a general cautionary note. In some cases the note also directs the reader to amendments to the Rules of Professional Conduct applicable to the question. Opinions relating to lawyer advertising also refer to the Attorneys’ Advertising Commission Regulations. Again, a link to the rules is provided.

Some editorial changes have been made. For example, the characterization of repealed opinions varied; some were “reversed” or “replaced,” while others were “overturned.” All such opinions are now described as “withdrawn.”


All updated ethics opinions will be available on the Kentucky Bar Association’s website at www.kybar.org/246. The Rules of Professional Conduct (SCR 3.130) are available at www.kybar.org/237.

The University of Louisville Student Bar Association has rescheduled its Andrew Young Memorial Golf Scramble for Saturday, October 19, at Fuzzy Zoeller's Covered Bridge Golf Course in Sellersburg, Ind. This four-man, best-ball golf scramble will begin at 9 a.m. with registration and practice.

**Early Registration Available**

Early registration is $600, May-July; and $700, August-October. The registration cost includes golf, range balls, lunch, and a goody bag. Prizes include low round; longest drive; closest to the pin and hole-in-one. All proceeds will benefit students through an immediate-use fund available at the discretion of the student bar association. (Short and long-term projects will be discussed.) For more information and to enter, contact Christy Ferko at christy.ferko@gmail.com.
Gov. Steve Beshear has named Court of Appeals Judge Michelle M. Keller of Fort Mitchell to the Supreme Court of Kentucky. With the appointment, the seven-member court – the state’s highest – now has three female justices for the first time ever. The appointment, which became effective April 3, replaces Justice Wil Schroder, who retired January 17.

Keller was elected to the Court of Appeals from the 6th Appellate District in November 2006. Prior to her election she practiced law for 17 years, as both an assistant county prosecutor and criminal defense attorney. She also has administrative law experience and previously served as chairwoman of the Kentucky Personnel Board.

The new justice is a graduate of Northern Kentucky University’s Salmon P. Chase College of Law. She worked as a nurse while attending law school, and has served her community through various volunteer and board positions.

Keller’s appointment will create a vacancy on the Kentucky Court of Appeals. A judicial nominating commission will meet and submit three names to Gov. Beshear, who will make the appointment.

The counties in the 6th Supreme Court District are Bath, Boone, Bracken, Campbell, Carroll, Fleming, Gallatin, Grant, Harrison, Henry, Kenton, Lewis, Mason, Nicholas, Oldham, Owen, Pendleton, Robertson, Shelby, Spencer and Trimble.

Call for Entries - Deadline June 1, 2013

The Kentucky Bar Association invites and encourages students currently enrolled at the University of Kentucky College of Law, the University of Louisville Louis D. Brandeis School of Law, and the Northern Kentucky University Salmon P. Chase College of Law to enter the KBA Annual Student Writing Competition. This competition offers these Kentucky legal scholars the opportunity to earn recognition and a cash award. First, second, and third place awards will be given. Entries must be received by June 1, 2013.

1st Place - $1,000 * 2nd Place - $300
3rd Place - $200

Students may enter their previously unpublished articles. Articles entered should be of interest to Kentucky practitioners and follow the suggested guidelines and requirements found in the “General Format” section of the Bench & Bar Editorial Guidelines at www.kybar.org/103. For inquiries concerning the KBA Annual Student Writing Competition, contact Shannon H. Roberts at sroberts@kybar.org or call (502) 564-3795 ext. 224.

Submit entries with contact information to:
Shannon H. Roberts
Communications Department
Kentucky Bar Association
514 West Main Street
Frankfort, KY 40601-1812

*Also includes possible publication in the Bench & Bar.
### JULY 2013 KENTUCKY BAR APPLICANTS

Following is a list of applicants who have applied to take the July 30 & 31, 2013 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

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<td>ELAINE RITA BUTLER</td>
<td>LINDSAY AYERS CARTER</td>
<td>KYRSTY RITA BURNS</td>
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MICHAEL THOMAS McKinney
MARY LAUREN MELTON
ALISON MEREDITH MESSEX
MATTHEW STEPHEN MICHALOVIC
ANDREW STEELE MILLER
JORDAN KATHLEEN MILLER
STEWARD PATRICK MILLER
CHARLES MAURICE MILLS II
ERICA LINH MITCHELL
EDWARD ALAN MORGAN
KATHERINE ELIZABETH MUDRAK
EMILY JILL MUSIC
JUSTIN WADE NOBLE
TASHENA ANN NOBREGA
BRETT R NOLAN
WILLIAM BRECKINRIDGE NORMENT III
EDWARD M O’BRIEN
VICTORIA MARIE O’GRADY
SHANE JOHNSON ORR
ELLIS HENRY OTTE
ALLISON KAITLIN PAGE
PAUL JAY PAINTER
BRADLEY MARTIN PARKE
MARY KATHERINE PARROTT
COURTNEY RENEE PAWLEY
ANTHONY MICHAEL PERNICE
ANDREW BRYAN PHELPS
DELMAS PHILPOT III
SAMUEL ERIC POLLOM
JOHN VIRGIL PORTER III
MASON PATRICK POWELL
THOMAS KEVIN PRIDE
MICHAEL LEE PROFUMO
THAER OMAR QASEM
REZA ADAM RABIEE
CAROLINE SUZANNE RAMSEY
STEVEN LAWRENCE RAYBURN
SCOTT RANDALL REDDING
JEREMIAH WESLEY REECE
CHRISTOPHER JOEL REED
ZACHARY CHASE RICHARDS
MICHAEL JOSEPH RICHARDSON
BRITTANY NICOLE RILEY
SUSAN MARIE ROBARDS
TYLER SCOTT ROBERTS
PHILLIP ANTHONY ROBINETTE
LAUREN E ROBINSON
CASEY MICHELLE ROBINSON
NELSON DAVIS RODES IV
BAILEY ROESE
VANESSA NICOLE ROGERS
AARON LEON ROOF
BRANDON LAWRENCE ROSEN
DOROTHY THOMPSON RUSH
VIRGINIA FRANCES RYAN
CHRISTOPHER JAMES RYAN JR
ASHTON REBECCA SAWYER
RICHARD HENRY SCHABOWSKY
MELANIE MARIE SCHIMMEL
CHRISTOPHER JAMES SCHROEDER
JOSEPH PAUL SCHULER
ANDREW MARTIN SCHULZ
HAMID HUSSAIN SHEIKH
KARLEEN MARIE SHIFER
AMBER LYNN SHREVE
DANIEL MICHAEL SIMS
WILLIAM ROBERT SKOPELJA
AMANDA MARIE SMITH
LEAH RUPP SMITH
ANDREW TYLER SMITH
SHANNON CATHERINE SMITH
PATRICK JOHN SMITH
MOLLY KATHERINE SMITH
ANDREW ROBINSON SMITH
BRENNAN JAMES SOERGEL
SHAWN MARTIN SPALDING
ALISON MARIE SPARKS
JULIE ANN STANIFER
MICHAEL ANTHONY STEIDL
KIMBERLY ELIZABETH STEPHENS
STEFANIE ANN STOLZ
LESLEY ANN STONE
RYAN MATTHEW STRATTON
RACHEL ANN STRATTON
BRIAN RANDOLPH STRUNK
TAYLOR JAMES STUCKEY
TERRANCE SULLIVAN
AARON WEBB SUTHERLAND
LUKE ADRIAN SWAIN
CLAY TALLEY
SARAH MARIE TATE
SARA ELIZABETH THOMPSON
CLARE EILEEN THOMPSON
DONNA MARIE TOOLL
SARAH ELISABETH TOWNZEN
DEANNA LY TRAN
ASHLEY BROOKE TROSPER
TRAVIS DANIEL VAN ORT
JOHN BROWNING VANMETER
LINDSAY ERIN VOLK
JADE SOMMERS VON WIEGEN
JOSHUA FRANCOSE WALDROP
NAOMI CECILIA WARNICK
JOHN STEPHEN WATHEN
RAABIA SHAHNAZ WAZIR
MCKINZEE ANN WEDDE
MELISSA LEAH WEINSTEIN
REBECCA MICHAY HICHARD
KRISTA ANN WILLIKE
JOHN TUCKER WILLIS
DOMINIQUE MARIE WILSON
WILLIAM LOGAN HUNT WILSON
APRIL ANN WIMBERG
SHAUN ANTOINE WIMBERLY
STEPHEN KYLE WINHAM
JAMES THOMAS WORM
SHARON LEE WRIGHT
DANIELLE MARION YANNELLI
ERICA JOY YARTZ
ANDREW MCRATH YOCUM
ROY LEWIS YORK
NOTE: This list is current as of April 8, 2013. Any applications filed after this date will not be included on this list.

BEFORE YOU MOVE...

Over 17,000 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.
KYLAP OFFERS OPEN RECOVERY MEETINGS DURING ANNUAL CONVENTION

Open Recovery Meetings will be held 5:15-6:15 p.m., Wednesday, June 19, and Thursday, June 20, during the KBA’s 2013 Annual Convention, in the McCreary Room of the Galt House Hotel & Suites in Louisville.

All meetings are open to law students, lawyers and judges who are already involved or who are interested in a 12-step program of recovery, including but not limited to Alcoholics Anonymous, Narcotics Anonymous, Overeaters Anonymous, Gamblers Anonymous and Al-Anon.

Come meet other attorneys in recovery from around the state. All meetings and contacts are confidential. SCR 3.990. For additional information, please visit www.kylap.org, call (502) 564-3795, ext. 266, or email abeitz@kylap.org.

RECOGNIZING SIGNS OF SUICIDE RISKS

KYLAP will be traveling around the state over the next six months to provide courses on recognizing the signs of suicide risks in our colleagues, staff, family and friends. Look on the KYLAP website at www.KYLAP.org, and at upcoming issues of the Bench & Bar and the monthly KBA e-News for more information.

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The Kentucky Bar Foundation extends a sincere expression of appreciation to all attorneys, judges, teachers and school administrators for their participation in this year’s CARE programs and without whose help, this financial literacy initiative would not have been made possible. The dedication of all who volunteer their time and effort to make the CARE program successful throughout Kentucky is the key factor to its continued growth during these past six years.

The CARE program has been designed to help high school seniors better understand the pitfalls of credit abuse and provide a wide range of information to help students learn about financial responsibility. The CARE program was presented by various local bars throughout the state in the following 43 Kentucky counties:

- Adair
- Bell
- Boone
- Boyd
- Boyle
- Calloway
- Campbell
- Casey
- Clinton
- Daviess
- Estill
- Fayette
- Floyd
- Franklin
- Graves
- Green
- Greenup
- Hancock
- Hardin
- Harlan
- Jefferson
- Jessamine
- Johnson
- Kenton
- Knott
- Knox
- Laurel
- Marion
- Marshall
- Martin
- McCracken
- McCreary
- Ohio
- Owsley
- Perry
- Pike
- Pulaski
- Rockcastle
- Taylor
- Warren
- Wayne
- Whitley
- Wolfe

Learn how you can get your community involved by visiting the website at www.careinky.org.

For further information, please contact:
Todd S. Horstmeyer
Executive Director
Kentucky Bar Foundation
502-564-3795 X252
thorstmeyer@kybar.org
Don’t Forget…

The deadline to complete your annual CLE requirement for the 2012-2013 educational year is JUNE 30, 2013.

You must have a total of 12.5 CLE credits including 2.0 Ethics credits to meet the annual requirement.

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

Note: The deadline to report your CLE credits is AUGUST 10, 2013 for the 2012-2013 educational year.

KBA Teleseminars

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

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

2013 KBA DVD Program Catalog

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

Note: DVDs are technological programs. A maximum of six (6.0) technological CLE credits may be applied to your record for any given educational year. Visit www.kybar.org/639 for details and ordering information.
2013 KBA Video Replay

Earn up to 7.0 “Live” CLE Credits including up to 3.0 Ethics Credits

Dates: Thursday, June 27
Or
Friday, June 28
Time: 8:30 A.M. - 4:30 P.M.
Location: Kentucky Bar Center
Frankfort, Kentucky

Seating is limited so register today to guarantee your attendance!

Get Your CLE Credits Online!

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

Online seminars are technological programs. A maximum of six (6.0) technological CLE credits may be applied to your record for any given educational year.


Go Paperless

This year, join many other KBA members and sign up today to have your CLE notifications sent to your e-mail address of record. This action will help eliminate excess paper, create a convenient electronic record for your files, and save the association thousands of dollars allocated to mailing CLE notifications to KBA members.

Just e-mail us a brief note at cle_reg@kybar.org indicating “I grant the KBA permission to e-mail my CLE notifications to me.”
Looking for Upcoming KBA Accredited CLE Events?

Look no further...

Check out www.kybar.org/580

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

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

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

2012-13 Continuing Legal Education Commission

Deborah B. Simon  
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Shane C. Sidebottom  
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COMING THIS FALL – TO A CITY NEAR YOU!

Mark your calendars! Plans are well underway for the 2013 KLU program. Check the schedule for a location near you.

KENTUCKY LAW UPDATE 2013

ADVANCING THE PROFESSION THROUGH EDUCATION

The KLU program is an exceptional benefit of KBA memberships. Kentucky is the only mandatory CLE state that provides its members a way of meeting the annual CLE requirement at no additional cost. Registration will be available in late May. In the meantime, visit www.kybar.org/186 for more information.

SEPTEMBER 10-11 - RUSSELL (ASHLAND)
Bellefonte Pavilion

SEPTEMBER 26-27 - LEXINGTON
Lexington Convention Center

OCTOBER 3-4 - OWENSBORO
RiverPark Center

OCTOBER 9-10 - LONDON
London Community Center

OCTOBER 24-25 - LOUISVILLE
KY International Convention Center

OCTOBER 30-31 - GILBERTSVILLE
KY Dam Village State Resort Park

NOVEMBER 6-7 - BOWLING GREEN
Holiday Inn & Sloan Convention Center

NOVEMBER 21-22 - PRESTONSBURG
Jenny Wiley State Resort Park

DECEMBER 5-6 - COVINGTON
Northern Kentucky Convention Center

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

SCR 3.652 New Lawyer Program

Kentucky Bar Association

2013 New Lawyer Program

in conjunction with:

June 19-20, 2013
Galt House Hotel
Louisville, KY

Registration is now available.
Visit www.kybar.org/195 for more information.
Supreme Court of Kentucky

2013-7

IN RE:
ORDER AMENDING
SUPREME COURT ORDER 2012-10
FAMILY COURT RULES OF PROCEDURE AND PRACTICE (FCRPP)

The following corrections are made to Supreme Court Order 2012-10, entered on October 4, 2012, and shall become effective upon entry of this Order. These deleted provisions were incorporated into other sections of the Family Court Rules of Procedure and Practice (FCRPP).

FAMILY COURT RULES OF PROCEDURE AND PRACTICE (FCRPP)

I. FCRPP 5. Maintenance.

Section (4) of FCRPP 5 shall be deleted in its entirety.


Sections (5) and (6) of FCRPP 9 shall be deleted in their entirety.

ENTERED: April 19, 2013.

CHIEF JUSTICE
ON THE MOVE

Miller Wells is pleased to announce that Earl (Chip) Hamm has joined the firm. Hamm concentrates his practice in the areas of real estate and corporate law, including property and business sale and acquisitions, development, start-up ventures, and business sale and acquisitions, and corporate law, including property his practice in the areas of real estate.

Bubalo Goode Sales & Bliss PLC announced that Michael Cannon has joined the firm. He earned both his undergraduate degree and his law degree from the University of Louisville. Cannon has experience in a broad range of injury cases, having worked in a personal injury law firm as a full-time law clerk throughout the years he completed law school at night. He comes naturally to his interest in law, as his father is a lawyer from Grayson County who also represents clients with injury and disability issues. He earned an undergraduate degree in Spanish before going on to law school. And, since his wife is from Germany, he quickly picked up German as well. Having an affinity for languages, Cannon now speaks, writes or reads at least six languages.

Daniel G. Mudd is the most recent addition to Frost Brown Todd’s newly-created Regional State Tax and Incentives Team. Prior to joining the firm, Mudd was an attorney at a law firm in Louisville, where he began practicing and specializing in state and local tax controversy and planning. Mudd has quickly risen to obtain a prominent leadership role throughout the Bar and the community. He was the chairman of the Louisville Bar Association’s (LBA) Tax section in 2012 and is currently the vice chairman and chair-elect of the Kentucky Bar Association’s (KBA) Tax section. He also serves as the general counsel and secretary of the Young Professionals Association of Louisville (YPAL), as well as the chair of YPAL’s Legal Committee. Daniel graduated, summa cum laude, from the University of Kentucky Gatton College of Business with a double major in Finance and Business Management in 2007; he later went on to earn his J.D., cum laudee, from the University of Kentucky College of Law in 2010.

Fox, Wood, Wood, & Estill in Maysville is pleased to announce that Blake Wright has joined the firm as an associate. Wright received his B.A. (2005) from Transylvania University and J.D. (2008) from the Northern Kentucky University Salmon P. Chase College of Law. Wright has previously worked as an assistant Public Advocate. Wright will be working in several areas of law including real estate, family law, and personal injury. He will also be acting as the assistant county attorney in Mason County.

Located in Bowling Green, Reynolds, Johnston, Hinton & Pepper, LLP, is proud to announce the addition of Katie Bennett as an associate attorney with the firm. Bennett is a 2009 graduate of Western Kentucky University and a 2012 graduate of the University of Louisville Louis D. Brandeis School of Law. Bennett will focus her practice in the areas of business and real estate law with an emphasis on residential and commercial transactions.

The law firm of O’Bryan, Brown & Toner, PLLC, is pleased to announce that Andolyn Johnson and Holly S. Kent have joined their Louisville office as associate attorneys.

Kent graduated, summa cum laude, with a B.A. in Political Science from the University of Kentucky in 2008. She received her J.D. from the University of Kentucky College of Law in 2012. Her primary areas of practice include insurance defense litigation cases involving matters of medical malpractice, bad faith and tort claims.

Wyatt, Tarrant & Combs, LLP, is pleased to welcome Sherry P. Porter to its highly regarded Employee Benefits team. Porter is the former associate dean of the Salmon P. Chase College of Law at Northern Kentucky University. She concentrates her law practice in the areas of employee benefits, including employee stock ownership plans, and executive compensation arrangements. She also has extensive experience in handling and negotiating benefits issues in corporate and transactional matters. She earned her law degree from the Northern Kentucky University Salmon P. Chase College of Law and her B.A. from the University of Kentucky.

Darby and Gazak, P.S.C., is pleased to announce that Robert J. Shilts has been named a partner of the firm. Shilts practices in the area of medical malpractice defense and has been with Darby and Gazak, P.S.C., since 2006. He received his B.A. from Bellarmine University in 1998; his M.A. from University of Maryland in 2001 and his J.D. from University of Maryland School of Law in 2005.
Fogle Keller Purdy PLLC is proud to announce Marcel Smith, Colin Thomas and Aida Babahmetovic have recently joined the firm. Congratulations to the firm’s newest members, Michael DeFilippo, Daniel Urban and Matthew Zanetti. Please note that our Florence, Ky., office is expanding to a new location on April 1st. The new location will be 1655 Burling Pike, Suite 50, Florence, KY 41042.

Michael Ryan Brodarick of Boca Raton, Fla., joined PuroSystems, Inc., as its in-house general counsel. Founded in 1990, PuroSystems, Inc., is a leader in the franchise restoration industry, having launched PuroClean, which has become one of the fastest growing property damage remediation franchise organizations in North America.

Hannah Hodges has joined the marketing department of McBrayer, McGinnis, Leslie & Kirkland, PLLC. Hodges will be working with the McBrayer attorneys to gather information, edit, write and produce hardcopy and electronic materials. She earned her B.A. in Political Science and electronic materials. She earned her B.A. in Political Science and was a UK Ambassador and a four-year leader at the University of Kentucky College of Law in New Orleans. Price’s focus is that of personal injury plaintiff’s representation. Prior to joining the firm, Price was a senior associate at a major law firm in Louisville. Born and raised in Kentucky’s capital city, Price is considered an insider in state politics and governmental affairs.

Barber graduated from the University of Kentucky with her Juris Doctor in 2008, where she also earned her B.S. in Communications in 2005. While at the University of Kentucky, she served as a UK Ambassador and a four-year member of the University’s Strategic Planning Committee.

Jennifer Barber, has joined Frost Brown Todd’s newly-created Regional State Tax and Incentives Team as a managing associate. Prior to joining the firm, Barber was a senior associate at a major law firm in Louisville. Born and raised in Kentucky’s capital city, Barber is considered an insider in state politics and governmental affairs.

While at the University of Kentucky, she served as a UK Ambassador and a four-year member of the University’s Strategic Planning Committee.

A. Pete Pullen is an associate in the Louisville office of Quintairos, Prieto, Wood & Boyer, P.A. His practice focuses in the areas of complex civil litigation, nursing home defense litigation, construction litigation, auto and trucking litigation, insurance defense and coverage claims, premises liability, and products liability. Pullen received his J.D. in 2006 from the University of Louisville Louis D. Brandeis School of Law and a B.A. from the University of Louisville Louis D. Brandeis School of Law and a B.A. from the University of Louisville in 2005. Sears’ focus area is personal injury litigation, auto and trucking litigation, insurance defense and coverage claims, premises liability, and products liability. Pullen received his J.D. in 2006 from the University of Louisville Louis D. Brandeis School of Law and a B.A. from the University of Kentucky in 2001. He is a member of the Kentucky, Louisville and American Bar associations.

Bingham Greenebaum Doll LLP has named partner Mark A. Loyd as chair of the Tax and Finance Practice Group. The Tax and Finance Practice Group provides full service representation, counsel and advice regarding federal and state tax planning, transactions, and controversy resolution, including litigation, to for-profit and non-profit clients. Loyd’s areas of practice concentration are state, local and federal tax controversy resolution, litigation and planning. He has counseled and advocated for clients with issues involving state and local income, gross receipts, sales and use, property, franchise/license and various excise taxes, as well as federal income and excise taxes, for over 20 years. He is licensed to practice in Kentucky, Indiana, Ohio and Tennessee.

E-mail resume to resume@qpwblaw.com
Bork concentrates her practice on commercial and tort litigation, including contract and commercial disputes, product liability, asbestos and mass product liability and toxic tort litigation. Her practice also includes appellate practice and litigation matters involving the First and Fourteenth Amendment, state employment, civil rights and college and university law.

Gerch, who is a member of the Estate Planning Practice Group, practices out of the firm’s Louisville office. Gerch has over four years of experience working in trusts and estates. He is a graduate from the University of Nebraska College of Law and Bellarmine University.

Johnson practices in the areas of mergers and acquisitions, intellectual property, advertising and promotions, general business transactions and securities. He is a member of the firm’s Corporate and Transactional Practice Group and has experience representing clients in a wide variety of industries. Johnson is a graduate from the University of Kentucky and the University of Louisville Louis D. Brandeis School of Law.

Middleton Reutlinger is pleased to announce that Jennifer M. Barbour has joined the firm. Barbour is a member of the health care practice group. Her health care litigation practice includes long term care and nursing home malpractice defense, including claims of negligence, abuse and neglect, violation of residents’ rights, breach of contract, and wrongful death. She received her law degree from the University of Louisville Louis D. Brandeis School of Law and a B.A in Political Science/Comparative History from the University of Virginia.

Gwin Steinmetz & Baird PLLC (GSB) is pleased to announce that W. Douglas Kemper has been named member of the firm. Kemper was of counsel with GSB after serving as a judge in Jefferson Circuit Court where he presided over felony criminal cases and a wide variety of civil litigation. He is a graduate of University of Louisville, Indiana University and University of Kentucky College of Law. Kemper’s practice focuses primarily on insurance defense issues, including defense of tort liability and insurance bad faith, investigation of insurance fraud, and analysis of contractual and coverage issues in liability, casualty, commercial and property policies.

Miller, Griffin & Marks, P.S.C., is pleased to announce the addition of four shareholders and directors: Carl Devine, Anna Dominick, Michelle Hurley, and Elliott Miller.

Devine’s primary practice area is family law. He received his J.D. from the University of Kentucky in 1997 and graduated, magna cum laude, from Georgetown College in 1994 with a B.A. in Political Science.

Dominick concentrates her practice in family law. She received her J.D. from the University of Kentucky in 2008 and graduated, cum laude, from Berry College in 2005 with a B.S. in Government. Dominick has also served as the co-chair of the Fayette County Bar Association’s Domestic Relations Section.

Hurley practices primarily in equine law and civil litigation. She received her J.D. from the University of Kentucky in 2006 and graduated, summa cum laude, from Georgetown College in 2003 with a B.A. in Philosophy and Political Science. While in law school, Hurley served on the Kentucky Law Journal.

Miller practices in civil litigation, including construction, employment, insurance defense, and personal injury, as well as criminal law. He received his J.D. from the University of Kentucky in 2009 and his B.A. in History from Rhodes College in Memphis, in 2004. While attending law school, Miller clerked for Virginia Supreme Court Justice Cynthia Kinser.

Wolnitzek & Rowekamp, P.S.C., is pleased to announce Matthew B. DeMarcus has been named a partner of the firm along with partners Stephen D. Wolnitzek and Leonard G. Rowekamp. The firm will now operate as Wolnitzek, Rowekamp & DeMarcus. P.S.C. DeMarcus is an active member of the Kentucky Bar Association (KBA) as a member of the Young Lawyers Division Executive Committee, the co-chairperson of the KBA Disaster Legal Services Committee and a member of the KBA Unauthorized Practice of Law Committee. He is also a Board Member of the Northern Kentucky Volunteer Lawyers. DeMarcus focuses his practice on civil litigation including insurance law, personal injury, family law, business law and school law. He earned his J.D. from the Salmon P. Chase College of Law (2003) and his B.A. from the University of Kentucky (1999).

Law Offices of Maurice A. Byrne, Jr. is pleased to announce the expansion of his law practice to 1009 South Fourth Street Louisville, KY 40203-3207. This practice is more accessible for clients with more convenient parking to continue to focus his law practice on estate & financial planning, employment law, fire departments, litigation, and how to avoid probate, in Kentucky and Indiana.

The law firm of Dolt, Thompson, Shepherd & Kinney, PSC, is happy to welcome Chris Haden to its personal injury firm. Haden brings a solid litigation background in the area of personal injury, including medical malpractice, hospital negligence and products liability. Haden has experience as both defense and plaintiff’s counsel. He began his career with one of Kentucky’s largest law firms defending insurance companies, doctors and hospitals. For the past several years, his practice has been focused on helping individual patient-victims and their families.

Reminger Co., LPA, is pleased to announce the addition of Matthew Swafford to our Louisville office. Swafford focuses his legal practice on professional liability, general casualty, nursing home and medical malpractice defense, premises liability, and retail and hospitality defense. Before joining Reminger, he clerked for Justice Will T. Scott of the Kentucky Supreme Court and was a staff attorney for Circuit Judge Barry Willett in Louisville. Swafford is currently a member of various professional bar associations, including the Kentucky Bar Association and Ohio State Bar Association. He can be contacted by emailing ms@reminger.com or by calling 502-584-1310.
Bryson and Mason, P.L.C., is pleased to announce that Francine A. Wayman and Francine A. Wayman, P.S.C., have become of counsel with Bryson and Associates. Wayman is a graduate of the Northern Kentucky University Salmon P. Chase College of Law and focuses her practice in the areas of wills and trusts and estate planning. Wayman is located at 130 Dudley Road, Suite 180, Edgewood, KY 41017 and can be reached at 859-344-9980.

Wood & Boyer, P.A. She focuses her practice in the areas of insurance coverage disputes, bad faith claims, and appeals. Her practice is also involved in real estate development, estate planning and probate litigation. Lomond received her J.D. from the University of Louisville Louis D. Brandeis School of Law in 1993 and served as an active member of the Louisville and Kentuck Bar Associations. Lomond is a former officer and member of the Women Lawyers' Association of Jefferson County. She is also a former member of the Louisville and Kentuck Bar Associations. Lomond is a former officer and member of the Women Lawyers' Association of Jefferson County. She is also a former member of the Kentucky Bar Association.

The law firm of Braden and Associates, LLC, is pleased to announce that Francine A. Wayman and Francine A. Wayman, P.S.C., have become of counsel with Bryson and Associates. Wayman is a graduate of the Northern Kentucky University Salmon P. Chase College of Law and focuses her practice in the areas of wills and trusts and estate planning. Wayman is located at 130 Dudley Road, Suite 180, Edgewood, KY 41017 and can be reached at 859-344-9980.

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Ohio. Hollis holds a LL.M. in Public International Law from the University of Helsinki Faculty of Law, a J.D. from the University of Cincinnati College of Law and a B.A., summa cum laude, in History and Political Science from Northern Kentucky University.

Becker Law Office PLC announced that Stacy Hullett Ivey has joined the firm in the Lexington office. Ivey earned her J.D. from the University of Kentucky College of Law in 2007, where she was actively involved with moot court. She joined Buffalo Goode Sales & Bliss in 2009, and now has moved her practice to the Becker Law Office to continue her work in personal injury law and workers compensation. Ivey is an active member of the Kentucky Justice Association (KJA), serving on the Board of Directors and the Young Lawyers’ Board. She is also a member of the Kentucky, Fayette County, and Louisville Bar associations, and the American Association for Justice. She earned an undergraduate degree, magna cum laude, from Western Kentucky University in government and animal science with emphasis in equine studies.

The Kentucky Office of Bar Admissions is pleased to announce that Elizabeth S. Feamster has recently been appointed its director and general counsel and that Frances Catron Cadle has been appointed a bar examiner.

Feamster joined the office in September 2012 following 29 years in private practice, predominantly with Fowler, Meadle and Bell, PLLC. She concentrated her practice in the areas of insurance defense, bad faith defense, long term care defense and insurance coverage analysis. Prior to this appointment, she served on the Board of Bar Examiners, the Fayette County Bar Association Board and has served as a member and chair of the KBA CLE Commission. Feamster received her J.D. from the University of Kentucky College of Law where she was a member of the Kentucky Law Journal. She earned her undergraduate degree in history and psychology, graduating with honors from Transylvania University.

Cadle was appointed by the Kentucky Supreme Court as the Bar Examiner for Kentucky’s Fifth Judicial District in December 2012. She has recently retired from the United States Attorney’s Office for the Eastern District of Kentucky where she served with distinction in both the civil and criminal divisions. Cadle also serves as the Editor of the Bench & Bar magazine. She received her J.D. from the University of Kentucky College of Law, where she was a member of the Kentucky Law Journal. She earned her undergraduate degree in economics, graduating with honors, and was part of the honors program at the University of Kentucky.

Carole Meller Pearlman is a partner in the Louisville office of Quintairos, Prieto, Wood & Boyer, P.A. She is a member of the firm’s Workers’ Compensation Practice Group. Pearlman has concentrated her practice in workers’ compensation defense since 1986. During her career, she has represented insured and self-insured employers throughout Kentucky at the administrative and appellate levels. Pearlman received her J.D. from the University of Louisville Louis D. Brandeis School of Law in 1985. She also received her M.A. in foreign language education in 1978 and her Bachelor of Arts in 1974 from the University of Louisville. Pearlman is licensed to practice law in the Commonwealth of Kentucky and is a member of the Kentucky Bar Association and the Workers’ Compensation section of the Kentucky Bar Association.

IN THE NEWS

Wyatt, Tarrant & Combs, LLP is pleased to announce that Christopher Brooker has been accepted into Leadership Kentucky’s Class of 2013. Leadership Kentucky, founded in 1984, brings together a select group of individuals possessing a broad variety of leadership abilities, career accomplishments, and volunteer activities to gain insight into complex issues facing the Commonwealth. Brooker is a member of Wyatt’s Litigation and Dispute Resolution Service Team. He handles a wide array of cases at the trial level, including complex contractual disputes, constitutional disputes, unfair competition cases, fiduciary litigation, and product liability cases. He also has considerable experience in handling appeals. Brooker received his undergraduate degree from the University of North Carolina at Asheville, magna cum laude, and his law degree, with honors, from the University of North Carolina School of Law.

Bingham Greenebaum Doll LLP attorney Michelle Browning Coughlin was recently selected as a 2013 American Heart Association (AHA) Survivor Model. The 10th anniversary event will include survivor stories and will feature Coughlin as she shares her story of being diagnosed with a congenital heart defect as an adult. Go Red For Women works to gain equal support for women in the study, prevention and treatment of heart disease. Coughlin focuses her practice in the areas of intellectual property, privacy and security, and health care and life sciences. Her intellectual property practice focuses on the assessment and protection of trade secrets, as well as copyright and trademark strategy, prosecution, and enforcement, taking into consideration the particular challenges of using and monitoring one’s intellectual properties online.

Kohnen & Patton LLP is pleased to announce that Kimberly Kyle has been invited to join the Claims and Litigation Management Alliance (CLM). The CLM is a nonpartisan alliance comprised of thousands of insurance companies, corporations, Corporate Counsel, Litigation and Risk Managers, claims professionals and attorneys. Through education and collaboration the organization’s goals are to create a common interest in the representation by firms of companies, and to promote and further the highest standards of litigation management in pursuit of client defense. Selected attorneys and law firms are extended membership by invitation only based on nominations from CLM Fellows. A resident of Fort Thomas, Kyle is a partner in the Litigation, Insurance Coverage, Employment Law and Construction Law Practice Groups at Kohnen & Patton LLP. She practices in the areas of insurance coverage and bad faith, insurance defense, construction law, appellate practice, professional liability, tort and contract disputes, and employment law.

The Boyd and Greenup-Lewis Bar Associations recently held a pro bono dinner to present awards and honor local attorneys who donate their time. Legal Aid of the Bluegrass hosted the event. Daniel Carter (Greenup-Lewis Counties), Benjamin Harrison (Lewis County), and Andrew K. Wheeler (Boyd County) were presented with the Young Lawyers Award. William C.O. Reaves was presented the Distinguished Service Award. Richard W. “Sonny” Martin was presented the Attorney of the Year Award for Boyd County and Rhonda M. Copley received the Outstanding Newcomer Award. Jeffrey Tatterson received the Attorney of the Year Award for Greenup-Lewis Counties. Tracy Frye and was presented the Greenup-Lewis County Comeback Award and Leigh Gross Latherow received the Boyd County Comeback Award.

The Boyd and Greenup-Lewis Bar Associations recently held a pro bono dinner to present awards and honor local attorneys who donate their time. Legal Aid of the Bluegrass hosted the event. Daniel Carter (Greenup-Lewis Counties), Benjamin Harrison (Lewis County), and Andrew K. Wheeler (Boyd County) were presented with the Young Lawyers Award. William C.O. Reaves was presented the Distinguished Service Award. Richard W. “Sonny” Martin was presented the Attorney of the Year Award for Boyd County and Rhonda M. Copley received the Outstanding Newcomer Award. Jeffrey Tatterson received the Attorney of the Year Award for Greenup-Lewis Counties. Tracy Frye and was presented the Greenup-Lewis County Comeback Award and Leigh Gross Latherow received the Boyd County Comeback Award.
Stoll Keenon Ogden PLLC (SKO) is pleased to announce attorney Steven Loy has been recognized in the 2013 Lexology Client Choice Awards – USA & Canada. This international award honors law firms and lawyers for their exemplary service and is based on anonymous nominations from clients. The criteria for the awards focus on the ability to add real value to clients’ business. Loy is the chair of SKO’s Intellectual Property Litigation practice and has been with the firm since 1994. He also works in the Banking Litigation and Antitrust, Trade Regulation & Franchise practices.

Dinsmore is excited to announce that Kim Greene, who is of counsel in Dinsmore's Louisville office, has been honored with the James Madison Award from the Scripps Howard First Amendment Center at the University of Kentucky. The award is given to a professional with Kentucky ties who exhibits outstanding service and support for the First Amendment. Greene joins a distinguished list of previous recipients of the award, including her husband, Jon Fleischaker, a partner in Dinsmore's Louisville office who focuses his practice on the First Amendment and media law. Greene was integral in the establishment of the Freedom of Information Hotline for the Kentucky Press Association (KPA) in the 1980s, and she also assisted in starting the KPA's Legal Defense Fund in 1996. In 2001, she was named the KPA's most valuable member. She also received the First Prize from the Louisville Chapter of the Society of Professional Journalists in 2005 for her First Amendment work. Greene is a native of Ashland and received her J.D. from the University of Kentucky College of Law.

Karen A. Thomas, Chief Regional District Judge for the Northern Region of the Commonwealth of Kentucky and Chief Judge for the Campbell County District Court was named one of the 2013 Outstanding Women of Northern Kentucky. This award is sponsored by Toyota and celebrates women who have demonstrated leadership in their home, profession or community. The Northern Kentucky residents must also display qualities of personal integrity, perseverance and leadership. Judge Thomas stays active with professional organizations and the Northern Kentucky community. Judge Thomas has served as a District Court Judge since November 1996, when she was appointed to the 17th Judicial District, Division 2, for Campbell County. Judge Thomas has also served in the administrative position of Chief Regional District Judge for the Northern Region by appointment of the Chief Justice since 2000. The Kentucky Court of Justice has recognized Judge Thomas with three awards for her contributions to law-related education programs. She has also received the Northern Kentucky University Alumni Association Professional Achievement Award and the Chase Award of Excellence. In 2011 she received the The Chief Justice's Service award for outstanding service to the Commonwealth of Kentucky. Judge Thomas is a member of the Kentucky Bar Association, the Northern Kentucky Bar Association and the Salmon P. Chase Inns of Court. She graduated second in her class at Northern Kentucky University Salmon P. Chase College of Law in 1985.

Child Advocacy Today, the Medical-Legal Partnership between Kentucky Children's Hospital and Access to Justice Foundation, was represented at the National Medical-Legal Partnership Summit, April 11-12, in Bethesda, Md. Each year leaders in healthcare, law, public health and government attend the two-day conference to share ideas, insights and best practices about how to integrate health and legal care for vulnerable people. Attorney Andrea Welker and physician and faculty member Dr. Janeth Ceballos Osorio will partake in a panel presentation titled "Advancing Health Equity: Cross-Cultural Considerations and Equity-Focused Strategies for a Successful Medical-Legal Partnership."

The American Bar Association (ABA) recently appointed Stites & Harbison member Whitney Frazier Watt as co-chair of the Women in Products Liability Subcommittee. Watt is a member of Stites & Harbison’s Torts & Insurance and Business Litigation Service Groups. She has a wide-ranging practice including, but not limited to, products liability cases, contract disputes, toxic tort cases, professional negligence cases, tortious interference cases, and mass actions. Prior to being appointed co-chair of the Women in Products Liability Subcommittee, Watt served as executive editor of the ABA Products Liability newsletter. She is a volunteer attorney for the Louisville Legal Aid Society and the Center for Women and Families. Watt earned her J.D. from the University of Kentucky College of Law in 2003.

Bingham Greenbaum Doll LLP partner Peter L. Thurman Jr. has been selected as a Business First 2013 Partners in Health Care honoree. The Partners in Health Care honorees are professionals from a variety of industries who drive the Louisville area’s vital health care industry. Thurman, who is a partner in the firm’s Louisville office, concentrates his practice in the areas of health care and insurance law, including state and federal regulatory compliance, certificate of need, licensure, fraud and abuse, and litigation. He also works to advise clients on issues involving state procurement law and employee benefits.

Robert Croft, Jr., an associate in Dinsmore’s Louisville office, was honored at a dinner as a 2013 YMCA Adult Black Achiever. As an honoree, Croft will volunteer time and serve as a role model to Louisville-area youth, embracing the program’s mission of helping teenagers pursue their educational and career goals. In addition to several other adult honorees, Croft was joined by more than 90 students who were recognized for their work within the program. Croft, who practices in the Firm’s Litigation Department, is a member of the Diversity Committee and co-chairs the Minority Affinity Group. Away from his practice, he serves on the Board of Directors for The Muhammad Ali Center, the University of Kentucky Law Alumni Association and the Transylvania University Alumni Association. Additionally, he was one of the co-founders of the Kentucky Classical Theatre Conservatory, an initiative that revived the Lexington Shakespeare Festival and was responsible for providing educational opportunities in the theatre and performing arts to area students.

At its January meeting, the Bowling Green-Warren County Bar Association elected officers and directors for 2013. New directors, elected for two-year terms ending January 2015 are: Sarah Payne-Jarboe, Ashley Payne, Scott Laufenberg, Richard Hartsco, and Carrie Link. Returning directors, previously elected for two-year terms ending January 2014 are: Chris Whitfield, Sarah Capps Hayes, Maria Stewart, Mark Maier, and Ryan Reed. New officers, elected for one-year terms are: Aaron Smith was elected president, Lindsay Hinton elected vice president, Deborah Wilkins elected treasurer and Dow Moore elected secretary. Smith is a partner at English, Lucas, Priess & Owsley, LLP. His practice focuses on civil litigation and corporate defense work. He holds a J.D. degree from the University of Kentucky College of Law and a Bachelor of Arts degree from Centre College. Hinton is a partner at Reynolds, Johnston, Hinton & Pepper, LLP, in Bowling Green. She holds a J.D. and B.A. from the University of Kentucky. She concentrates her practice in real estate, finance, business law, probate and estate planning. Wilkins has served as Western Kentucky University’s (WKU) general counsel since 1994, and chief of staff since 2009. She received a J.D. from the University of Kentucky College of Law, and her undergraduate degree in history from WKU. Moore is an attorney in Bowling Green. He received his J.D. from Vanderbilt University and a B.S. degree from WKU. His practice focuses on injury cases, workers compensation, employment, and estate planning.
Wyatt, Tarrant & Combs, LLP, is pleased to announce that four of its lawyers have been named to Business First’s Partners in Health Care List. The publication highlights achievements of leaders in the area’s health care industry and named Theodore T. Myre, Carole D. Christian, and Kathie McDonald-McClure among those leaders. Wyatt’s Rosalind D. Cordini was also recognized among the “People to Watch in the local health care industry.”

Myre concentrates his practice in the areas of health care, taxation, non-profit organizations, and general business law.

Christian represents health care clients in matters involving patient care, reimbursement, compliance with state and federal law, and relationships with other health care providers.

McDonald-McClure advises healthcare providers in the areas of fraud and abuse, anti-kickback, physician self-referral, Medicare reimbursement, compliance programs, clinical trial research, Medicare and Medicare licensing, Board of Pharmacy, HIPAA, and HITECH electronic health records stimulus law.

Cordini has extensive experience with matters dealing with hospital administration and regulatory oversight.

Patrick Michael, a partner in Dinsmore’s Louisville office, was recently recognized with the Distinguished Service Award at the Louisville Bar Association’s Annual Bench & Bar Dinner. Michael, along with the Hon. A. C. McKay Chauvin, were recognized as outstanding members for their dedicated work and commitment to forming the Jefferson Courtroom Upgrade Project Inc. (JCUP). Formed in 2011, JCUP is a non-profit corporation whose mission is to equip Jefferson County’s courtrooms with state-of-the-art audiovisual systems. Michael, who serves as president of JCUP and chairman of the project’s finance committee, was tasked with raising $800,000 to upgrade the 13 courtrooms in Jefferson Circuit Court’s facilities in the downtown Louisville Hall of Justice.

Bingham Greenebaum Doll LLP partner Martin J. Cunningham has been selected to serve on the Board of Directors of the Kentucky Coal Association (KCA). Located in Lexington, KCA is the state’s leading coal association and strives to provide effective leadership for the coal industry. Its mission is to ultimately enhance the ability of the Kentucky coal industry to compete in domestic and world coal markets. Cunningham, who is a member of the firm’s Environmental and Natural Resources Practice Group, focuses his practice on coal law matters including acquisitions and sales, regulatory litigation, contracts and property transactions for mineral producers. Cunningham represents businesses by advising clients on hazardous waste, solid waste and water liability, permitting and compliance matters.

Wyatt, Tarrant & Combs, LLP is pleased to announce that Mary L. Fullington, has been nominated as a Kentucky Fellow of the American Bar Foundation (ABA). Membership in The Fellows is limited to one-third of one percent of the lawyers admitted to practice in each jurisdiction of the United States. The foundation, created in 1952 by the ABA, is recognized as the nation’s premier research institute on issues facing the legal system and the impact of the law on society. Fullington leads the firm’s Bankruptcy & Creditors’ Rights Service Team. She concentrates her practice in the areas of business bankruptcy, bankruptcy litigation, and commercial litigation. Fullington was named Best Lawyers® 2013 Lexington Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law “Lawyer of the Year.” She earned her law degree and B.A. from Louisiana State University.

The Bowling Green-Warren County Bar Association recently elected new officers for 2013. From left to right are Dov Moore, Secretary; Lindsay Hinton, Vice President; Walter Hawkins, Immediate Past President and Aaron Smith, President. Not pictured: Deborah Wilkins, Treasurer.
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As a final tribute, the Bench & Bar publishes brief memorials recognizing KBA members in good standing as space permits and at the discretion of the editors. Please submit either written information or a copy of an obituary that has been published in a newspaper. Submissions may be edited for space. Memorials should be sent to sroberts@kybar.org.

<table>
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<tr>
<th>Name</th>
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<th>State</th>
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<td>Raymond F. Bossmeyer</td>
<td>Louisville</td>
<td>KY</td>
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<td>Elaine Marie Bukowski</td>
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<td>November 13, 2012</td>
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<td>Donald Duff</td>
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<td>Jerry Wayne Guffey</td>
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<td>Fuller Harding</td>
<td>Campbellsville</td>
<td>KY</td>
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<td>KY</td>
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<td>KY</td>
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<td>Benton</td>
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<td>David M. Shouse</td>
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<td>John W. Tullis</td>
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<td>Roger E. Vincent</td>
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Corporate/Finance Attorney Needed:
Midleton Reutlinger in Louisville, Kentucky, is seeking to hire a corporate/finance attorney with three to six years experience. Send resume and letter of interest to Lisa Huber, Attorney & Director of Client Relations, 401 South Fourth Street, Suite 2600, Louisville, Kentucky, 40202, or email to lhuber@midletonlaw.com.

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Frost Brown Todd LLC, one of the largest regional law firms in the Midwest and one of the 150 largest law firms in the United States, seeks a temporary staff attorney to support our Real Estate Practice Group in our Louisville, Kentucky office. Experience in commercial real estate finance is a plus, but is not required. Applicants must be licensed to practice law in Kentucky and have a strong academic record and excellent written and oral communication skills. Send resume and law school transcript to Karen Laymance, 3300 Great American Tower, 301 East Fourth Street, Cincinnati, Ohio 45202 or by email to klaymance@fbt-law.com. Frost Brown Todd LLC is an equal opportunity employer.
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