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The mission and purpose of the Kentucky Bar Association, set forth in Supreme Court Rule 3.025, includes this language: “...to maintain a proper discipline of the members of the bar in accordance with these rules and with the principles of the legal profession as a public calling ...” In keeping with this mission, the KBA Board of Governors studied the Court’s rules, enforces the rules and, from time to time, criticizes the rules and recommends changes. The Board established a ‘Rules Committee’ years ago for this very purpose. It and the executive committee are always among the busiest groups serving the Board of Governors. Working with the Court’s Rules is one of the more important things the board does.

The Court considers proposed Supreme Court Rule changes every other year and, occasionally, as soon as change is submitted depending on the urgency of the situation. In 2000, the Court established a commission to examine the entire body of rules in light of changes that had been made on a national level since our version was adopted in 1990. This was the Ethics 2000 Commission and all Kentucky attorneys are, or should be, aware of the sweeping modifications that the Court adopted following the painstaking process of commission review, Board of Governor review, Supreme Court Rules committee review and, finally, Court review.

From time to time a particular rule is brought to the attention of a governor because of the effect it is having on the practicing bar. One such rule is Rule SCR 3.130 (1.15) (hereafter referred to as 1.15) – Safekeeping Property. The version that was revised on July 15, 2009, concerns how a lawyer holds property of clients or “third persons.” Particularly troublesome is paragraph (b) which requires a lawyer holding property in which a client, a third person, or both have an interest to do certain things: notify them that the lawyer has the property and promptly deliver to the client or third person what they are entitled to receive. While this sounds simple enough, if both the client and the third person claim the same property, the lawyer is placed squarely in the middle of a dispute between the client and third person, creating a conflict of interest. As a consequence of confusion about this rule, many lawyers have been disciplined, and legal education seminars have been developed and conducted to attempt to instruct practicing attorneys how to navigate this minefield.

During my KBA Ethics Hotline years, I wrote opinion after opinion on all variations of problems arising from 1.15. During my board years, I encountered several Inquiry Commission charges in violation of 1.15 and the resulting discipline activities. All the while, I was thinking that it was odd, and inappropriate, that a set of rules designed to establish standards of conduct between attorneys and the courts in which they work, and between attorneys and their clients, would carve out an exception and authorize discipline for actions toward some third person to which the attorney otherwise owes no professional duties. When the subject arose recently, I was heartened to learn that I was not the only person thus offended.

If my memory is correct, a governor mentioned in a meeting that he would like to review 1.15 in light of some discipline cases that had been announced by the Court, so it was referred to the board’s Rules Committee. At the next rules meeting, the perceptions of how the rule was working on Main Street and the problems attorneys were having with it were discussed, and a consensus was obtained to re-examine Kentucky attorneys’ duties to third persons. Assisted by the Office of Bar Counsel, which attends the meetings and provides staff support for the committee, a revision that removed an attorney’s ethical duties to third persons was proposed. The full board approved the revision, and it was delivered to the Court.

The Court has its own Supreme Court Rules Committee, which examined this and several other proposed changes. This examination took place in early 2013, and the Court included it in the list of proposed changes that was the subject of the rules hearing on Wednesday morning, June 19, at the 2013 convention in Louisville. The Court then accepted written comment from the bar as a whole through July. Then, the Court deliberated.

While we were waiting, my conviction that this rule change was justified was highlighted by a case that came to the board at the September 2013 meeting. A lawsuit lender cut a deal with a plaintiff to provide some funding while a suit progressed. The attorney involved when the deal was cut was aware of the situation, but withdrew from the case. New counsel was not aware of the contract the client had entered and when the case was settled, did not disburse funds to the lender. The lender did not sue the client nor attempt to use any remedies under civil law available to it – it simply filed a bar complaint against the attorney. A charge was issued by the Inquiry Commission and the attorney defended the charge vigorously. After a hearing was held, the trial commissioner dismissed the claim. Upon appeal to the Board of Governors, the commissioner’s ruling was affirmed and the case was over. Through this process, the board saw firsthand how the rule was being used by non-lawyers to obtain leverage against lawyers and, ultimately, penalize them.

The Court announced a series of Supreme Court Rule changes through an order issued Oct. 7, 2013, and the changes became effective Jan. 1, 2014. The revised Rule 1.15(b) is:

Upon receiving funds or other property in which a client has an interest, a lawyer shall promptly notify the client. Except as stated in this Rule or otherwise permitted by law or agreement with the client a lawyer shall promptly deliver to the client and funds or other property which the client is entitled to receive and, upon request by the client, shall render a full accounting regarding such property.

Third parties retain all the rights available under law to obtain what they believe they are entitled to. They can no longer use a lawyer’s license as an enforcement mechanism and leverage. In my book, this is a significant change for the Kentucky lawyer.

I offer this column as one example of the hard work the Board of Governors is involved with. It is an example of how the attorneys you send to the board to represent you do just that – they work hard to make our jobs easier and our duties clearer. I am proud to be a Kentucky lawyer.
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WINDSOR AND HOLLINGSWORTH: SHIFTING TIDES IN THE BATTLE FOR MARRIAGE EQUALITY

By: Jerrad Howard

Of all the Supreme Court decisions in recent years, few have drawn more public interest than United States v. Windsor and Hollingsworth v. Perry, and few Court decisions have impacted (if not legally, at least emotionally) the lesbian, gay, bisexual, transgender (LGBT) population in the same manner and scope as these cases. For many, however, the idea that the Supreme Court of the United States could reach two very different conclusions on what may initially appear to be the same legal issue has caused some to challenge those decisions.

While both Windsor and Hollingsworth dealt with the issue of marriage equality, the cases called into question very different laws, and raised particularly distinct issues with regard to standing. It is because of the latter that the Supreme Court could reach the merits in Windsor, while refusing to do so in Hollingsworth. This article will distill the facts and opinions from both cases, and explain why these two cases are, to date, the most important developments in the battle for marriage equality.

UNITED STATES V. EDITH WINDSOR: THE FALL OF (SECTION 3 OF) DOMA

United States v. Windsor addressed the constitutionality of certain provisions of the Defense of Marriage Act, which was enacted in 1996 by the federal government to “define and protect the institution of marriage.” Primarily at issue in Windsor was Section 3 of the Defense of Marriage Act, which provided that “[i]n determining the meaning of any Act of Congress... the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.” Section 2 of the Defense of Marriage Act, which was not directly impacted by the Court’s decision, provides that “[n]o State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.”

Windsor arose out of the executive branch’s application of the spousal exemption to the federal estate tax, which provides that a decedent’s gross estate is reduced, dollar for dollar, by any property that passes, or previously passed, from the decedent to his or her surviving “spouse.” Because “spouse” was defined under the Defense of Marriage Act to include only heterosexual couples for federal purposes, similarly-situated homosexual couples were denied this exemption. The impact was that homosexual decedents who were married under applicable state laws were subjected to a tax that did not apply to heterosexual couples.

This distinction became a considerable monetary issue for Edith Windsor. In February of 2009, Edith lost her wife of two years and her partner of 44 years, Thea Spyer, after Thea succumbed to a long battle with multiple sclerosis. Thea left behind a fairly sizeable estate, surpassing the blanket federal estate tax exemption of $5 million and incurring an estate tax of $363,053. Despite having been married in 2007 in Canada, and despite the fact that Thea and Edith’s marriage had been recognized by their state of residence (New York), Edith did not qualify as Thea’s “spouse” for purposes of the spousal exemption from the federal estate tax because of Section 3 of the Defense of Marriage Act. Though the Obama Administration had disavowed the constitutionality of the Defense of Marriage Act, the Internal Revenue Service continued to enforce that law and demanded that Edith pay the tax.

Windsor paid the estate tax due, and filed a refund action in the District Court for the Southern District of New York. Windsor’s primary contention was that she was entitled to the spousal exemption from the federal estate tax, and that the Defense of Marriage Act was unconstitutional because the statute violated the guarantee of equal protection under the Fifth Amendment. The Bipartisan Legal Advisory Group (BLAG), a group representing the interests of the House of Representatives, sought to intervene in the district court action to defend the constitutionality of the Defense of Marriage Act, and the motion to intervene was granted. The district court eventually concluded that Windsor was entitled to a refund. Both the United States and the BLAG appealed that ruling to the Second Circuit Court of Appeals, which affirmed the district court’s opinion. Subsequently, both the United States and the BLAG sought and were granted certiorari by the Supreme Court of the United States.

In a 5-4 decision, the Supreme Court held that Section 3 of the Defense of Marriage Act violated the Fifth Amendment and, therefore, was unconstitutional. The Court noted that the Defense of Marriage Act’s “demonstrated purpose [was] to ensure that if any State decide[d] to recognize same-sex marriage, those unions [would] be treated as second-class marriages for purposes of federal law.” Accordingly, DOMA wrote “inequality into the entire United States Code” in more than one thousand statutes governing Social Security, housing, taxes, and veterans’ benefits. The Court also stated that “DOMA’s principal effect [was] to identify a subset of state-sanctioned marriages and make them unequal” and “[t]he avowed purpose and practical effect of the law... [was] to impose a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States.” This disability imposed by the Defense of Marriage Act on a specific class of individuals, who are otherwise considered legally married in their state of residence, was found to violate the Fifth Amendment’s Due Process Clause and, therefore, was unconstitutional.

The majority also grounded its ruling in principles of federalism, stating that the Defense of Marriage Act was a departure from tradition because, “[b]y history and tradition[,] the definition and regulation of marriage... has been treated as being within the authority and realm of the separate States.” Though the Court acknowledged that in certain limited circumstances, Congress had passed legislation impacting marital rights, DOMA had a far greater reach and, therefore, infringed on the “virtually exclusive province of the States” to define and regulate marriage.
An additional controversial legal issue presented in Windsor was the question of standing. As mentioned previously, the Obama Administration issued a Section 530D notice to the speaker of the House of Representatives, stating that the United States would no longer defend the constitutionality of the Defense of Marriage Act. In the United States’ brief on the merits, the Justice Department asked that the Second Circuit Court of Appeals’ determination that Section 3 of the Defense of Marriage Act was unconstitutional be upheld. Both actions signaled that the interests of the original plaintiff and the original defendant were now wholly aligned, suggesting that no actual case or controversy existed.

To resolve this standing issue, the majority drew a distinction between the legal requirements for Article III standing – (1) injury in fact; (2) a causal connection between the injury and the challenged action; and (3) a likelihood that injury will be redressed by a favorable decision – and the rules of prudential standing, which the Court deemed to be “essentially matters of judicial self-governance.” The Court concluded that the legal requirements for Article III standing were satisfied because the United States had a real interest in the proceedings before the Court – namely, affirmance of the Second Circuit’s judgment would require that the United States Treasury refund the estate tax paid, which would be a “real and immediate economic injury.” The Court likened the executive branch’s continued enforcement of the statute (despite the executive branch’s opinion that the Defense of Marriage Act was unconstitutional) to the facts presented in INS v. Chadha. The Court concluded that, so long as the party requesting relief retains some stake in the appeal, that party maintains standing to appeal the lower court’s decision and the requirements of Article III are met.

Though the Court also noted that the Executive’s position in the case could result in a “friendly, non-adversary, proceeding” instead of a “real, earnest and vital controversy,” the Court concluded that the appointment of an amicus curiae to fully develop the record and ensure the adversarial presentation of the issues was sufficient to satisfy the prudential requirements. Further, the Court stated that, even though concerns related to prudential standing may exist, the Court should issue an opinion on the merits because otherwise (1) there would be a lack of precedent for lower courts to follow; (2) hundreds of thousands of people would be subjected to continuing discrimination; and (3) courts would have to entertain extensive litigation. Given all of the foregoing, the Court determined that the case was justiciable and that sufficient standing existed to enable the Court to reach the merits of the case. Six justices, including one dissenting justice, agreed that standing did exist in this case.

The Chief Justice’s separate dissent predominantly conveyed two messages. First, in his opinion, the Defense of Marriage Act was a constitutional act of Congress because Congress had an interest in uniformity and stability. Second, the Chief Justice wrote that the majority had effectively limited its analysis to Section 3 of the Defense of Marriage Act and provided further insulation for Section 2 of the Act by relying, at least in part, on principles of federalism.

Justice Scalia offered a particularly scathing dissent, chock full of rhetorical questions, in which he contended that (1) a justiciable case or controversy did not exist; and (2) it is not always the Supreme Court’s role to determine “all constitutional questions” “when an Act of Congress is alleged to conflict with the Constitution.” Scalia maintained that the determination of whether a statute infringes on the Constitution is ancillary – purely “by accident” – to resolving a dispute otherwise properly before the Court. As to whether a justiciable case or controversy existed, Scalia claimed that Article III requires “a plaintiff (or appellant) who has standing to complain [and] an opposing party who denies the validity of the complaint.” Because Windsor’s injury was cured by the District Court, and the executive branch did not ask the appellate courts to reverse the ruling, Scalia concluded that no case or controversy existed, and therefore, Article III standing requirements were not met.

Despite his allegation that the Court lacked jurisdiction to decide the merits of the case, Justice Scalia took his turn to pass upon the merits of the case as well. Justice Scalia concluded that the Defense of Marriage Act was enacted for legitimate reasons, one of which was to settle potentially difficult conflict of laws questions related to the status and validity of a homosexual couple’s marriage for federal purposes. Further, Scalia argued that the act allowed Congress to make determinations about policies it wanted to encourage, which was supposedly evidenced by providing “a special estate-tax exemption . . . [for] only opposite-sex spouses.”

Justice Alito also penned a dissenting opinion in which he challenged the merits of the majority’s findings, but agreed that standing was present.
As to the merits of the issue, Justice Alito asserted that “[t]he Constitution does not guarantee the right to enter into a same-sex marriage,” and that a right for same-sex marriage cannot be found in substantive due process because same-sex marriage is not a “fundamental right[ ] and libert[y] which [is], objectively, ‘deeply rooted in this Nation’s history and tradition’.” Instead of a justifiable case, Justice Alito felt that the issue presented to the Court was more of a political question and represented an end-run by the plaintiff to force the Court to ordain which school of political thought was the rule of the land. Justice Alito concluded that the Fifth Amendment was not violated by the Defense of Marriage Act, and therefore, the majority erred in its opinion.

Windsor ruled Section 3 of the Defense of Marriage Act unconstitutional under the Fifth Amendment Due Process Clause despite serious questions as to whether standing was present. The majority concluded that a “case or controversy” did exist and the United States did have Article III standing by virtue of the fact that the lower courts’ decisions required that the government issue a refund. As a result, same-sex couples married in a state that recognizes same-sex marriage will be treated as married for purposes of federal law.

Though the dissenting justices believe the majority’s reliance on federalism prevents the Court from invalidating state-imposed same-sex marriage bans in the future, the dissenters’ opinions seem to casually ignore the obvious caveats the majority included in its analysis. In fact, the majority twice notes that states may define what constitutes a marriage within its borders, “subject to constitutional guarantees.” Therefore, though the dissenting justices all state that the majority’s opinion limited the Court’s ability to render state definitions of marriage invalid, the majority has neatly left itself a window for future marriage equality cases to pass through, and has preserved the Court’s ability to analyze the constitutionality of state-imposed restrictions preventing marriage equality.

**Hollingsworth v. Perry: Voter-Led Prohibitions of Same-Sex Marriage**

Hollingsworth v. Perry was the Supreme Court’s opinion related to the constitutionality of Proposition 8. In 2008, the California Supreme Court concluded that limiting the definition of marriage to include only heterosexual couples violated the Equal Protection Clause of the California Constitution. Shortly thereafter, California voters passed a ballot initiative known as Proposition 8, which overruled the California Supreme Court’s decision and amended California’s Constitution to state that “[o]nly marriage between a man and a woman is valid or recognized in California.”

The plaintiffs in Hollingsworth, two same-sex couples who were unable to marry as a result of Proposition 8, filed suit in federal court against California’s governor, attorney general, and various other state and local officials, and alleged that Proposition 8 violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution. All California officials named as defendants in the action refused to defend the law, so the District Court allowed the official proponents of Proposition 8 to intervene to defend the amendment’s constitutionality. The District Court eventually concluded that Proposition 8 was unconstitutional and enjoined the enforcement of the ban on same-sex marriage.

The proponents of Proposition 8 appealed the District Court’s ruling to the Ninth Circuit Court of Appeals, and that appellate court was advised, by certified question to the California Supreme Court, that the proponents of Proposition 8 had authority “to appear and assert the state’s interest in the initiative’s validity and to appeal a judgment invalidating the measure when the public officials who ordinarily defend the measure or appeal such a judgment decline to do so.” The Ninth Circuit Court of Appeals concluded that Proposition 8 violated the Equal Protection Clause because California removed “a right or benefit from one group but not others” without a legitimate reason for withdrawing that right. The proponents of Proposition 8 filed a petition for writ of certiorari, which was granted by the U.S. Supreme Court.

In another 5-4 decision, and in what may be one of the oddest combinations of Supreme Court justices to sign such a politically-decisive opinion, the Supreme Court concluded that the proponents of Proposition 8 lacked standing to appeal the district court’s determination. The majority reasoned that the proponents of Proposition 8 lacked standing because the district court’s opinion did not cause any individual or personal injury to the proponents; rather, the proponents’ contentions merely represent “generalized grievances” because the district court’s determination impacted the proponents “no more directly . . . than it [did] the public at large.” The Court also concluded that the special role bestowed on the proponents under the California Election Code did not vest any role of enforcement in those individuals.

Further, the majority concluded that the California Supreme Court could not vest authority in private individuals to assert the validity of Proposition 8 in an Article III court. While certain public officials may represent the state’s interest, the majority concluded that same right does not extend to private individuals. The majority concluded that “standing in federal court is a question of federal law.” Accordingly, the California Supreme Court’s determination that the proponents had standing was insufficient to grant standing for federal purposes, thereby preventing the Court from reaching the merits of the dispute.

The dissenting justices relied primarily on one important fact in their analysis: the issue of standing before the Court was a question of state law related to “how California defines and elaborates the status and authority of an initiative’s proponents who seek to intervene in court to defend the initiative after its adoption by the elec-
torate.” 37 The dissent contended that, since this is an issue of state law, the California Supreme Court has the last say on that matter, and the Supreme Court of the United States has no basis to set aside that determination of state law. 38 Since the California Supreme Court had affirmatively stated that the proponents of Proposition 8 had authority to defend the constitutionality of the ballot initiative, Article III standing was met in the same manner it would have been had California officials chosen to defend Proposition 8.

The Hollingsworth ruling on standing resulted in the reversal of the Ninth Circuit Court of Appeals’ opinion, leaving the District Court’s determination that Proposition 8 was unconstitutional under the Due Process and Equal Protection Clauses intact. Though Proposition 8 was struck down, Hollingsworth presents no legally-binding precedent that will aid in striking down state-imposed discrimination related to marriage equality.

Contrary to the situation presented in Windsor, the state of California chose not to appeal the district court’s ruling, and therefore, was not a party before the Ninth Circuit Court of Appeals or the U.S. Supreme Court. Had the state of California appealed both the district court and the Ninth Circuit’s ruling (similar to how the Obama administration proceeded in Windsor), the Supreme Court likely would have been able to bypass the “generalized grievance” standing issue that was central to the majority’s opinion. This in turn may have allowed the Court to reach the merits of state-imposed same-sex marriage bans; however, there would still be a question as to whether Article III standing would have existed in Hollingsworth (even if the State of California had appealed) since the state of California may not have suffered an injury-in-fact sufficient to meet Article III requirements. 39

CONCLUSION

Though the Supreme Court’s opinions in Windsor and Hollingsworth revolved around the issue of marriage equality, the actual legal issues presented in those cases were very distinct, resulting in two very different conclusions. In Windsor, the Court found that Article III standing did exist because the United States had suffered a direct injury by being required to issue a refund to Edith Windsor. As a result, the Court was able to strike down Section 3 of the Defense of Marriage Act, allowing same-sex couples legally married under state law to be treated as married for federal purposes in the future. However, in Hollingsworth, the Court concluded that standing did not exist because proponents of a ballot initiative only represent generalized grievances shared by all taxpayers, and therefore, the injury-in-fact requirement necessary to confer Article III standing was not met. The Court reversed the Ninth Circuit Court of Appeals’ decision because court similarly lacked standing to hear the case, but the Court’s opinion preserved the District Court’s opinion rendering Proposition 8 invalid.

How the Court’s majority opinions will be construed and utilized in the future is anyone’s guess, but one thing is certain: the majority in Windsor left powerful authority for individuals challenging same-sex marriage bans and is definitely a “win” in the battle for marriage equality. 40

Jerrad Howard is a corporate associate in Dinsmore’s Louisville Office, where he is responsible for providing advice to and representing public and private companies, public utilities, and financial institutions. Howard concentrates his practice on mergers and acquisitions, as well as commercial finance and regulatory compliance for financial institutions. Howard’s experience includes representing clients in a variety of agency proceedings and transactions, including multiple acquisitions and divestitures; providing thorough compliance advice in heavily-regulated industries; developing and implementing comprehensive corporate policies and procedures; and drafting complex product and service agreements. He also has experience counseling clients in the high-tech industry, with particular emphasis in the area of data breaches. Prior to joining Dinsmore, Howard worked for Montague Law PLLC, a Lexington-based soft intellectual property and technology boutique law firm, and GoDaddy.com, the Scottsdale-based primary domain name registrar.

1. 133 S. Ct. 2675 (2013).
4. In fact, one complication that arose during this case was related to the 28 U.S.C. § 530D notice the Attorney General of the United States sent to the Speaker of the House of Representatives stating that the Obama Administration would no longer defend the constitutionality of the Defense of Marriage Act. This notice was sent before any judicial adverse action was issued, making the scenario quite odd, and created a wrinkle, in some of the Justices’ opinions, as to whether the United States could appeal the District Court’s ruling.
6. Id.
7. Id. at 2679.
8. Id. at 2689-90.
9. Id. at 2691. The Court noted, however, that the states’ ability to regulate domestic relations is limited, and any regulation of the institution of marriage must respect the constitutional rights of persons. Id. (citing Loving v. Virginia, 388 U.S. 1 (1967)).
10. Id. at 2685 (citing Lujan v. Defenders of Wildlife, 504 U.S. 559, 559-62 (1992)).
11. Id. (quoting Warth v. Seldin, 422 U.S. 490, 500 (1975)).
12. Id. at 2688 (quoting Hein v. Freedom From Religion Found., Inc., 551 U.S. 587, 599 (2007) (plurality opinion)). As Justice Kagan pointed out during oral argument, “whether the Government is happy or sad to pay that $300,000, the Government is still paying the $300,000, which in the usual set of circumstances is the classic Article III injury.” Transcript of Oral Argument, United States v. Windsor, at 14.
13. 462 U.S. 919 (1983). In Chada, the Executive had presented to the Court of Appeals that it believed the statute at issue was unconstitutional, but also indicated it would continue to abide by the statute. For purposes of Article III standing, the Court in Chada stated that the phrase “case or controversy” requires that the Court’s “decision will have real meaning.” Id. at 939-40.
14. 122 S. Ct. at 2687.
15. Id.
16. Id. at 2688.
17. See id. at 2711 (Alito, J. dissenting).
18. Id. at 2697 (Roberts, C.J. dissenting) (“The dominant theme of the majority opinion is that the Federal Government’s intrusion into an area ‘central to state domestic relations law applicable to its residents and citizens’ is sufficiently ‘unusual’ to set off alarm bells. . . . [T]hat power will come into play on the other side of the board in future cases about the constitutionality of state marriage definitions.”)
19. Id. at 2698 (Scalia, J. dissenting).
20. Id. at 2699.
21. Id. at 2701 (emphasis in original deleted). What is interesting is that Justice Scalia seems to forget (or ignore) that a separate party, the BLAG, was allowed to intervene as a party of interest in the suit and was asking that the lower court’s ruling be overturned.
22. Id. at 2708.
23. Id.
24. Id. at 2714 (Alito, J. dissenting) (quoting Washington v. Glucksberg, 521 U.S. 702, 720-21 (1997)).
25. Id. at 2718.
26. Id. at 2692.
27. 133 S. Ct. 2652 (2013).
32. Hollingsworth, 133 S. Ct. at 2661 (citing Romer v. Evans, 517 U.S. 620 (1996)).
33. The majority in Hollingsworth v. Perry was composed of Chief Justice Roberts and Justices Scalia, Ginsburg, Breyer, and Kagan.
34. Id. at 2662 (quoting Lujan, 504 U.S. at 573-74).
36. Hollingsworth, 133 S. Ct. at 2666.
37. Id. at 2668 (Kennedy, J. dissenting).
38. Id. at 2670.
39. In Windsor, the United States government satisfied the injury-in-fact requirement necessary for Article III standing because the District Court’s determination prevented the United States government from collecting the $363,053.00 estate tax due. In Hollingsworth, there was no similar economical injury-in-fact suffered by the State of California.
By: Ross T. Ewing, Esq.

INTRODUCTION
As Kentucky and the nation discuss and debate same-sex marriage, many family law practitioners find themselves facing a more immediate issue. A growing number of Kentucky same-sex couples raise children together, and like their heterosexual counterparts, a significant percentage of these parents will find themselves litigating child custody and/or timesharing at some point. This article will address two issues important to these parents and Kentucky attorneys: the sexual orientation of parties in custody disputes generally and the procedural hurdles to making a custody determination upon the dissolution of a same-sex partnership. Both issues have seen significant recent developments in case law, and more may be on the way.

SEXUAL ORIENTATION OF A PARENT IN CUSTODY DETERMINATIONS
Gay and lesbian Kentuckians may find themselves in custody litigation in a variety of settings, and their sexual orientation should be not a dispositive factor in any of them. A gay or lesbian parent1 may find his or her sexual orientation alleged to be relevant to determining custody in an action to dissolve his/her heterosexual marriage, in a dispute with a former same-sex partner, or in an action by a third party, such as a dependent, neglect, or abuse action or an action by a relative to be declared a de facto custodian. In any of these instances, recent Kentucky case law makes clear that the parent’s sexual orientation cannot, on its own, form a legal basis for denying that parent custody of his or her child(ren).

In Maxwell v. Maxwell, 382 S.W.3d 892 (Ky.App. 2012), Robert and Angela Maxwell divorced after a 16-year marriage that produced three children. Id. at 892. At some point unspecified in the record, Angela entered into a committed relationship with another woman. Pending a final trial, the parties, by agreement, shared joint custody of the children and shared time with them equally, on a week-to-week basis. Id. The parties resolved all of their property issues outside of court but adjudicated the issues of custody and timesharing in a final hearing involving nine witnesses.2 Id. at 893-94. Robert asked the court to award joint custody and name him the children’s “primary residential custodian.”3 Id. at 894. Angela asked the court to award the parties joint custody and to continue the parties previously agreed-to week-to-week timesharing. Id. After extensive testimony by the parties, their two older children, and other acquaintances and family members, the trial court awarded sole custody of the children to Robert, set a minimum visitation schedule for Angela that fell below the guidelines set by local rules, and enjoined both parties from cohabiting with another adult outside of marriage during their time with the children. Id. at 895.

Angela appealed, and the Court of Appeals reversed, finding that the family court erred in relying exclusively or excessively on Angela’s sexual orientation when making its custody determination. Using Angela’s sexual orientation as the sole determinative factor violated her constitutional rights to due process and equal protection, as well as her fundamental right to parent. Id. at 899. Any custody determination must be made after evaluating all relevant factors, including those outlined in KRS 403.270(2). The delineated factors are not an exclusive list. However, the court “shall not consider conduct of a proposed custodian that does not affect his relationship with the child.” KRS 403.270(3). Moreover, the court must give equal weight to both parents. KRS 403.270(2). In Maxwell, the family court cited to the factors listed in KRS 403.270(2) but did not make specific findings as to any of them. Instead, the family court focused on Angela’s same-sex relationship and determined that it was harmful to the children. Id. at 897. In so doing, the family court relied not upon specific testimony but upon prior case law suggesting that the court may consider the misconduct of a proposed custodian if the court concludes “that such misconduct has affected, or is likely to affect, the children adversely.” Krug v. Krug, 647 S.W.2d 790, 793 (Ky. 1990).

The Court of Appeals found the family court’s reliance on Krug misplaced. Ultimately, the court concluded “that being a member of a same-sex partnership alone does not meet the criterion for sexual misconduct.” Id. at 898. Stated differently, “KRS 403.270(3) does not allow sexual orientation to be a determining factor unless there is a direct negative impact on the chil-
In both analyses – Angela’s alleged “misconduct” in her committed relationship to another woman and the alleged harm to the children by potential teasing – the Court of Appeals’ message was clear. “Harm to these children must have an evidentiary basis and cannot be assumed.” Id. at 899. For the trial bench and for practitioners, this is key. Of course there will be cases in which the specific conduct of a parent who happens to be gay or lesbian warrants sole custody to another parent or party under the appropriate factors in KRS 403.270(2). But more often those factors will suggest – as they do in the majority of custody cases – that the child’s best interests require that he or she maintain a custodial relationship with both parents, regardless of their sexual orientations. Practitioners must make their case with specific, admissible evidence, and trial courts must determine custody in the children’s best interest, as determined by the relevant factors, with factual findings supported by ample admissible evidence. After Maxwell, both bench and bar must do so without sole regard for one party’s sexual orientation.

Note that while the court in this case only addressed custody, the visitation statute is one of several that employ the “best interests of the child” standard analyzed in the court’s opinion. KRS 403.320(3). See also Drury v. Drury, 32 S.W.3d 521, 524 (Ky.App. 2000). Thus, the Maxwell analysis – that a parent’s sexual orientation is not relevant absent proof of specific harm to the child – should apply to visitation and timesharing determination.

CUSTODY DISPUTES BETWEEN FORMER SAME-SEX PARTNERS

Less clear is the path to a child custody determination in a dispute between former same-sex partners. This is true regardless of whether the couple ever entered into a legal marriage, civil union, or other similar legal relationship. Of course, same-sex partners cannot presently marry in Kentucky. Ky. Const. § 33A; KRS 402.020(1)(d). Likewise, the prevailing view of judges and practitioners is that these provisions prevent Kentucky courts from dissolving same-sex marriages entered into in other jurisdictions. No published case law addresses this point, and a case testing the proposition was recently filed in Jefferson County. However, that case involves no minor children, and even an appellate opinion addressing the court’s ability to dissolve that marriage will leave unanswered questions about the legal rights of the spouses to custody of children born to either parent during the marriage.

Despite the availability of an out-of-state divorce for some married same-sex couples, child custody determinations for those couples will continue to be made in Kentucky. A handful of states and the District of Columbia retain jurisdiction over the same-sex marriages of non-residents for the limited purposes of dissolving those marriages, should such dissolution not be possible in the state of the parties’ domicile. However, even in those states the dissolving court probably lacks jurisdiction to enter a child custody order.

The Uniform Child Custody Jurisdiction and Enforcement Act (U.C.C.J.E.A.), enacted by all fifty states and the District of Columbia, is the “exclusive jurisdictional basis for making a child custody determination.” KRS 403.822(2). U.C.C.J.E.A. jurisdiction hinges upon the child’s “home state,” as defined by statute. Unless the parties are recent transplants, Kentucky will be deemed the child’s home state for U.C.C.J.E.A. purposes. KRS 403.800(7). This grants Kentucky exclusive child custody jurisdiction. Kentucky likely cannot decline this jurisdiction under the strict standards articulated in KRS 403.822(2). Moreover, even if Kentucky could properly decline jurisdiction, the state of the couple’s marriage lacks the significant connections to the family and the substantial evidence about the case necessary to acquire jurisdiction. KRS 403.822(b). See Gullett v. Gullett, 992 S.W.2d 866 (Ky.App. 1999) (unborn child’s pre-natal presence in the state does not constitute “significant connection” for purposes of acquiring U.C.C.J.E.A. jurisdiction); Graham & Keller, West’s Kentucky Practice, Domestic Relations § 14.27 (3d ed. 2008) (examples and discussion of “significant connection” and “substantial evidence”).

Some states, such as Delaware, require parties entering into a marriage or civil union to consent to the dissolution of the marriage or union in that state. Even in those states, though, the U.C.C.J.E.A. is the sole mechanism for acquiring child custody jurisdiction. See 13 Del. Code § 1920(b). The parties’ consent to divorce jurisdiction does not alter the home-state analysis of the U.C.C.J.E.A., because personal jurisdiction over a child and/or his parents is “not necessary or sufficient to make a child custody determination.” KRS 403.822(3).

Accordingly, former same-sex partners in Kentucky seeking a court order on custody and timesharing will be litigating here and applying Kentucky law. A perfect storm of three state laws ensures that the parties will always be on unequal footing.

The marriage prohibitions cited above, the lack of second-parent adoption, and the out-molded provisions of our 1964 Uniform Parentage Act ensure that one partner will legally be a non-parent to any children raised by the couple. Regardless of any psychological or emotional bonds the child forms with the partner of his or her legal parent, that person will be a non-parent for purposes of custody and timesharing.

As non-parents, the first hurdle these litigants face is standing to seek custody. “Under our current statutory scheme, non-parents may attain standing to seek custody or visitation of a child only if they qualify as de facto custodians, if the parent has waived her superior right to custody, or the parent is conclusively determined to be unfit.” Tranman v. Lillard, 404 S.W.3d 863, 868 (Ky.App. 2013) (citing Mullins v. Picklesimer, 317 S.W.3d 569, 578 (Ky. 2010)). The claimant must also be “a person acting as a parent” as defined in the U.C.C.J.E.A. Mullins, 317 S.W.3d at 575. In this context, that means the person must have physical custody of the child or have had it for a period of six months within the year immediately prior to the filing of the petition. Id.

The same-sex partner of a child’s legal parent is unlikely to meet the criteria to be declared de facto custodians. This is primarily because that statute requires that the claimant have acted in place of the child’s legal parent(s) and not as a co-parent with the child’s legal parent(s). Mullins, 317 S.W.3d at 574; Brumfield v. Stinson, 368 S.W.3d 116 (Ky.App. 2012). This is simply very unlikely to occur during any intact relationship.

Unfitness is similarly unlikely to help the same-sex partner of the child’s legal parent attain standing to pursue custody or visitation. Only in extreme cases will the proposed custodian have the proof necessary to allege unfitness, and even then he or she will have to overcome logi-
cal questions about his or her role in the parent’s unfit life. Moreover, in cases of true unfitness, the parties are likely to find themselves litigating in dependency, neglect, and abuse court rather than resolving their private differences as to child rearing.

So, to acquire standing to pursue custody and timesharing, the non-parent will most likely need to prove that the biological or adoptive parent has waived his or her superior right to custody. Crucially, the biological or adoptive parent need not waive the entirety of his or her parental rights. Mullins, 317 S.W.3d at 579. Unlike the de facto claim, facts showing the co-parenting and cooperation of the parties actually enhance rather than preclude a waiver claim. The party seeking standing must prove that the biological or adoptive parent waived his or her “right to be the sole decision-maker regarding [the] child and the right to sole physical possession of the child.” Id.

The Supreme Court’s opinion in Mullins is a road map of the proof required. The parties’ attempts to convey legal rights upon the non-parent during their relationship – such as signing a co-parenting agreement, seeking a joint custody order, or nominating another as the child’s guardian in an estate plan – will be relevant to show the legal parent’s intent to waive his or her custody rights. Id. at 581.

Day-to-day facts about the child’s life - such as financial support, a hyphenated last name, or calling the non-parent “momma” – are also relevant and admissible. Id. at 580.

Ultimately, the trial court will look for evidence that the child considers the non-parent his or her parent and that the child’s legal parent played an active, integral role in forming this relationship.

Once the former partner of the child’s legal parent has established standing to seek custody, the court must then determine custody and timesharing/visitation in accordance with the child’s best interest. As outlined above, this must be done without undue regard for either party’s sexual orientation. Note that even this exhaustive process does not make the non-parent a legal parent of the child. For instance, the child will not inherit from the non-parent custodian under the laws of intestacy. However, the non-parent is able to maintain a parenting relationship with the child by exercising custody and timesharing.

Mullins also did not address the possibility of a child support obligation between former same-sex partners. In Truman v. Lillard, supra, the party seeking standing offered to pay child support to the child’s legal parent, but she failed to prove waiver as discussed above, so that issue did not reach the Court of Appeals. The family court’s authority to order the non-parent partner to pay child support to the legal parent is not at all clear. No statutory or common-law authority requires a non-parent to financially support the legal children of another, absent perhaps an enforceable contract to do so. Perversely, the legal parent has a duty to support his or her child and can be ordered to pay child support to the child’s custodian, regardless of whether that custodian is a parent. See Graham & Keller, West’s Kentucky Practice, Domestic Relations § 14.27 (3d ed. 2008). This further illustrates the inequity and frustration caused by a system of laws that continues to treat one partner as “parent” and one as non-parent custodian.

CONCLUSION

Recent developments in case law have made it easier for trial courts to respect and maintain the parent-child relationship for gay and lesbian parents in child custody litigation. However, these changes do not permit both parties to be legal parents. Serious legislative reform will be needed to make that happen. Until that occurs, family law practitioners and judges must tread carefully through several chapters of KRS 653 to preserve these children’s emotional and psychological bonds with both their legal parent and that parent’s same-sex partner.

1 Note that no published case law addresses a custody determination involving a parent who explicitly identifies as bisexual. The court in Maxwell spoke of the constitutional impossibility of making a determination solely on the basis of “sexual orientation.” Id. at 888-89. Black’s Law Dictionary defines “sexual orientation” as “A person’s predisposition or inclination toward a particular type of sexual activity or behavior; heterosexuality, homosexuality, or bisexuality.” Black’s Law Dictionary 653 (3d pocket ed. 2006). A self-identified bisexual parent should be able to successfully argue the irrelevance of his or her sexual orientation in making a custody determination.

2 The Opinion is silent as to the issue of child support.

3 The dubiuousness of this designation after Pennington v. Marcum, 266 S.W.3d 759 (Ky. 2008), and the implementation of the Family Court Rules of Practice and Procedure is outside the scope of this article but worth noting.

4 When parties share joint custody, each of them has “timesharing” with the children; when one party has sole custody, the other party has “visitation” with the children. Pennington v. Marcum, 266 S.W.3d 759, 768 (Ky. 2008).

5 The “best interest of the child” standard applies in numerous other statutes. See, e.g., KRS 403.320 (visitation), KRS 199.520 (adoption), KRS 620.140 (disposition of dependency, neglect, and abuse cases); KRS 625.090 (involuntary termination of parental rights). In some instances, such as in termination of parental rights, other factors are listed. Whether they are additional or alternative is not clear. More often, the phrase appears on its own.

6 For transgender parents, the impact is not as clear. M.B. v. D.W., 236 S.W.3d 31 (Ky.App. 2007) (upholding father’s gender transition as basis for
finding emotional injury to children and terminating his parental rights), is only five years old and has not been addressed on this issue in any other published opinion. Moreover, the Maxwell court spoke only of “sexual orientation,” a concept that is distinct from “gender identity,” a term developed in anti-discrimination legislation and litigation.


KRS 403.800 et seq.


The U.C.C.J.A. determines jurisdiction for visitation as well as custody. KRS 403.800(3) and (4).

See S.J.L.S. v. T.L.S., 265 S.W.3d 804 (Ky.App. 2008), a thorough discussion of which is outside the scope of this article.

As the Court of Appeals clarified, “the in loco parentis doctrine is no longer applicable in these matters,” having been superseded by the de facto custodian statute. Id. at 868.

The application of this six-month rule is currently before the Kentucky Supreme Court in Coffey v. Wethington, 2012-CL-721-DE. The court heard oral arguments on Nov. 13, 2013, on the construction of 403.800(13). The Court of Appeals ruled that the all persons relying on this provision to seek custody of a child must have had physical custody of that child for six months prior to filing a petition. The appellants in this case urge that the more natural reading of the statute requires the petitioner to either have physical custody at the time of filing or have had it for six months within the past year but lost it prior to filing. Interested readers should look for an opinion in 2014.

KRS 403.800(13). This six-month rule exemplifies the difficulty in calling one partner a non-parent. Consider, for example, a committed same-sex couple splitting after 10 years together, with three children ages six, three, and three months. Suppose all three children have the same adoptive parent, and suppose that parent frustrates the non-parent’s access to the children immediately upon their break-up, depriving the non-parent of physical custody of the children. The non-parent would have standing to pursue custody and timesharing of the two older children but not the youngest.

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Harwell F. Smith, Ph.D.
“CAN YOU CREATE A LEGAL BOND FOR SAME-SEX COUPLES IN KENTUCKY?”

By: Madeleine T. Baugh

Kentucky prohibits same-sex marriage by constitutional amendment and by statute.1 The constitutional amendment not only prohibits same-sex marriage, it also prohibits any legal status identical or substantially similar to marriage for unmarried individuals. In addition, a marriage between members of the same sex which occurs in another jurisdiction is void as against public policy in Kentucky.2

So can we as Kentucky attorneys nevertheless assist our clients who live in committed, albeit unmarried, relationships with a member of the same sex in creating a legally enforceable bond between them? Can we as attorneys assist our clients who have been legally married in a state that permits same-sex marriage in creating a legally enforceable bond in Kentucky? If the bond is contractual in nature, the answer should be a qualified yes.

Competent adults may mutually agree to undertake mutual, concrete obligations to one another with adequate and legal consideration. However, this author has found no reported cases in Kentucky directly addressing such contracts between same-sex couples. Our clients should be told and made to acknowledge that such contracts are untested in Kentucky courts.

Kentucky courts do recognize the ability of unmarried couples who cohabit to contract with each other and to establish business partnerships and joint ventures with one another. However, there is no direct line of case law regarding its application to same-sex couples.

Unlike married persons, no statutory set of default rules exist for unmarried persons, so the court looks to a variety of general legal principles, from contract and partnership law as well as general property law, to determine the outcome of any dispute. Given the wide variety of legal rules that may apply, some uncertainty exists on the outcome of any given case.3

Can we argue that same-sex couples are unmarried couples under Kentucky law?

In 1997, the Kentucky Court of Appeals recognized same-sex couples as unmarried couples in an intimate relationship under domestic violence statutes in Ireland v. Davis, 957 S.W.2d 310 (Ky. App. 1997).

John Ireland appealed an order of the Fayette Circuit Court affirming the order of the Fayette District Court dismissing a domestic violence order (DVO) it had entered against his partner, Blake Allen Davis. Ireland had obtained a DVO against Davis from Fayette District Court. Later, when Ireland filed an affidavit alleging that Davis had violated the terms of the DVO, one judge signed a show cause warrant and another judge set it aside, dismissing the entire domestic violence proceeding on the ground that the Court lacked jurisdiction under the domestic violence statutes (KRS 403.715 - .785) because Ireland and Davis were of the same gender. After Fayette Circuit Court affirmed the dismissal order of the Fayette District Court, Ireland appealed to the Kentucky Court of Appeals.

The Court of Appeals reversed the orders of both courts and remanded the case to Fayette District Court for reinstatement of the domestic violence proceedings.

The Court held that the domestic violence statutes afford protection to same-sex couples, just as they do to other enumerated couples in KRS 403.725, rejecting the arguments that the domestic violence statute did not apply to same-sex couples.

The Court stated that “When the domestic violence statutes were amended in 1992, the General Assembly extended protection from domestic violence to a new class of individuals – members of an unmarried couple who either are living together or have lived together, but who do not have a child in common” Ireland, supra.

The Court found the language of the statute to be unambiguous, even though it is gender-neutral and does not specifically include or specifically exclude same-sex couples from its scope. Further, it stated that the General Assembly did not give preferential treatment to same-sex couples or homosexuals; rather it provided for equal treatment under the law for same-sex or homosexual victims of domestic violence.4

In Ireland the statute provided the framework for its decision, but the Court recognized the same-sex couple as an unmarried couple living together or having lived together without same-sex couples having been specifically named in the statute. The Court recognized the same-sex couple as unmarried cohabitants.5

Kentucky does not provide by statute or by common law for contractual rights or obligations to be implied from the existence of unmarried cohabitation.6 Kentucky courts have taken great care over time not to obviate by judicial fiat Kentucky’s statutory and common law decisions against the recognition of common law marriage between a heterosexual couple.7 Kentucky courts will surely take similar care not to create any legal status identical or substantially similar to marriage for same-sex couples in contravention of Ky. Const. 233A and the statutes prohibiting same-sex marriage. The Supreme Court of Kentucky in
Emphasize to your client that she has a duty to disclose her assets and to express contracts between unmarried heterosexual couples should be applicable to same-sex couples as well.

To establish a contract, a partnership or joint venture for unmarried cohabiting couples, in Murphy vs. Bowen, 756 S.W.2d 149 (Ky. Ct. App., 1988), the Kentucky Court of Appeals ruled there should be evidence of an express agreement or an agreement that can be implied in law between the parties. In Tolson v. Allen, 2010-CA-00400 MR, Ct. of App of KY, 2/18/2011 in an opinion not to be published, the Court of Appeals cited Murphy v. Bowen and remanded the case for further proceedings for determination of material fact as to whether or not an agreement existed between the parties. The lower court was directed to determine if an oral agreement existed and, if it existed, its terms.

**Creating the Agreement**

**How do we create such an agreement?**

While a court might enforce an oral agreement between the members of an unmarried couple when the evidence supports such a finding, the cautious practitioner advising her client in an unmarried, same-sex relationship, will encourage the client to create a written contract, stating the obligations undertaken between them.

- When drafting this contract, do not promise enforceability of the contract to your client.
- Insist that each party to the contract have separate counsel.
- Emphasize to your client that she has a duty to disclose her partner’s assets and to expect a disclosure of her partner’s assets due to the confidential nature of the relationship. The couple trusts one another and has reason to rely upon each other’s representations.
- Question your client about the relationship. Does your client contribute income to the relationship, or is he a homemaker without monetary compensation? How long has this relationship existed? How old is your client? How old is the partner?

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**Is the agreement unconscionable?**

Pay special attention to the economic circumstances of the couple. Where there is gross disparity in bargaining power, agreements tend to be looked at more closely under the law of unconscionability.

- What would she expect, if there is a significant change in the medical or economic circumstances of the partner? What would he expect, if there was a significant medical change in their circumstances? What if the couple was married in a state permitting their marriage - a recognition state, and your client has a significant ERISA retirement plan and wants the spouse to waive her right to take as a beneficiary?
- Encourage your client to review the contract with the partner over the years. Life throws curveballs.
- Discuss with your client their family situations. Does the couple have families who acknowledge their relationship? Can they share the agreement with their families?
- Advise the client that the agreement is only as stable as the partners. The contract is one entered into during good times, intending to cover obligations to one another when the relationship is in trouble or terminating.

**Conflict of Laws in Recognition and Non-Recognition States**

**What if your client is married in a jurisdiction permitting same-sex marriage – a recognition state?**

Although the marriage of a client undertaken in a recognition state is void and any rights granted by virtue of the marriage, or its termination, is unenforceable in Kentucky courts, the client is married in recognition states. The agreement you draft should state this.

Same sex couples who have been legally married in a recognition state are in the process of being extended federal rights and benefits under the June 26, 2013, decision in the United States v. Windsor, __ U.S. __ (2013); 133 S.Ct.2675. In the Windsor decision the U.S. Supreme Court held that the Defense of Marriage Act (28 U.S.C. 1738C) denied those same sex couples legally married in a recognition state equal protection of the law under the Fifth Amendment of the Constitution for no legitimate purpose, intending only to disparage and injure them. Under this decision, federal law protections, responsibilities and benefits are to be extended to those same sex couples who are legally married in a recognition state.

The Windsor decision covers all same-sex couples, who have legally married in a recognition state, whether they presently reside in a recognition or non-recognition state. The federal government is in the process of extending protections, making benefits available and clarifying responsibilities. For example, federal tax returns for same-sex married couples must now be filed “married, filing jointly” or “married, filing separately.” The applicable federal rules and regulations governing retirement plans and the benefits available to spouses now apply to those same-sex couples legally married in a recognition state.

Issues of the relationship between federal and state laws will certainly arise. Medicaid is a joint program between states and the federal government with many regulations tied to marital status. How will Medicaid benefits be affected by the Windsor decision? Presently the Medicaid program does not honor antenuptial and postnuptial agreements between married couples. Your clients should know this.

Any contract between your client and his partner should state that they have been married in a recognition state. It should contain language about terminating the marriage, if their relationship terminates. If the couple’s relationship terminates in Kentucky, the couple is still married in recognition states. To dissolve the marriage, one should establish residency in a recognition state and file for divorce. If that is not possible, the couple should be advised that, as long as their spouse is living, they cannot enter into another marital relationship in a recognition state without ending the first.

They should also be advised that, when and if they are resident in a recognition state and married, they should consult with an attorney as to their rights and obligations as spouses under the laws governing marriage in that state and to consult with an attorney as to the enforceability of their contract as an antenuptial or postnuptial agreement in that state. For example, does the recognition state in which she now resides have laws allowing her spouse to elect against her will for a statutory share of her estate, if she is the first to die?
Discuss this with your client and include language about how the couple intends to file taxes and what they intend regarding their retirement plans. Do they want to waive their spousal right to a beneficiary designation in ERISA qualified plans? Remember that spousal waivers can only be executed after the couple is married.

**WHAT SHOULD GO IN THE AGREEMENT?**

*What should you include in the agreement itself?*

- Identify the parties.
- Identify the consideration for the contract. Contracts should be enforceable based upon mutual promises and obligations, but be sure that the mutual promises and obligations are evident in the agreement. The sexual relationship between the parties should not in any way be part of the consideration for the agreement.
- Describe the parties’ relationship. Are they married in a recognition state? When? How long have they been in the relationship?
- If there are children, refer to and incorporate by reference the agreement concerning custody, support and visitation.
- Describe whether there is presently any jointly held property and how any property purchased in the future will be titled. Describe what happens to jointly held property if the relationship terminates.
- Include a full disclosure of all separate and joint assets, including a separate property schedule for each party.
- Describe how real estate will be divided upon sale or upon termination of the relationship (appraisals, refinancing and procedures to establish current fair market value).
- Describe any individual real estate owned at the start of the relationship. Describe how real estate purchased in the relationship is to be held.
- Include a provision for gifts between the parties. Describe how inherited property or gifts received during the relationship will be treated.
- Include a provision regarding retirement plans and whether or not each has a claim to the retirement plan of the other. Has the client been married in a recognition state? If the client wants his spouse to waive his federal law right to be a beneficiary under an ERISA retirement plan, a provision to that effect should be included.
- Make provisions for current and future support. Indicate how changed financial circumstances would affect the parties’ financial agreement.
- Include an agreement about payment of individual and household expenses.
- Include an agreement about how taxes will be filed. For example, who gets the home mortgage interest deduction on her tax return? If your client operates his business from a home office, does he get to expense the utilities? If they are married in a recognition state, do they intend to file their federal tax returns married, filing jointly or married filing separately? Couples married in a recognition state must now file their federal return(s) as married under the Windsor decision; however, they will be filing separate Kentucky returns.
- Include a provision about their wills. Do they intend to require testamentary gifts to one another? Unmarried couples have no statutorily protected rights at death. The contract must create those rights, if that is their intention. If they are married in a recognition state and do not want statutorily protected marital rights at death to take effect, if their marriage is recognized in Kentucky at some future time or if they move to recognition state, provide for it in the agreement.
- Consider including an acknowledgment of the Kentucky inheritance tax that will be due as between the partners upon the death of the first to die. Clients tend not to understand Kentucky inheritance tax and often do not know that state inheritance tax will be due. Perhaps the client will want to include a requirement for life insurance between the partners.
- Provide for the death of either party during the relationship or during the process of dissolving the relationship.
- Provide for the termination of the relationship. Consider including a clause requiring counseling before terminating the relationship and include a notice provision of intention to terminate. Providing such a provision will create a time for consideration.
- Make provisions for how any marriage in a recognition state is to be dissolved.
- Describe arrangements for custody, visitation, and support for any pets.
- Provide for mediation and/or nonbinding or binding arbitration, rather than litigation, to solve problems unless the client refuses. Explain mediation and arbitration and its benefits. Point out that the couple will have more control of the outcome with a mediated resolution, it is generally less expensive than litigation, and in litigation the courts might do something that neither of them expect or want.
- Include the boilerplate. It is boilerplate for a reason and can save a contract. For example, include a severability clause, allowing a court to disallow certain provisions without negating the entire contract, a confidentiality and privacy provision, a written modification only clause, signed by both parties and a provision that the agreement contains the entire agreement between the parties.
- Specify a choice of law. Include a Kentucky choice of law for so long as they are resident in Kentucky. Remember that most of us are only licensed to practice law in Kentucky. If the contract is intended to be enforceable in another state, have your client have the contract reviewed by competent counsel in that state.
- Have the document notarized.

**IS THIS A GOOD IDEA?**

*Can the members of a same-sex couple use partnership or joint venture law to create a legal bond?*

Partnership law is business law. A joint venture is a business relationship. KRS 362.175 defines partnership as an association for the purpose of carrying on a business for profit. In Murphy v. Bowen, supra, the Court states “[t]he law of business partnerships does not apply to a living arrangement, although it could apply a business carried on by persons who live together.” Pearl Murphy had lived with Claude Bowen for 11 years and tried without success to be awarded compensation for her contribution and equity, alleging that they had a contractual agreement of joint venture and partnership. The Court could find no evidence of any express agreement of joint venture or partnership.
While partnership law can be used to create a legal business relationship between members of a same-sex couple and can be useful for establishing property rights between the business partners, it is not useful for creating contractual obligations between the couple as to their personal property or their financial or domestic obligations to one another. It is also important to remember that each business partner is jointly and severally liable for the partnership obligations.13

CONCLUSION

Uncertainty is presently a given in creating a contractual bond for same-sex couples in Kentucky. However, with a candid discussion and acknowledgement of this uncertainty with and by your client and careful drafting of the contract, you should be able to create a written contract for your clients that reflect the mutual obligations and rights your clients wish to undertake with their partners.10

A native and resident of Lexington, Madeleine Taylor Baugh has practiced law in solo or small firm practice for 25 years. She is a double graduate of the University of Kentucky. She concentrates in the areas of life planning, estate planning, estate administration, small business formation/dissolution and real property law. She believes that planning for what happens while we live is as important as planning for when we die.

1 Kentucky Constitution Section 233A, KRS 402.005, 402.020, 402.040, 402.045.
2 KRS 402.045.
3 Domestic Relations Law, 3d, Vol. 15, Kentucky Practice Series, pg 64, Note 4.
4 Also note Ireland v. Davis was cited in 855 So.2d 690 (Fls. App. 2 Dist. 2003) Peterman v. Meeker.
5 See Estate of Reaves v. Owen 744 So.2d 799 (Miss Ct. App. 1999) where Miss. Court upheld obligation to make payments was enforceable as a matter of private contracts, whether or not, Miss. prohibited palimony and same-sex marriage.
6 Murphy v. Bowen 756 S.W.2d 149 (Ky. App. 1988).
7 Id.
8 See also AOG 07-004 regarding the extension of employee health insurance coverage to “domestic partners” and conditioning such benefits upon a legal status defined in manner substantially similar to marriage. See also dicta in S.J.L.S. v. T.L.S. 265 S.W.3d 804 (Ky App. 2008) at page 836, where the Court of Appeals stated “We take issue with any legal professional, and will reverse any court, for exempting any person or group from the uniform application of our laws merely because their membership in a particular subset of society.”
9 CR 76.28(4)(c) Opinions that are not to be published shall not be cited or used as binding precedent in any other case in any court of this state; however, unpublished Kentucky appellate decisions, rendered after Jan. 1, 2003, may be cited for consideration by the court if there is no published opinion that would adequately address the issue before the court. Opinions cited for consideration by the court shall be set out as an unpublished decision in the filed document and a copy of the entire decision shall be tendered along with the document to the court and all parties to the action.
10 See Restatement of Contracts, Section 169.
11 KRS 402.040(2) states that marriage between members of the same sex is against Kentucky public policy and shall be subject to the prohibitions established in KRS 402.045. KRS 402.045 states that a marriage between members of the same sex occurring in another jurisdiction is void in Kentucky with any rights granted by virtue of the marriage unenforceable. As of the date of publication, 18 states and the District of Columbia permit marriage between members of the same sex. The states are California, Connecticut, Delaware, Hawaii, Illinois (as of June 14, 2014), Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, New Mexico, Rhode Island, Utah (currently subject to a U.S. Supreme Court stay pending state appeal), Vermont, and Washington. These states are referenced as recognition states. Kentucky and the other 32 states which do not permit marriage between members of the same sex are referenced as non-recognition states.
12 The good basic list of contract details, given in Estate Planning for Same Sex Couples, Second Edition, by Joan M. Burda (2012 American Bar Association), has been used as the basis for the list given in this article. The author recommends this book for its excellent commentary and forms.
13 KRS 362.220.

An additional article regarding Legal Issues for the LGBT Community has been placed on the KBA website under the Hot Topics page. Look for this logo at www.kybar.org to find this additional article:

Windsor is a Win for Same-Sex Couples, But Not Every Change is Welcome
By Margaret S. Barr

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Shifts in attitudes and changing social mores impact workplace dynamics in ways that are difficult to measure. In some instances, changes in social customs give rise to the need for new laws, regulations or policies affecting the employer-employee relationship. The recent advent of social media illustrates this principle. The increased use of social media by people while at work or to communicate about work has created the need for guidelines about when and how employers can regulate an employee’s use of social media. In other instances, however, changes in the law instigate changes in the workplace. The legal protections increasingly available to lesbian, gay, bisexual and transgender (LGBT) workers is one of those instances where the legal environment is forging new ground in the workplace. The shift in the law towards recognition of same-sex marriage leads to conversations in the workplace about individual sexuality. As disclosure of sexual orientation becomes necessary and common for some purposes, such as enrolling a same-sex partner or spouse in an employer’s benefit plan, the risk of discrimination also increases.

This article explores the current protections available by law for LGBT workers in Kentucky, protections arising from the interpretation of existing law, and a glimpse of what lies ahead.

FAIRNESS ORDINANCES IN KENTUCKY

“Fairness laws” generally protect individuals from discrimination based on sexual orientation and gender identity in employment, housing, and public accommodations. Currently, six jurisdictions in Kentucky have fairness ordinances: Louisville/Jefferson County; Lexington-Fayette County; Covington; Vicco; Frankfort; and Morehead. Henderson passed a fairness ordinance in 1999, but repealed it in 2001. Berea’s local government has considered passage of a fairness ordinance, and statewide legislation has been introduced in the Kentucky Senate and House.

A critical feature of the fairness ordinances is that enforcement lies with a local entity, usually a human rights commission, and the courts lack jurisdiction over claims arising under the ordinance. If an employee believes that s/he has been subjected to an adverse employment action or hostile work environment on the basis of sexual orientation or gender identity, the employee may lodge a complaint with the local human rights commission. The commission has the power to review and investigate the complaint, attempt conciliation, and issue a probable cause finding. The employee cannot, however, pursue the discrimination claim in state or federal
court. The commission is empowered to hold an administrative hearing on the allegations, after it has found probable cause to believe that discrimination has occurred, and to order the same remedies available under the Kentucky Civil Rights Act.9

In jurisdictions with fairness ordinances, employers should be cognizant of the local laws and ensure that their handbooks, policies, communications to employees and personnel practices are in compliance.

APPLICATION OF EXISTING NON-DISCRIMINATION LAWS TO LGBT EMPLOYEES

The case law illustrates a gradual expansion of the protections of Title VII of the Civil Rights Act of 1964 to adverse employment actions based on an employee's non-conformity to gender stereotypes or hostility to transgender or transsexual individuals. In particular, same-sex harassment claims have blurred the distinction between harassment based on sex and harassment based on sexual orientation (real or perceived). A review of recent decisions exhibits the trend to extend Title VII's prohibition on sex discrimination to discrimination based on sexuality and gender roles.

In 1998, the U.S. Supreme Court held, in Oncale v. Sundowner Offshore Servs., Inc., that same-sex sexual harassment in the workplace is actionable as sex discrimination under Title VII. The Court provided guidance for determining that same-sex harassment is "based on sex," suggesting that the plaintiff should (1) introduce credible evidence that the harassing conduct is "motivated by sexual desire," (2) prove that "the harasser is motivated by general hostility to the presence of [people of the plaintiff's sex] in the workplace," or (3) introduce "direct comparative evidence about how the alleged harasser treated members of both sexes in a mixed-sex workplace."10

Noting that its application of Title VII to same-sex harassment went "beyond the principal evil" with which Congress was concerned in passing Title VII to "cover reasonably comparable evils,"11 the Court advised lower courts to give "careful consideration of the social context in which particular behavior occurs and is experienced by its target."12

The U.S. Courts of Appeal have applied the holding of Oncale in slightly different ways. While the Sixth Circuit had recognized, prior to Wasek, that other evidentiary theories could support a finding that same-sex harassment constituted discrimination based on sex, in addition to the methods of proof articulated in Oncale, that may no longer be the case.13 The Sixth Circuit has most recently held that a plaintiff can prove that same-sex harassment is based on sex only through the three methods described in the Oncale decision.14 In Wasek v. Arrow Energy Servs., Inc., the Sixth Circuit held that the plaintiff's Title VII hostile work environment claim was properly dismissed on summary judgment because the plaintiff did not introduce credible evidence of the alleged harasser's sexuality and the other methods of proof were unavailable as only men were present in the workplace.15 This restrictive application of Oncale came even in the face of egregious facts about how the plaintiff was abused and harassed by a co-worker.16 Some courts and commentators have viewed the Wasek decision as a departure from prior Sixth Circuit jurisprudence.17 A recent decision by the Fifth Circuit provides a contrasting approach. In EEOC v. Boh Bros. Constr. Co., the Fifth Circuit went beyond the methods of proof described in the Oncale decision and held that in same-sex harassment cases, "a plaintiff can satisfy Title VII's because-of-sex requirement with evidence of a plaintiff's perceived failure to conform to traditional gender stereotypes."18 In the Boh Bros. case, the EEOC relied on evidence that the alleged harasser viewed the complainant as effeminate and harassed him for that reason. The court found that a sexual harassment claim could be based on evidence of sex-stereotyping, citing Price Waterhouse v. Hopkins19 as precedent.20 Thus, if the plaintiff can show that the harassment was based on a negative perception of gender non-conforming behaviors or attributes, rather than sexual orientation, the plaintiff may be permitted to proceed with a claim of discrimination based on sex under Title VII.

The theory that claims based on non-conformity to gender stereotypes state a claim for discrimination based on sex under Title VII has gained some traction in cases brought by transgender and transsexual individuals. In Smith v. City of Salem, the Sixth Circuit held that "discrimination against a plaintiff who is a transsexual – and therefore fails to act and/or identify with his or her gender – is the same as sex stereotyping based on gender non-conforming behavior, which was found to constitute discrimination in Price Waterhouse."21 The EEOC, relying on a line of cases including Smith, has held in a federal-sector administrative proceeding that "intentional discrimination against a transgender individual because that person is transsexual is, by definition, discrimination 'based on…sex,' and such discrimination therefore violates Title VII."22 Thus, consideration of gender in an employment action, including consideration of whether the employee or applicant meets a gender stereotype, violates Title VII.

While it is clear that a claim of discrimination based solely on sexual orientation is not cognizable under Title VII, state actors may be held liable for sexual orientation discrimination under 42 U.S.C. § 1983. Section 1983 provides a private right of action against a state actor for a violation of one's constitutional rights. In some instances, the courts have permitted sexual orientation discrimination to be pursued under the Equal Protection Clause, though the available remedies are limited.23 In Stroder v. Commonwealth of Ky. Cabinet for Health & Family Servs.,24 the U.S. District Court for the Western District of Kentucky issued a bench decision finding the state agency liable for terminating Mr. Stroder because of his sexual orientation. The plaintiff demonstrated that his violations of the cabinet's internet usage policy were treated differently from "strikingly similar" actions by a heterosexual employee.25 The plaintiff was awarded reinstatement but could not recover back pay and benefits because the state was shielded by Eleventh Amendment immunity.26

Because sexual orientation discrimination is not prohibited by any existing state or federal law in Kentucky, victims of such discrimination have proffered novel theories for seeking redress. For example, in Pedreira v. Ky. Baptist Homes for Children, Inc.,27 a plaintiff whose termination notice stated that "she was fired ‘because her admitted homosexual lifestyle is contrary to Kentucky Baptist Homes for Children core values,’” sought to challenge the termination as religious discrimination in violation of the Kentucky Civil Rights Act.28 The Sixth Circuit noted that discrimination based on religion includes adverse action “because the employee fails to comply with the employer's religion.”29 The plaintiff argued that “she was terminated because she does not hold KBHC's religious belief that homosexuality is sinful.”30 The court rejected this theory, finding that the defendant clearly acted based on the plaintiff's sexuality, not her religious beliefs or non-adherence.31 The court, however, left the door open for future claims by stating that “there may be factual situations in which an employer equates an employee’s sexuality with her religious beliefs or lack thereof.”32
Employees and applicants who are members of the LGBT community have found some protection, depending on the underlying facts and circumstances, pursuant to the general proscription of discrimination based on sex. The case law requires a showing that the decision maker considered sex in issuing an adverse employment action. Employers should expect continued evolution of the law in this area, particularly if Title VII or the Kentucky Civil Rights Act is not amended to include sexual orientation and gender identity as protected bases.

LEGISLATION ON THE HORIZON

As indicated earlier, bills to amend the Kentucky Civil Rights Act to add sexual orientation and gender identity to the list of protected bases have been introduced. During the 2013 regular session of the Kentucky General Assembly, these bills died in committee. The prospect of such a bill being passed at the state level currently appears remote.

At the federal level, effort is underway to pass the Employment Non-Discrimination Act of 2013 (“ENDA”), which would ban employment discrimination on the basis of sexual orientation and gender identity. On Nov. 7, 2013, the Senate passed its version of ENDA by a vote of 64 to 32. The companion bill in the House, H.R. 1755, has seen little traction and faces a "steep uphill climb" to passage.

CONCLUSION

Employers should address instances of harassment, bullying, threats, ridicule and similar behaviors in the workplace. Moreover, employers should be hesitant to assume that they have no liability to an employee or applicant who is a member of the LGBT community and who is subjected to an adverse employment action or hostile work environment. As illustrated by the cases discussed above, the demarcation between discrimination based on sex and based on sexual orientation or gender identity is fluid. In jurisdictions with fairness ordinances and for governmental employers, discrimination based on sexual orientation or gender identity is explicitly prohibited.

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15 Id. at 468.
16 See id. at 465-67 (describing the harassing conduct and events leading to the plaintiff’s abandonment of his job).
17 See infra note 18.
19 490 U.S. 228 (1989) (holding that the plaintiff could prevail if she could show that her sex played a role in an employment action and the employer did not overcome this showing by a preponderance of the evidence). In Price Waterhouse, the plaintiff relied on evidence that she was not viewed as sufficiently feminine to support her claim.
20 Boh Bros., 2013 U.S. App. LEXIS 19867, at *22. The Fifth Circuit stated that “[e]very circuit to squarely consider the issue has held that the Oncale categories are illustrative, not exhaustive, in nature.” Id., at *20. Noting that the Sixth Circuit “arguably treated the Oncale categories as if they were exclusive in Wasek, it did not expressly consider the issue . . . . In any event, the Sixth Circuit follows the rule of orderliness, so Vickers, not Wasek, controls.” Id., at *21 n.6.
21 378 F.3d 566, 575 (6th Cir. 2004).
22 Macy v. Holder, Appeal No. 0120120821, 2012 EEOC LEXIS 1181, at **34-35 (EEOC Apr. 20, 2012). In Macy, the complainant was rejected for employment by the Bureau of Alcohol, Tobacco, Firearms and Explosives after revealing that she was in the process of transitioning from male to female.
23 E.g., Scarbrough v. Morgan County Bd. Of Educ., 470 F.3d 250, 261 (6th Cir. 2006) (finding that plaintiff stated a claim under § 1983 for an equal protection violation where he offered evidence that he was not hired by a school board out of an animus against homosexuals).
25 Id., at *10.
27 579 F.3d 722 (6th Cir. 2009).
28 Id. at 725.
29 Id. at 727.
30 Id. at 728-29.
31 Id. at 728.
32 Id.
33 “Although most courts have found protection for transgender people under Title VII under a theory of gender stereotyping, evidence of gender stereotyping is simply one means of proving sex discrimination. Title VII prohibits discrimination based on sex whether motivated by hostility, by a desire to protect people of a certain gender, by assumptions that disadvantage men, by gender stereotypes, or by the desire to accommodate other people’s prejudices or discomfort.” Macy, 2012 EEOC LEXIS 1181, at **29-30 (footnotes omitted).
34 See supra note 5.
37 Id.
The Board of Governors met on Friday, Sept. 20, 2013. Officers and Bar Governors in attendance were, President T. Rouse; President-Elect B. Johnson; Vice President D. Farnsley; Immediate Past President D. Myers and Young Lawyers Division Chair C. Frazier. Bar Governors 1st District – J. Freed, M. Pitman; Bar Governors 2nd District – T. Kerrick, J. Meyer; 3rd District – H. Mann, G. Wilson; 4th District – D. Ballantine, A. Cubbage; 5th District – A. Britton, W. Garmer; 6th District – D. Kramer, S. Smith; and 7th District – M. McGuire, B. Rowe.

In Executive Session, the Board considered one (1) disciplinary case and three (3) disciplinary default cases. Malcolm Bryant of Owensboro, Brenda Hart of Louisville, Roger Rolfes of Florence, and Dr. Robert Strode of Frankfort non-lawyer members serving on the Board pursuant to SCR 3.375, participated in the deliberations.

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

- Heard a status report from the Rules Committee and Task Force on Financial Summit.
- Young Lawyers Division (“Division”) Chair Carl Frazier reported that there are eight (8) YLD committees comprised of approximately eighty (80) volunteer young lawyers who serve on the committees and oversee the work of the YLD to carry out its mission. Mr. Frazier reported on following projects the YLD has planned: KLU Receptions, Road Less Traveled, YLD Outreach Committee and Partnerships.
- Approved the Marriott Griffin Gate Resort in Lexington for the housing for the 2014-2015 Board of Governors Meetings.
- President Rouse reported that he would be hosting small gatherings for dinner with local bar officers, former KBA bar presidents and Board of Governors’ representatives at each KLU Program to continue the efforts of the KBA’s local bar outreach program in seeking input on how the Association can better serve the attorneys in Kentucky.
- Appointed Allison Donovan of Lexington to the Kentucky Bar Foundation Board of Directors for the 5th Supreme Court District to replace Josh Nichols. Ms. Donovan’s term will end June 30, 2016.
- President Rouse appointed Vice President Douglass Farnsley of Louisville to serve as the president’s designee on the IOLTA Board of Trustees for a one-year term.
- President Rouse reported that he has asked KBA Past President Jane Winkler Dyche who organized the efforts for a Long Range Plan to once again become involved by helping to finalize the matter of Law Office Management under the Long Range Plan recommendations.
- Approved the proposed Immigration & Nationality Law Section Bylaws for submission to the Supreme Court of Kentucky.
- Approved the total reserve/surplus carry forward of 23 sections and the Young Lawyers Division funds for fiscal year ending on June 30, 2013.
- Approved the total reserve/surplus carry forward for computer funds for fiscal year ending on June 30, 2013 in the amount of $150,000.
- Approved the recommendation of the KBA Member Services Committee to authorize National Insurance Agency to provide a private exchange for the purpose of assisting the KBA members to obtain health insurance as an alternative to the Kentucky Exchange with the condition that National Insurance Agency will provide bi-monthly status reports up to six months.
- Executive Director John Meyers reported that the KBA is a co-sponsor (in name only), for the ABA GPSolo National Conference scheduled to be held in Lexington on October 3-4, 2013.
- Mr. Meyers reported on the oral argument, before the Supreme Court of Kentucky, of the appeal of Ethics Opinion E-435 concerning plea bargains that include a contingency that the client waive their right to bring an ineffective assistance of counsel claim that was held at the University of Louisville Brandeis School of Law on September 19, 2013.
- A copy of the CLE Commission Annual Report that is filed with the Supreme Court of Kentucky was distributed to the Board for their information and review.
- Attorneys’ Advertising Commission Chair David Latherow presented the Commission’s annual report.
- Client’s Security Fund Chair William Crabtree presented the annual report of the Fund.
- Accepted the report of the Task Force on Attorney Advertising presented by Chair Bruce K. Davis and task force member Donald Cox. Approved to refer the report and proposed rule changes to the KBA Rules Committee.
Chief Justice John D. Minton, Jr., of Bowling Green was recently inducted into Western Kentucky University’s (WKU) Hall of Distinguished Alumni during luncheon ceremonies conducted as a part of WKU’s 2013 Homecoming celebration on Friday, Oct. 25, 2013, at the Sloan Convention Center in Bowling Green. The chief justice was joined in the 22nd class of noted WKU alumni by Dan Cherry, a former commander of the U.S. Air Force Thunderbirds and past secretary of the Kentucky Justice Cabinet, and Greg Smith, a 1971 NBA championship team member of the Milwaukee Bucks.

Chief Justice Minton was elected to the Kentucky Supreme Court in 2006 and was sworn in as Kentucky’s fifth chief justice in 2008. His fellow justices elected him as chief justice for a second term that began in June 2012. Under his administration, the Supreme Court adopted the state’s first uniform family law rules and formed the Kentucky Access to Justice Commission to improve access to civil legal aid for the poor. As a member of the Task Force on the Penal Code and Controlled Substances Act, he joined forces with the executive and legislative branches to curb prison costs and improve public safety. He supports transparent government and in 2009 led the judicial branch in posting its financial information on a public website shared with the executive branch.

As head of the judicial branch, Chief Justice Minton is committed to investing in the people who operate the court system and in the technology that can help Kentucky courts reduce costs and deliver better service. He formed the Technology Governance Committee to guide efforts to replace the outdated court case management system with one that will allow eFiling and innovative electronic services. He also created a Compensation Commission to determine how to make the judicial branch’s salary structure more fair and competitive with the other branches of state government.

Chief Justice Minton was in private practice for 15 years before serving as a circuit judge from 1992 to 2003 and a Kentucky Court of Appeals judge from 2003 to 2006. He holds degrees from Western Kentucky University and the University of Kentucky College of Law. He serves on the boards of the Conference of Chief Justices and the Council of State Governments. In 2003, the Kentucky Bar Association honored him with its Outstanding Judge Award. He was named Distinguished Jurist in 2012 by the UK College of Law Alumni Association. He is married to Susan Page Minton, a Bowling Green native, and they have two children. Chief Justice Minton is the son of Betty Redick Minton and the late Dr. John D. Minton, who retired from WKU after serving for many years as a history professor, administrator and its fifth president.

The Kentucky Court of Justice has listened to the suggestions by the Bar with respect to the complexity of the family law forms mandated by the Family Court Rules of Procedure and Practice (FCRPP).

In 2013, a FCRPP Forms Review Committee comprised of judges, agency representatives and practitioners was assembled and charged with the responsibility of reviewing all FCRPP-mandated forms in an effort to streamline and simplify the forms, including the simplification of the disclosure forms.

The proposed domestic relations forms will begin being piloted on Jan. 1, 2014, in collaboration with the AOC and the KBA for your review, consideration and use prior to the Supreme Court Rules Hearing in June 2014.

The pilot forms will be available to the Bar through the Kentucky Court of Justice website (www.courts.ky.gov) in a fillable PDF format that can be saved to your computer. As forms are subject to revision based on statutory changes and/or case law, Bar members must ensure that they use the current version of any form being piloted. Notice of any revision will be communicated to the Bar through the KBA and will be posted on the KBA and KCOJ websites.

Please send any comments or questions relative to the forms to FCRPPforms@kycourts.net by July 31, 2014.
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Vanna Rae Miligan
Luschka Mariana Montijo
Bryan Charles Moore
Ashley Rose Morgan
Kelvin Lamont Morris
Katherine Elizabeth Mudrak
Jonathan Ray Mueller
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, 2014.

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.
LAW REVIEW RECEIVES 2013 MEDIA AWARD

The University of Louisville Law Review is pleased to announce that it received the 2013 Media Award from the Kentucky Association of Criminal Defense Lawyers (KACDL) in recognition of the inaugural edition of the University of Louisville Law Review Online in which a series of six articles commemorating the 50th anniversary of the landmark Gideon v. Wainwright decision were published. The award was presented during the Association’s 27th Annual Criminal Defense Law Seminar and Conference on Friday, Nov. 1, 2013, at The Galt House Hotel & Suites in Louisville. Present to receive the award on behalf of the law school and the Law Review were Dean Susan Duncan and B.J. Hardy, Volume 52 editor-in-chief. These pieces were written in connection with this summer’s program at the Kentucky Bar Association’s Annual Convention, “The Gideon Decision: Constitutional Mandate or Empty Promise? Does the 50th Anniversary of the U.S. Supreme Court Decision Deserve a Celebration?” These award-winning articles online at www.louisvillelawreview.org/onlinecontent.

The KACDL Media Award is presented to a reporter, editor, author, publication or organization that has informed Kentucky citizens about the critical constitutional roles of criminal defense lawyers, public defenders or criminal defense organizations in ensuring the individual liberties guaranteed by our Bill of Rights. The awards committee unanimously agreed that the law school, the law review, its editors and staff were richly deserving of this recognition for focusing attention on the importance of the right to counsel in our system of justice and the continuing challenge of making the mandate of Gideon a meaningful reality in our courts.

The launch of the new online component in late-May culminated more than a year of planning and development by the Editorial Boards for Volumes 51 and 52. The University of Louisville Law Review Online will serve as a complement to the Law Review’s print edition. Created by the Editorial Boards for Volumes 51 and 52, the online component is intended to facilitate robust discussion of our print content and prompt commentary on timely issues of law and policy, recent judicial decisions, and legislative developments. It will feature works from accomplished practitioners, judges, professors, and students alike, offering non-traditional law review articles, responsive essays, case reviews, book reviews, and other commentary. Online exclusive pieces will be published on a rolling basis under an expedited editorial schedule that facilitates timely responses to hot-button issues.

In addition to publishing online exclusives, the Law Review Online — available at www.louisvillelawreview.org – is also the official web presence of the University of Louisville Law Review. The website features over 1,150 pages of archived content from print issues of the Law Review, available at no charge, and provides the most up-to-date information about the Law Review’s publications, membership, events, and initiatives.

IN MEMORIAM

JUSTICE WIL SCHRODER

Justice Wilfrid Albert (Wil) Schroder of Fort Mitchell is being remembered by his friends, family and constituents as a brilliant legal mind who contributed to Kentucky’s legal system for the entirety of his lifelong career in public service. Justice Schroder, 67, passed away on Saturday, Oct. 26, 2013.

“Wil was known for his ethics and integrity and was his own man in terms of making up his mind,” Chief Justice of Kentucky John D. Minton Jr. said of his friend and colleague. “He listened carefully but could always be relied on to make an independent decision. He gave the full measure of his energy and his intellect to the work. When illness forced an early retirement, his absence was a profound loss to the Supreme Court and we are deeply saddened by his passing.”

Justice Schroder retired from the Supreme Court of Kentucky in January 2013 with more than 29 years of judicial service. He retired after being diagnosed with a brain tumor to focus on his health and spend more time with his family.

Justice Schroder served in District Court and then the Court of Appeals before becoming a Supreme Court justice. He was elected to the Supreme Court in November 2006 to serve the 6th Supreme Court District, a 21-county district in Northern Kentucky. Prior to his election to the Supreme Court, he served on the Kentucky Court of Appeals for more than 15 years (1991 to 2006) and as a trial judge for Kenton District Court for almost eight years (1983 to 1991), which included one year as a juvenile judge. Justice Schroder began his legal career in private practice in 1975.

In May 2013, the Northern Kentucky Bar Association honored Justice Schroder with its Legacy of Justice Award. Memorial donations may be made to Hospice of the Bluegrass, 7388 Turfway Road, Florence, KY 41042, or to the Justice Wil Schroder Scholarship at NKU Chase College of Law, 100 Nunn Drive, Suite 521, Highland Heights, KY 41099.
50TH ANNIVERSARY CIVIL RIGHTS MARCH

The Allied Organizations for Civil Rights (AOCR), of which the Kentucky Human Rights Commission is one of many members, invites the public to participate in the 50th Anniversary Civil Rights March in Frankfort to the state Capitol.

The march begins Wednesday, March 5, at 10 a.m. (EST), with a speaking rally to follow. Participants may gather at the corner of 2nd Street and Capital Avenue at 9:30 a.m., for the approximate two-block walk to the state Capitol building at 700 Capital Avenue, in Frankfort.

The event commemorates the historic 1964 Civil Rights March on Frankfort attended by more than 10,000 people. The initial march was part of a successful push that helped result in the 1964 U.S. Civil Rights Act in July of the same year. It helped lead to the 1966 Kentucky Civil Rights Act, which made Kentucky the first south of the Mason-Dixon Line state to pass a state civil rights law.

For more information, contact Mary Ann Taylor of the Kentucky Commission on Human Rights at 1-800-292-5566 or aocr@ky.gov to pre-register. Registration is not required but appreciated for planning reasons.

LAW DAY 2014 PLANNING GUIDES COMING SOON

Presidents of local bar associations across the Commonwealth should be on the lookout in February for their Law Day 2014 Celebration planning guides. This year’s theme is “American Democracy and the Rule of Law: Why Every Vote Matters.”

Law Day 2014 falls on Thursday, May 1. For more information on Law Day, visit www.lawday.org or contact Shannon Roberts in the KBA Communications Department at (502) 564-3795, ext. 224.

SCR 3.175 Efficient enforcement; notice of attorney’s address

(a) Reasonable efforts have been made to achieve actual service of the document upon the member;

(b) Two (2) true copies of the document have been provided to the Director, accompanied by a written request that the Director serve the document upon the member at the member’s current Bar Roster address;

(c) Within seven (7) days after receipt of such request, the Director mailed one (1) copy of the document to the member at the aforesaid address, posted by certified mail, return receipt requested, restricted delivery - addressee only, in an envelope bearing the return address of the Director and marked on the outside as “OFFICIAL COMMUNICATION – IMMEDIATE ATTENTION REQUIRED”;

(d) No less than thirty (30) days after mailing the document pursuant to subparagraph (c), the Director shall enter a Return of Service which attests:

(i) that the Director mailed one of the copies of the document mentioned in subparagraph (b) to the member’s Bar Roster address in accordance with the requirements of subparagraph (c);

(ii) that the Director has attached to the Return of Service all communications received in response to the service or attempted service of the document, including any certified mail receipt or other postal notice or return receipt relating to the delivery or attempted delivery of the document and any communication from the member of the Association or other person acting on behalf of such member; and

(iii) that the Director has provided a true copy of the Return of Service, with copies of all attachments, to the person or entity who requested service of the document upon the member of the Association.

(3) After July 1, 2004, the Association may reject any communication to the Association which fails to comply with paragraph (1) (b) 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.

(2) After July 1, 2004, every member of the Association shall be deemed to have appointed the Director as that member’s agent for service of any document that is required to be served upon that member by any provision of Supreme Court Rule 2 or 3, provided that service of a document upon the Director shall constitute constructive service of that document upon the member only upon proof that all of the following requirements have been satisfied:

(a) maintain with the Director of the Association a current address at which he or she may be communicated with by mail, the said address to be known as the member’s Bar Roster address, and shall upon a change of that address notify the Director within thirty (30) days of the new address;

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

(c) (b) includes 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) If the member provides a Post Office address, he or she must also provide a current address for service of process.

(d) 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.
The Second Annual Forum on Criminal Law in the Commonwealth of Kentucky, hosted this year by the University of Kentucky College of Law, focused on a 2011 ABA report on the death penalty in Kentucky. Two years of extensive research by a team of Kentucky legal experts, including law professors from all three state law schools, retired Supreme Court justices, and other prominent lawyers from the community, led to the findings and recommendations around which the forum centered. The team members were chosen due to their eminent reputations in the state, and were not asked their views on the death penalty prior to participating on the Kentucky Assessment Team. Professor Linda Ewald, a retired University of Louisville Louis D. Brandeis School of Law professor and co-chair of the Kentucky Assessment Team, and Sarah Turbell, the ABA representative who helped spearhead the study, began the afternoon by presenting nine of the team's key findings:

- Kentucky has a high error rate in death penalty cases. Of the 78 people sentenced to death in Kentucky since the death penalty was reinstated in 1976, 50 have had a death sentence overturned on appeal, an error rate of 64 percent.
- Kentucky inadequately retains evidence in criminal cases. Evidence is not required to be retained for as long as a defendant remains incarcerated, diminishing the effectiveness of a state law that allows post-conviction DNA testing prior to execution. Such lost or missing evidence prevents the exoneration of innocent people and can prevent apprehension of the guilty.
- A lack of uniform standards on eyewitness identifications and interrogations, two of the leading causes of wrongful convictions, means that many law enforcement agencies across the state inadequately protect against wrongful convictions. The ABA recommends recording all confessions, a much easier task in the age of smartphones, and compliance with best practices for eyewitness identifications.
- The death penalty in Kentucky is applied inconsistently, as there is no mechanism in place to guide prosecutors in deciding when to seek the death penalty. Practices vary dramatically across the state. Kentucky has 57 Commonwealth attorneys. Some of them seek the death penalty in every death-eligible case, while others rarely seek it. Whether a defendant faces the death penalty is therefore often a function of the location where the person is charged.
- A survey of jurors found a high rate of juror confusion in the standard jury instructions given during death penalty sentencing hearings. Many failed to understand the instructions critical to deciding whether a defendant should be executed.
- Kentucky public defenders are overworked, understaffed and underpaid. Kentucky public defenders handling capital cases have caseloads that far exceed the national average, and salaries that are 31 percent below those of similarly experienced attorneys in surrounding states. The state public defender budget is less than half that of the state's combined prosecutorial agencies, even though the public defender office represents individuals prosecuted by all three agencies, including the vast majority of cases in circuit court.
- Many defense attorneys who have represented capital defendants were unqualified to do so. At least 10 of the 78 people sentenced to death in Kentucky were represented by defense attorneys who were subsequently disbarred. There are no statewide standards governing the qualifications and training of attorneys appointed to handle these cases.
- Kentucky does not have adequate protections to ensure that death sentences are not imposed or carried out on a defendant with mental retardation or mental illness. Kentucky's statutory definition of mental retardation creates a maximum IQ of 70, which does not comport with modern scientific understandings.
- Kentucky does not collect data on the administration of the death penalty in the state, making it impossible to assess proportionality, as required by the U.S. Constitution, or to guarantee the system is operating fairly.

During the period from 2000-10, the death penalty was more than three times as likely to be imposed when the victim was a woman than when the victim was a man. Race also played a dominant role. When the defendant was black and the victim a white woman, plea agreements were significantly rarer. Professor Vito found that juries preferred life without parole to death, imposing death less than six percent of the time the sentence was presented as an option. Finally, Professor Vito commented on the lack of data collection by the state. Noting that police departments he has advised were required to collect data on race and did so quite effectively, Professor Vito suggested if the police can do it, so can the Kentucky justice system. The collection of data would help to determine where the problems lie so they can more effectively be corrected.
Professor Sandys ran the Cooper’s Jury Instructions for death penalty cases through commonly used tests of readability and ease of reading. She found that most of the jury instructions relevant to death sentencing require more than a college education to understand, striking in a state where approximately 20 percent of the population has a college degree. Similarly, she found the ease of reading shockingly low, usually ranging between 30 and 40, but going as low as 15 on a scale of 1-100, with 60-70 being the ideal. Professor Sandys recommended the state hire a linguist to work with judges, prosecutors, defense attorneys and former jurors in crafting jury instructions that are both legally accurate and easier to understand. The result would be greater confidence in juror findings and fewer reversals.

The afternoon’s keynote speaker, Stephen Bright, is a native of Boyle County who received both his undergraduate and law degrees from the University of Kentucky. Bright went on to become the director of the Atlanta-based Southern Center for Human Rights, where he remains president and senior counsel. He also has taught at Yale Law School for the past 20 years. Having represented capital defendants at both the trial and appellate levels throughout his career, Bright brought a more personal perspective.

He began by asserting his view that there is an emerging consensus against the death penalty. Bright discussed the change of heart many prominent lawyers and politicians previously in favor of capital punishment have had. From Judge Dorothy Beasley, the lawyer who argued for the state in Furman v. Georgia, the case leading to the temporary cessation of the death penalty in 1972, to the former attorney general for the state of Virginia, Mark Earley, who, after participating in 15 executions, no longer is in favor of capital punishment, many respected and thoughtful lawyers have determined it is time to abandon the death penalty.

Bright then noted the recent drop in the number of death sentences imposed by juries, as well as in the number of executions. Juries imposed 78 death sentences nationwide in 2012, and the number of executions dropped to the mid-40s. Bright highlighted a study revealing two percent of all counties in the United States account for the majority of death sentences, and 20 percent of counties account for the entire death row population. Turning his focus to Kentucky, Bright observed that 17 individuals were sentenced to death between 2000-06, but only four have received a death sentence in the past seven years. Kentucky has executed three people since 1976, two of whom declined to exercise their rights to appeal, “volunteering” for death instead. Seven of the 78 people sentenced to death have died of natural causes.

Bright also focused on several issues raised by the Kentucky Assessment Team’s report. Commenting on the “scandalously” low standard of legal representation we, as a society, have accepted, he noted there are no rich people on death row. “People who are well-represented don’t get the death penalty,” he remarked. He also observed, consistent with Professor Vito’s results, that race still determines who gets the death penalty, more often than not. Although the Kentucky Racial Justice Act might minimize the risk of race playing a role, Bright raised the question of whether we are willing to tolerate the risk of race playing any role in the death penalty. Finally, he turned to the issue of mental illness, discussing the differences in culpability between someone with mental illness and someone without such deficits.

The afternoon concluded with an esteemed panel of judges, legislators, professors, cabinet members and federal and state lawyers. Although the speakers did not agree on all of the findings and recommendations, there was the unmistakable consensus that if we are going to have a death penalty in Kentucky, we need, as state House Judiciary Committee Chair John Tilley so succinctly put it, “to get it right.” Kentucky Assessment Team member and retired Supreme Court Justice James Keller articulated the general consensus that we need to correct the problems highlighted in the report in order to avoid executing people we should not be. Most panelists agreed that some solutions were, in the words of state Senate Judiciary Committee Chair Whitney Westerfield, “no duh” fixes. For example, no one openly questioned that evidence should be retained for the entirety of a defendant’s sentence. The panelists also seemed to agree that interrogations should and could be recorded. Jefferson County Commonwealth Attorney Thomas Wine reflected that law enforcement in his jurisdiction record every interrogation, an approach he endorsed. Many seemed to concur with a suggestion by United States Attorney Kerry Harvey that the state create a centralized prosecution system, such as the one used in the federal system, to set guidelines, oversee pursuit of the death penalty across the state, and ensure consistency in the exercise of discretion. The report aims to bring such uniformity and standardization to the legal process, from the collection of data to the final sentencing, according to Kentucky Assessment Team member and retired Supreme Court Justice Martin Johnstone.

The report was released in 2011, but now, two years later, the state has made few steps toward effecting the proposals contained therein. (One piece of legislation, House Bill 41, passed in the 2013 session of the Kentucky General Assembly, does aim to allow increased access to DNA testing.) But the concern panelists repeatedly raised is the cost of implementing the recommendations. Supporters of the assessment team’s report argue that many of the problems could be solved without significant cost. As Kentucky Assessment Team member and University of Kentucky College of Law Professor Allison Connelly stated in response to a question from the audience, “I don’t think you can put a dollar sign on what the Constitution requires.”

Predominantly, the panelists seemed to embrace the view that problems with Kentucky’s death penalty need fixing. “We have a constitutional reality,” Justice and Public Safety Secretary J. Michael Brown confirmed, but “we struggle with a constitutional application of that reality.” According to a poll conducted by the ABA and provided to attendees of the forum, a solid majority (62%) of likely voters statewide support a temporary halt on executions to allow for problems with the system to be identified and corrected. That support, the ABA poll indicates, is consistent across the state—a majority of men, women, urban, suburban, rural, Republican, Democratic and Independent voters all favor Kentucky “getting it right.” Based on their comments during the question and answer period, attendees appeared to agree.
I had the good fortune to spend 10 years after graduation clerking for trial court judges at both the state and federal levels. What surprised me the most was the wide disparity in the quality of briefs submitted to the courts. This made a strong impression on me as a young lawyer: The quality of an attorney's credibility and reputation is based in large part on the quality and thoroughness of her legal writing. Where the law was unsettled or undeveloped, or where the facts of the case did not clearly favor one side, the attorney with the better written memorandum often ended up winning the argument. The following are just a few tips for making your written submissions as effective, efficient, and understandable as possible.

**Use IRAC. Seriously.**

To most attorneys, “IRAC” is something mentioned in 1L legal writing class and never discussed again. This is a huge mistake; in my experience, judges (and their law clerks) expect legal arguments to be presented in this fashion. The IRAC paradigm is nothing fancy— in fact, it is intended to serve as a formulaic, routinized method of presenting legal analysis by organizing it around the issue, rule of law, application, and conclusion.

Take every opportunity to inform the court of your ultimate position. As my college journalism professors advised me, “Tell them what you’re going to tell them, tell them, then tell them what you told them.” This applies equally in court briefs. Expressing your conclusion up front allows the reader to better contextualize the argument that follows.

Many briefs I reviewed muddled the argument by lumping all applicable case law into one large section. Instead, simplify and clarify the argument by expressing a general, governing rule for the issue followed by a brief statement of what element(s) or factor(s) you will not be discussing (and why). Then, one by one, create a separate “sub-IRAC” analysis for each element or factor to be discussed. State your conclusion on that one element, explain the law applicable only to that element or factor, apply the facts to it, and conclude. Then repeat for each factor.

Finally, perhaps the toughest aspect of legal writing is the process of application — “connecting the dots” between the law you just explained and the facts of your particular dispute. The tendency is to merely restate the facts and form a conclusion without explaining how the facts fit or don’t fit the rule. The key, in a sense, is to “do the reader’s thinking for her.” There should be no inferences, unstated connections, or leaps of logic in the analysis; state them all, even if they seem obvious.

**Take Care in Citing Authority**

I was surprised at the overall lack of citation to authority, as well as by the inconsistency and lack of attention to detail in citations. You don’t have to be a “Bluebook nerd” to help the court find the authority you’re relying upon, but you do have to be precise and consistent. Verify that you are citing to the correct reporter. Make sure you haven’t reversed the digits in the volume or page numbers. Most importantly, always provide a pin cite. You want to give the court ready access to the authority supporting your argument. Don’t send the law clerks on a trek to locate it; it’s your duty to provide it, and the law clerks won’t hunt long.

A related issue is citing and quoting headnotes. The headnotes provided by West and Lexis at the front of a reported case are not the law; they are written by staff attorneys to assist lawyers in finding similar cases. They are surprisingly inconsistent; I noticed a tendency of headnotes to summarize the law cited by the court rather than its specific application to the facts of that case. It would be a shame to lose credibility by relying on headnotes.

**Check Your Tone**

It is important to convey a professional tone in your briefs. Judges and their law clerks cannot abide name-calling, snippy footnotes challenging counsel’s credibility, unfounded accusations of ethical violations, and other barbs. Such behavior will harm your reputation in the court’s eyes more than it will undermine opposing counsel’s. In these situations, it is difficult for the court to filter through the righteous indignation to uncover the legitimate analysis. Attorneys must develop the ability to disagree without descending into incivility.

**Grammar and Punctuation**

Historically, law is one of the great “learned professions.” The use and manipulation of language is the hallmark of legal practice; it is our stock in trade. In my career as a law clerk, however, I was often astonished at the sloppiness of language in legal memoranda. It is helpful to consult a usage and style manual for those pesky, nuanced grammar rules, but perfect English isn’t necessary. Most errors in grammar, punctuation, and spelling occur due to inadvertence and oversight, but the effect on the reader is that the writing seems less intelligent or, at the very least, less professional than fundamentally sound writing. It affects the credibility of the attorney’s argument and his commitment to the client. Take a few minutes to review your brief with “fresh eyes;” it’s amazing what you’ll catch.

**Formatting**

There is an art to writing a brief, and this art has an aesthetic component. There is just something about the way a good brief “looks” on the printed page; it conveys a sense of professionalism and earnestness that is difficult to describe. A poorly-formatted brief looks sloppy and half-hearted; the reader is (perhaps subconsciously) left with the impression that the argument is inferior or not thought through.

In addition to complying with any applicable local rules requirements for margins, font, spacing, and citation, pay attention to how the document looks on the page. Shape up the case caption. Create uniform headings. Be sure to clean up the font in and remove unnecessary details from block quotes cut-and-pasted from other sources. And number your pages! Law clerks like to print briefs and take them apart, so it will save them some consternation.

**Conclusion**

Brief writing is a critical skill in the practice of law. If your case load is growing, solid writing fundamentals will allow you to produce high-quality briefs more efficiently. Take it from a former law clerk: The easier it is for the court to review and understand your position, the more seriously it will be considered.

Brock Collins is a 1996 graduate of the University of Kentucky College of Law. He is currently a legal writing professor and director of Bar Preparation at the Charleston (S.C.) School of Law. He is licensed in both Kentucky and South Carolina.
2014 Kentucky
Legal Training for Dependency, Neglect and Abuse Cases

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

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

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

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With many lesbian, gay, bisexual, and transgender (LGBT) issues, such as marriage equality, fairness laws, and HIV criminalization garnering attention in the political sphere — both at the national and state level — it should come as no surprise that these issues are just as important to examine in a legal context.

At the University of Louisville Brandeis School of Law, we recognize the benefit from a deeper understanding of these issues, as well as having an appreciation for the diversity in the broader legal community. Fortunately, I have many colleagues that bring an incredible depth of expertise to these complex issues and provide insight and training to our students, some of whom will undoubtedly encounter these LGBT issues in the future.

**PROFESSORS EXAMINE THESE ISSUES IN THE CURRICULUM AND IN THEIR WORK**

Professor Laura Rothstein, former dean of the Brandeis School of Law from 2000–2005 and a legal educator for more than 30 years, has relentlessly worked to promote diversity and raise awareness on issues of disability, gender, and race in her scholarship and teaching. In the Fall 2013 semester, Professor Rothstein taught poverty, health, and the law, offered for the first time at the University of Louisville School of Law. The class was intended as study of legal solutions to the health disparities of poor and vulnerable populations through an interdisciplinary, problem-solving approach. Jeff Staton, a staff attorney for the HIV/AIDS Legal Project at the Legal Aid Society of Louisville, was one of the many guest speakers who visited the class and discussed, among other related topics, the potential problems of HIV criminalization — referring to criminal statutes that apply only to people with HIV, and the sometimes heightened sentences people with the disease face in court.

Professor Jamie Abrams teaches domestic relations and legislation, both of which overlap with a study of the issues faced by the LGBT community. After attending the national LGBT Bar Association’s three-day annual Lavender Law Conference in August to stay up-to-date and engaged in pressing issues affecting LGBT families, Professor Abrams will be hosting a program on marriage and parenting in LGBT families. As part of this year’s inaugural diversity week at the law school, the program is expected to cover topics including marriage equality, same-sex divorce in Kentucky, parenting, and LGBT adoption.

Although currently authoring a book regarding constitutional reforms aimed at saving our political process, since joining the Brandeis School of Law’s faculty, Professor Samuel Marcosson’s research and writing has concentrated on constitutional law (especially the Fourteenth Amendment), and the civil rights issues facing lesbians, gay men, bisexuals, and transgendered people. He has served on the board of directors of the National Lesbian and Gay Legal Association and was the programing coordinator for its annual conference in 1998. He currently serves on the coordinating committee of the Fairness Campaign, Louisville’s long-standing LGBT civil rights organization. Professor Marcosson noted an increased trend across the Commonwealth in recognizing LGBT issues as a part of the political agenda, a trend that is, perhaps, best evidenced by the tiny Perry County city of Vicco (population 334, according to 2010 U.S. Census data) receiving national attention after its adoption of a fairness ordinance that bans discrimination against anyone based on sexual orientation or gender identity.

“The message for [state] politicians is that there’s widespread support that people shouldn’t lose a job or other opportunity because of their sexual orientation,” said Marcosson, adding that more than 80 percent of Kentuckians support statewide fairness protections.

Also of interest to Professor Marcosson are the marriage equality cases; this topic has served as the basis for many speaking engagements Marcosson has recently given in front of attorney groups and on the campuses of Western Kentucky University and the University of Louisville. Marcosson said that two cases — one in U.S. District Court for the Western District of Kentucky, the other in Jefferson County Family Court — challenging the Kentucky Marriage Amendment of 2004, which makes it unconstitutional for the state to recognize or perform same-sex marriages or civil unions, are worth watching as the potential state law analogs to the landmark United States v. Windsor opinion, which declared Section 3 of the Defense of Marriage Act (DOMA) unconstitutional.

Professor Marcosson has taught sexuality and the law four times, primarily exploring with students the treatment of identity and equality under the law, as well as topical legal issues in the news. As a result, many students enrolled in the class choose to write their papers with a focus on LGBT issues.

**STUDENT RECEIVES HONORABLE MENTION IN WRITING COMPETITION, PRESENTS PAPER AT CONFERENCE**

As a student in Professor Marco’s sexuality and the law class in the Spring 2013 semester, Gregory Justis, a fourth-year law student (he was initially enrolled as a part-time student) wrote a paper titled “Defining Union: The Defense of Marriage Act, Tribal Sovereignty and Same-Sex Marriage,” motivated in part from being a Michigan native and the son of a former tribal prosecutor for the Little Traverse Bay Bands of Odawa Indians (LTBB), with a keen interest in legal issues surrounding Native American tribal sovereignty and equality, particularly tribal constitutional issues, and the issues faced by members of the LGBT community. In his paper, Justis argues that not only should same-sex unions be recognized by tribal governments as a fundamental historical feature of Native American culture, but that they should likewise be legally recognized by state and federal governments as a result of the fundamental nature of laws of domestic relations to tribal sovereignty.

“I believe strongly that discrimination and marginalization based upon sexual orientation represents a fundamental global civil rights issue,” Justis said. “Over the last several years, tribal nations around the country have taken up the issue of marriage equality alongside the states in which they reside, raising unique questions of tribal autonomy and self-governance.”

Justis’s paper received an Honorable Mention at U of L’s 6th Annual Social Justice Research Paper Awards, and he later presented the paper at the Midwest Political Science Association’s (MPSA) meeting in Chicago, as one of several presentations for the LGBT Caucus.

“The highlight of the conference was, in my opinion, seeing the extraordinary mix of academic disciplines coming together to explore and advocate for fairness and social justice, both here and abroad,” Justis said. He will be attending the conference again this year to provide an update following the Supreme Court’s recent DOMA decisions.
RECENT FORUMS AND PROGRAMS

The University of Louisville School of Public Health and Information Sciences and the Brandeis School of Law co-hosted a free public forum in October discussing issues related to HIV criminalization. Kentucky Department for Public Health HIV/AIDS Program Branch Manager Karen Sams was joined by Professor Marcosson to provide the medical and legal context for this issue. According to Marcosson, the two best ways to combat “over-criminalizing a social problem” are to more clearly define the elements required in HIV transmission statutes through legislative reform and to better educate prosecutors as to when to exercise their discretion in HIV transmission cases.

Furthermore, the Lambda Law Caucus, the LGBT student organization at the Brandeis School of Law that aims to serve as a social and political group fostering support for LGBT issues in the legal community, co-sponsored a program in the fall on the effect of diversity during the hiring process. Panelists from a variety of legal settings explored different issues diverse students could face and offered advice, including when students should highlight their diversity and how students can deal with difficult questions concerning their diversity in the interview process.

In November, the Kentucky Law Journal teamed with the Kentucky Bar Association Criminal Law Section to present the Second Annual Forum on Criminal Law Reform in the Commonwealth of Kentucky. The Death Penalty in the Commonwealth: What the ABA Kentucky Death Penalty Assessment Team Report on the Administration of the Death Penalty in Kentucky Means gathered Kentucky judges, lawmakers, professors, and practitioners to explore the findings of the American Bar Association’s assessment of capital punishment in Kentucky. The assessment found serious problem areas in the operation of the state’s death penalty, including high error rates and inconsistent application. In 2012, the Kentucky Bar Association Criminal Law Section initiated a criminal law reform forum series to be held each fall at a Kentucky law school to serve as a context for the subsequent Kentucky General Assembly as it considers criminal law issues. Nearly 150 attended this year’s talks, many of which will be transcribed and printed in a special upcoming issue of the Kentucky Law Journal. To read more about the Second Annual Forum on Criminal Law Reform in the Commonwealth of Kentucky, please see page 26.

The Kentucky Law Journal is the tenth oldest law review published by the nation’s law schools. Publication has been continuous since 1913. Four issues are published annually by the University of Kentucky College of Law. The journal is edited entirely by a student editorial board, with guidance from a faculty advisor. Each issue contains articles written by prominent national scholars and notes written by Journal members encompassing a broad range of legal topics. To access the Kentucky Law Journal web page, visit www.kentuckylawjournal.org.
CHASE FACULTY MEMBERS RECEIVE NKU FACULTY EXCELLENCE AWARDS

The annual Northern Kentucky University Faculty Excellence awards recognize exceptional performance by faculty members as demonstrated by teaching, scholarly or creative activities, outreach and public engagement, and international education.

There are two categories of awards: Excellent Performance by a Faculty Member for a Project, Innovation or Creativity Activity, which recognizes faculty members for excellent performance related to a specific project, innovation or creative activity that is ongoing or has been recently completed; and Sustained Excellence by a Faculty Member, which recognizes faculty members for a history of exceptional performance over a sustained period of time.

Chase professors Amy Halbrook, Ljubomir Nacev, and John Bickers were among this year’s award recipients at the Celebration of Faculty Excellence on October 28.

Assistant Professor Amy E. Halbrook received an award for Excellent Performance - Teaching. Professor Halbrook is the director of the Children’s Law Center Clinic, a partnership between Chase and the Children’s Law Center in Covington. When she joined Chase in 2011, Professor Halbrook designed the clinic with three start-up students. Clinic students receive specialized instruction in child and family law and advocacy, and represent child and youth clients in court and administrative proceedings. Clinic students build their practical skills and professional responsibility while supporting the critical mission of public engagement. Professor Halbrook also incorporates practical and experiential learning components into her family law course. In addition, Professor Halbrook teaches juvenile, child and family law trial skills to practitioners locally and nationally.

Professor Ljubomir Nacev received an award for Sustained Excellence - Outreach and Public Engagement. Professor Nacev teaches in the area of tax law. He has spent countless hours over the past 25 years assisting the low-income taxpayer community in our region. His many contributions to this cause include initiating the Chase Volunteer Income Tax Assistance project in the fall of 1987 as part of a national effort to implement public policy initiatives to alleviate poverty in our community, and to help those affected by poverty become more self-sufficient. Over the years, the VITA project has assisted over 12,000 taxpayers. Professor Nacev is also a co-founder of the NKU Tax Clinic, which represents low-income taxpayers in controversies with the IRS. On behalf of the tax clinic, he has been involved in numerous cases, including Hall v. Commissioner, a fully reviewed tax court decision invalidating a tax regulations that had precluded a taxpayer from filing an innocent spouse equitable claim under IRC Section 6015(f), and Linkugel v. Commissioner, a decision dealing with the burden of proof when challenging a cancellation of debt income deficiency following a foreclosure.

Professor John M. Bickers received an award for Sustained Excellence - Teaching. Professor Bickers teaches constitutional law, professional responsibility, and national security law. He is known as an innovative teacher who is committed to student success. He challenges students, but also encourages them. His philosophy is that if students are not engaged, then they will not retain the legal lessons. His classes combine legal doctrine with the skills necessary for a real-world practice. For example, in constitutional law, students serve as justices and attorneys in a mock Supreme Court case. In national security law, students work in teams as members of federal agencies, confronting hypothetical national security crises. The Chase class of 2010 selected him as the winner of the Lukowsky Award for Teaching Excellence.

NKU CHASE


The Northern Kentucky Law Review and NKU Chase College of Law will host the third annual Law + Informatics Symposium focusing on cyber defense strategies and responsibilities. An interdisciplinary line-up of academics and legal professionals will review the challenges of providing critical infrastructure, responding to cyber threats from foreign governments and terrorists, and combating corporate espionage:

Susan J. Court ’80, principal, SJC Energy Consultants, LLC; former director of enforcement, Federal Energy Regulatory Commission

Luis Armando Garcia, professor, Universidad Nebrija, Madrid, Spain

Jon M. Garon, professor and director, NKU Chase Law + Informatics Institute

Janine S. Hiller, professor of business law, Pamplin College of Business, Virginia Tech

Sarah Jane Hughes, university scholar and fellow in commercial law, Maurer School of Law, Indiana University

Danil Kerimi, head of Information and Communication Technology Government Community, World Economic Forum, Cologny, Switzerland

Cassandra Kirsch, the National Conference of State Legislatures, Information Technology and Telecommunications Law and Policy

Ors Penzes, contract specialist, PPD, Budapest, Hungary

Roland Trope, Trope and Schramm LLP; adjunct professor, U.S. Military Academy, West Point

Learn more here: http://lawandinformatics.org/2014Symposium.php
“E-DISCOVERY BASICS” SEMINAR

Brett Burney, principal, Burney Consultants LLC; Erin Corken, adjunct professor, NKU Chase College of Law and director of Discovery Services at PRO.TEM Legal Solutions, LLC; and Bob Dibert, member, Frost Brown Todd LLC, will present “E-Discovery Basics” on Tuesday, Feb. 18, 2014, from 6:30 p.m. to 8:15 p.m. in the Eva Farris Auditorium, NKU, Highland Heights. While this event is free for the community, $25 is requested for 1.5 hours of CLE credit anticipated in Kentucky and Ohio. Visit http://chaselaw.nku.edu/centers/advocacy/news.html for more information.

SUCCESS STRATEGIES FOR THE PROFESSIONAL ARTIST IN THE DIGITAL AGE – WEBCAST AVAILABLE FROM NOV. 6, 2013

Presented by the NKU Chase Law + Informatics Institute and sponsored by the ABA Business Section Cyberspace Law Committee, the Copyright Alliance, Kentucky Arts Council, and ArtsWave SpringBoard, this three-hour program featured expert attorneys and filmmakers who discussed a range of business and legal practices. Discussions focused on ways lawyers can help their creative clients understand the legal issues involved in independent film production, terms of services agreements for online content distribution, visual arts licensing terms, crowdfunding strategies, and financing art projects. Lively discussion included Dayton School of Law professor Dennis Greene’s advice that “The devil is in the details.” Jennifer Kreder added that “when art is created in more traditional visual medium and then digitized, several issues arise,” and Stephen Gillen ‘80 explained that “there is no ‘one size fits all answer’” for how best to contract for rights. Budding artists beware!

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Take a Minute, Go Pro.
Do you remember your 18th birthday?

Turning 18 is an exhilarating, frenetic, and somewhat daunting time in the life of a young adult. Most 18-year-olds are graduating from high school and experiencing newfound freedom. This time also corresponds with the acquisition of new rights and the imposition of additional responsibilities. Adults have privileges and obligations as citizens, consumers, spouses, employees, voters, property owners, and contracting parties.

Statistics from countless metrics tell the tale: we do not do enough to teach youngsters about the legal ramifications of adulthood.\(^1\) In a recent study, less than half of high school graduates reported that their high school did a good to excellent job of teaching them basic life skills.\(^2\) As leaders in the law and community, lawyers are uniquely equipped to help teach young adults about the legal ramifications of turning 18.

Enter U@18. U@18 is a public service project of the Kentucky Bar Association Young Lawyers Division. The project pairs lawyers with classrooms of high school seniors across the state. The lawyer makes a one-hour presentation that focuses on acquainting young adults with their legal rights and obligations. Thanks to the generosity of the Kentucky Bar Foundation, the U@18 program utilizes a professionally designed and produced video. The video contains a series of vignettes, each depicting a young adult encountering an everyday problem that implicates the law. After each vignette, the attorney-presenter leads the students in a discussion of the issues presented.

Through the U@18 program, the Young Lawyers Division hopes to help young adults in Kentucky's newest adults. If you are aware of a high school classroom that could benefit from the U@18 program, or if you wish to volunteer to make a presentation, please contact U@18 Chair Eric Weihe at Eric.Weihe@SKOfirm.com or (502) 568-5704. By assisting with the U@18 program, you can help the Young Lawyers Division in its quest to better equip a generation of Kentuckians with crucial life skills.

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\(^2\) The College Board, One Year Out: Findings from a National Survey Among Members of the High School Graduating Class of 2010.
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to the Kentucky Bar Foundation Directors and the Kentucky IOLTA Fund Trustees
for the dedication and time devoted to ensure the continuing success of both programs.

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FRANKFORT, Ky. — The American Bar Association has awarded Louisville lawyer Asa P. “Pete” Gullett, III, with the prestigious John “Jack” Keegan Award in recognition of his distinguished efforts in support of Kentucky’s recovery program for lawyers.

Gullett serves as chief operating officer for the Louisville-based Lawyers Mutual Insurance Company of Kentucky (LMICK), a professional liability insurance company created by Kentucky lawyers for Kentucky lawyers. The Keegan Award is named in honor of Keegan, one of the founders of the ABA’s Commission on Lawyer Assistance Programs who passed away in 2006. Since Keegan’s death, the national commission has seen fit to present this namesake award only once previously — to Kentuckian William L. Hoge III of Louisville, another pioneer of lawyer recovery in Kentucky.

Gullett’s nomination was submitted by Yvette Hourigan, director of the Kentucky Lawyer Assistance Program (KYLAP), with the support of Kentucky Supreme Court Justice Will T. Scott; former KYLAP Director Randy Ratliff of Louisville; and Scott White of Lexington, a member of the KYLAP Commission and one of the original volunteers with the Kentucky program.

KYLAP is a KBA program that offers help to members of the Kentucky legal community who are struggling with mental health issues, such as depression, alcohol and drug abuse, stress, compulsive gambling or any other condition that may adversely impact the individual’s personal or professional life.

The ABA’s Commission on Lawyer Assistance Programs voted unanimously to present the award to Gullett, a long-time volunteer with the informal “Lawyers Helping Lawyers” group which preceded KYLAP and served as a catalyst for the state’s implementation of the official lawyer assistance program.

Gullett obtained start-up funding for KYLAP program through LMICK and has served as chairperson of the commission overseeing KYLAP since its inception. He was also a member of the selection committee for KYLAP’s first director.

“The characteristics repeatedly assigned to Pete Gullett are ‘tireless,’ ‘dedicated,’ and ‘selfless,’” Hourigan said. “He has been a beacon of light and hope for troubled Kentucky lawyers for more than 40 years, and it is with great pride that KYLAP and the Kentucky Bar Association thank him for his now legendary service.”

John Meyers, executive director of the KBA, said Gullett “routinely rises above the call to service to the Kentucky Bar and its members. He provides a constant source of reason, intellect and integrity as we work to provide assistance to members of our profession who struggle with mental health issues.”

Gullett, who has worked for LMICK since 1999, received his B.A. from Centre College in 1968 and his J.D. from the University of Kentucky College of Law in 1971. From 1971 to 1999, he was in private practice in Hazard, where he also served as city prosecutor and city attorney.

He also served as a member of the Hazard Independent School Board of Education from 1984 to 1999. Gullett was a member of the Perry County Bar Association, serving as its president from 1972-1974, and is now a member of the Jefferson County Bar Association. He served as a member of the KBAs House of Delegates from 1977 to 1983 and from 1990 to 1998, and served on the KBA Board of Governors from 1983 to 1989. Gullett is a member of the American Bar Association and is a fellow of the American College of Trial Lawyers.

Gullett was the 2000 recipient of the KBAs Justice Thomas B. Spain Award for Outstanding Service in Continuing Legal Education. He was also awarded the KBA’s Bruce K. Davis Bar Service Award in 2008 and has been on the faculty of the New Lawyers Program since its inception, including service as its program manager for several years.

For more information on KYLAP, visit www.kylap.org. For more information on the KBA, visit www.kybar.org.
Access the Kentucky Bar Association’s CAREER CENTER at www.kybar.org/720

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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.
Kentucky’s New Attorneys Need Your Help!

Become a Mentor or Volunteer Advisor

The KBA welcomes volunteers in support of its Find a Mentor service through which new attorneys may connect with more experienced attorneys listed by practice area and location for in-person mentoring and support. The service is a part of the Great Place To Start (GPS) resource hub for new attorneys that also includes a Lawyer to Lawyer service that allows new Kentucky attorneys to ask questions of more experienced “Attorney Advisors” via e-mail and/or telephone. The new services are available only to bar members who register through the KBA and who have been licensed for less than five years.

If you are interested in becoming a Mentor and/or an Attorney Advisor, please visit http://kbagps.org/find-a-mentor/become-a-mentor and http://kbagps.org/volunteer-advisor/become-a-volunteer.
The Kentucky Supreme Court has approved changes to the Supreme Court Rules that will substantially affect annual continuing legal education (CLE) requirements for Kentucky Bar Members. These rules became effective as of Jan. 1, 2014. For your convenience, the major changes have been highlighted below.

1) The actual Supreme Court Rule numbers that govern CLE have changed. These numbering changes were necessary to aid in internal consistency as well as consistency with the rest of the Supreme Court Rules of practice. The rule numbering changes also include significant reorganization in an attempt to reduce redundancies, and to clarify and simplify the rules. Due to these changes in the rule numbering, there will be new CLE forms, effective Jan. 1, 2014.

2) The most significant change to the CLE rules, and likely most popular, is the reduction of the annual minimum CLE reporting requirement from 12.5 to 12 hours. The annual 12.5 hour CLE requirement is a holdover result of Kentucky’s conversion from a 50-minute to a 60-minute CLE hour. Kentucky and Louisiana were the only states with an annual 12.5 hour CLE requirement for its members. Every state contiguous to Kentucky has a 12 credit hour per year requirement, or multiples of 12 (reporting every two-three years). After much consideration and internal debate, the change was made. Members should note that minimum required Ethics hours per year (2 hours), remains the same.

3) Another important change of the CLE Rules concerns the availability of non-hardship time extensions for members who are deficient CLE hours when the June 30 reporting time arrives. The rule was that a member could only get a non-hardship time extension once every three years. The new rule makes this extension available to members every year, but with a progressive fee schedule. The fee will remain $250 for the first year, but now increases to $350 for the second year, and to $500 for all subsequent years. If a member goes three years without applying for a non-hardship extension, the fee schedule will reset back to $250. The non-hardship CLE reporting deadline remains September 10 of each year.

4) The CLE requirement for removing a CLE non-practice exemption is lowered by the new rules. The former rule required a member seeking to remove a non-practice exemption to earn sufficient CLEs to be compliant for each year the exemption is held, capped at two years’ worth of credits (25, including 4 Ethics). The new rule requires earning one year of CLE (12 hours, 2 Ethics) in order to remove the exemption. The member would still be responsible for earning the current year requirement after removal of the exemption.

If you any questions about the new CLE rules, contact your district’s CLE commission member.
Law Update program was able to meet the CLE needs of over 5,500 Kentucky Bar members. Through the contributions of time, expertise, talent, and funding of the following individuals and organizations, the 2013 Kentucky Bar Association was able to bring CLE to your area at no cost to members.

Please accept our thanks for all you do!

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CLE REMINDERS NOW E-MAILED IN MAY AND MID-JULY

As a courtesy, KBA members who have not yet met their minimum annual CLE requirement will be e-mailed in early May of each year as a reminder of the upcoming end of the educational year and again in mid-July regarding the August 10 reporting deadline for credits timely earned by June 30. These reminders are no longer mailed through the U.S. Mail to members who have an e-mail address on file with the KBA. Therefore, it is important for KBA members to ensure that their e-mail address is correct. To ensure your correct e-mail address is on file, please log-in to the KBA website at www.kybar.org and look yourself up in the “Lawyer Locator” available on the left-hand side of the homepage under “Popular Pages” or under “Membership” on the toolbar. If you need to update the e-mail address on file, log-in and complete the online address update or return a PDF of the address change form. The KBA appreciates your assistance with this effort.
The law firm of O’Bryan, Brown & Toner, PLLC, announces that Whitney Kramer and Chris Leopold have joined the firm’s Louisville office as associate attorneys.

Kramer attended Saint Louis University on a volleyball scholarship where she obtained a bachelor of science degree in business administration. She earned her law degree from the University of Louisville Louis D. Brandeis School of Law. Kramer is licensed to practice law in Kentucky. Her primary areas of practice include insurance defense litigation with a focus on medical and legal malpractice and defense of general civil liability claims.

Leopold obtained his undergradu ate degree from the University of Kentucky, where he graduated magna cum laude with a bachelor of business management degree in management and marketing. He received his law degree from the University of Kentucky College of Law, where he was a member of the Kentucky Law Journal. Leopold is licensed to practice law in Kentucky. His primary areas of practice involve matters of insurance defense litigation, including medical malpractice, premises liability, and product liability.

The law firm of Zaring & Sullivan Law Office, PSC, which recently celebrated its 10th anniversary, announces the addition of Neil S. Hackworth to the firm as an “of counsel.” Hackworth is a lifelong resident of Shelby County where he graduated from Shelbyville High School. He attended Kenyon College in Ohio, and graduated with a B.A. in political science. He then attended the University of Kentucky College of Law, where he served on the staff of the Kentuck y Law Journal and clerked for the Kentucky Attorney General. He graduated in the top 10 percent of his class in 1973. He returned to Shelbyville and began his law career, practicing with two local firms before beginning a solo practice in 1980. His practice areas included civil litigation, family law, property, contracts, business and corporate law, and estate planning. In addition to practicing law, Hackworth managed his family’s insurance agency (The Armstrong Agency) for 15 years. Hackworth served as mayor of Shelbyville from 1982-1995. In 1995, he began work as a staff attorney for the Kentucky League of Cities, and was then promoted to deputy director. During his 16 years at the league, he spent time as a lobbyist, assisting cities with legal issues, overseeing the insurance operations, and managing a staff of nearly 80 people. Hackworth retired from the league at the end of 2010.

Dillingham & Traughber, Attorneys at Law, of Elkton announce that Elizabeth Teel has joined the firm as an associate attorney. Teel received her B.A. degree, magna cum laude, from Lipscomb University in 2009 and her J.D. from Faulkner University, Jones School of Law in 2012. Teel joins the firm after having served as staff attorney for Tyler L. Gill, the circuit court judge for Todd and Logan counties. Her practice will focus mainly in the areas of criminal defense, domestic relations, and civil litigation.

The Paducah firm of Denton & Keuler LLP announces that Lesley A. Stone has become associated with the firm. She graduated from Murray State University, summa cum laude, and the Southern Illinois University School of Law. She has been admitted to practice in Kentucky and will focus her practice in the areas of real estate and commercial transactions.

Wyatt, Tarrant & Combs, LLP, announces that Jennifer R. Monarch and Hamid H. Sheikh, Jr., have joined the firm’s Lexington office, and Brittany L. Hampton has joined the firm’s Louisville office.

Sheikh is a member of the firm’s real estate and lending service team. He was a former summer associate at Wyatt in 2012. Sheikh received his J.D., summa cum laude, in May 2013, and his B.A., summa cum laude, in accounting and finance in 2010 from the University of Kentucky.

Hampton is a member of the firm’s litigation and dispute resolution service team. Before graduating from law school, she was a summer associate at Wyatt, clerked for the U.S. Attorney’s Office in Louisville, and was a judicial extern for Judge McKay Chauvin in Jefferson Circuit Court. Hampton received her B.A. in political science, summa cum laude, from the University of Kentucky; her M.A. in elementary education from Marian University; and her J.D. from the University of Louisville Louis D. Brandeis School of Law, summa cum laude. She was a member of the Law Review; the National Moot Court Team; and was a First Year Oral Advocacy Competition winner.

Monarch is a member of the firm’s litigation and dispute resolution service team. She was a former summer associate at Wyatt and law clerk for the Honorable Eugene E. Siler, Jr., U.S. Court of Appeals for the Sixth Circuit, and the Honorable John G. Heyburn II, U.S. District Court for the Western District of Kentucky. Monarch received her J.D., with honors, from the University of Louisville Louis D. Brandeis School of Law in 2011 and her B.A., with honors, in political science in 2008 from Transylvania University.
**Dilbeck Myers & Harris, PLLC** announces that Aletha Thomas has joined the firm as an associate. Thomas received her B.A. from the University of Louisville in 2005 and her J.D. from the University of Louisville Brandeis School of Law in 2008. She was the managing editor of the University of Louisville Law Review. Thomas joins Dilbeck Myers & Harris after a one-year clerkship with the Honorable Brian C. Edwards of Jefferson County Circuit Court. Prior to that, she was a staff attorney at the Louisville Metro Public Defender’s Office. Thomas will concentrate her practice in the areas of defense and civil litigation.

**Bingham Greenebaum Doll LLP** announces that Aleksandr “Sasha” Litvinov, Reza A. Rabiee, Bailey Roese and April A. Wimberg have joined the firm’s Louisville office.

Litvinov will practice in the labor and employment practice group. Rabiee will practice in the corporate and transactional practice group. Roese will join the tax and finance practice group, and Wimberg will practice with the litigation practice group.

**Jefferson County Circuit Court**. Prior to that, she was a staff attorney at the Louisville Metro Public Defender’s Office. Thomas will concentrate her practice in the areas of defense and civil litigation.

**The Louisville office of Quintairos, Prieto, Wood & Boyer, P.A.** (QPWB) welcomes their newest lawyer, Matthew R. McCubbins. McCubbins will focus his practice in the areas of civil and commercial litigation. He will work with Jenni Adams in the defense of Walmart claims statewide in Kentucky. In 2012, the National Trial Lawyers Association named McCubbins to the “Top 40 under 40” trial lawyers in Kentucky. Prior to joining QPWB, he was an associate attorney at a Louisville law firm where he practiced in a wide variety of complex civil litigation matters. Previously, as a solo practitioner, he represented clients in over 10 counties throughout Kentucky in the areas of personal injury and wrongful death, business disputes, criminal defense, traffic violations, and probate and estate matters. McCubbins received his Juris Doctor cum laude from Case Western Reserve University School of Law, Cleveland, Ohio, in 2007 and his Bachelor of Arts from Bellarmine University in Louisville in 2000, graduating with an economics major. While in law school, he received the CALI Excellence for the Future Award in ERISA and Legal Research and Writing. After graduating from law school, he served as a law clerk to a Kentucky circuit court judge. He is a member of the Kentucky Bar Association, Louisville Bar Association, and the National Trial Lawyers Association.

**M. Miller, Casey C. Stansbury and managing member, Taft A. McKinstry. Ellison joined Fowler Bell’s litigation, bankruptcy and creditors’ rights groups in 2005 and since has gained significant experience in his employment law and workers’ compensation litigation practice representing local, regional and national clients.**

**Kirby Iland** has joined Frost Brown Todd as a corporate lawyer and appellate litigator. His practice is principally concentrated on mergers, acquisitions, and other corporate transactions. He also practices appellate litigation before state and federal courts of appeals. Iland is a graduate of Harvard Law School, where he was a member of Harvard Defenders and the Harvard Association for Law and Business. He received his undergraduate degree in economics and business from Westmont College in Santa Barbara, Calif.

**James Levin** is pleased to announce the relocation of his law practice. His new location is: 222 First Jefferson Center, 222 South First Street, Suite 307, Louisville, KY 40202, (502) 583-4441.

**McClain DeWees, PLLC** welcomes three attorneys aboard their team: Emily Farrar-Crockett, Michael McClain and Wendy Groce-Smith. Farrar-Crockett formerly worked as a public defender and is experienced in immigration and criminal law. McClain, formerly with Ballinger McClain, handles civil litigation and bankruptcy law. Groce-Smith, previously with the O’Bryan Law Office, has ample bankruptcy experience and will continue to use her skills and knowledge in her new position.

**Litvinov joins the firm’s labor and employment practice group as a graduate of George Washington University Law School, where he served as a member of the G.W. International Law Review. Prior to obtaining his law degree, Litvinov was chosen to serve as a student attorney with the District of Columbia Law Students in Court. While he was there, he represented indigent clients in the Superior Court of Washington, D.C., handling small claims matters, landlord and tenant disputes, and a wrongful eviction jury trial.**

**Rabiee joins the firm as a graduate of Emory University School of Law, where he received the Emory Law Transactional Law Certificate in 2013. He joins the firm’s corporate and transactional practice group, where he will focus his practice on corporate law, economic development and incentives for business, finance and transactions, mergers and acquisitions, and real estate development and construction.**

**FOREMAN WATSON HOLTREY, LLP** announces that Arthur F. Cook has joined the firm as an associate attorney. Cook received his B.A., magna cum laude, from Western Kentucky University in 2010 and his J.D. from the University of Kentucky College of Law in 2013. He joins the firm’s civil litigation team, focusing on personal injury and employment law. He will also work in areas of real estate and estate planning.
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Roese is a new member of the firm’s tax and finance practice group. She earned her law degree from William & Mary School of Law, where she served as editor-in-chief of the William & Mary Journal of Women and the Law. She will concentrate her practice in state and local tax law and federal tax law.

Wimberg has an extensive background in corporate finance and strategy and will bring that experience to the firm’s litigation practice group. Prior to joining the firm, she spent 10 years working on Wall Street and in corporate strategy for Fortune 50 companies. She has assisted companies across the globe with a wide range of business services from raising capital to managing working capital. Wimberg obtained her law degree from the University of Louisville Louis D. Brandeis School of Law.

The Louisville office of Quintairos, Prieto, Wood & Boyer, P.A. (QPWB) welcomes its newest lawyer, Angela D. Lucchese. Lucchese practices in the areas of medical malpractice, long-term care defense, insurance coverage, insurance defense, products liability, commercial litigation, general liability, and labor and employment. Lucchese’s litigation experience includes handling the defense of personal injury claims at trial and numerous summary judgment dismissals of suits prior to trial. In addition, she has successfully represented clients in appellate matters including arbitrations and mediations. Prior to joining QPWB, Lucchese was an attorney with a Louisville civil litigation law firm, where she represented clients in state and federal courts throughout Kentucky in matters involving all of her areas of practice. Lucchese received her J.D., cum laude, from the University of Louisville Louis D. Brandeis School of Law in 1998 and a B.A., summa cum laude, from Western Kentucky University in 1995 with a major in broadcast journalism. While in law school, she received Book Awards in Contracts I and Civil Procedures II and served as executive editor of “Notes” for the Journal of Family Law. She also served as a judicial intern with the Kentucky Court of Appeals under the Honorable Judges William L. Knopf and Lisabeth H. Abramson. Lucchese participated in the moot court competitions and was a contributing editor of the alumni publication, Brandeis Brief.

Ziegler & Schneider, P.S.C. proudly announces Kelly J. Brown as the newest associate attorney with the firm. Kelly has been admitted to practice since 1983. His practice areas include: creative contracts/business transactions, real property issues/litigation, resolution of governmental issues, estate planning/probate, and collections business/personal. Kelly is also interested in behavioral analysis, community development and legislative reform.

The Law Office of Heather A. Hadi, PSC, is pleased to announce the opening of the new office in the Hamburg area of Lexington. Focusing on immigration and asylum, Hadi strives to assist the immigrant population in Lexington and surrounding counties. Hadi received her undergraduate education at the University of Kentucky before attending the St. Thomas School of Law in Miami, Fla. She received her J.D. degree in May of 2013 and is newly licensed to practice law here in Kentucky. During her time at St. Thomas, Hadi was a member of the International Moot Court team and focused much of her classes on human rights and international law. As a new immigration attorney, Hadi will work on a number of immigration issues such as U-Visas, naturalization, family and employment based green card applications, cancellation of removal proceedings, DACA applications, agricultural work visas and more.

Thomas E. Szurlinski has joined the Northern Kentucky law firm of Taliaferro, Carran & Keys, PLLC, as an associate, primarily practicing in the area of plaintiff’s personal injury. Szurlinski received a B.S. degree in criminal justice from the University of Cincinnati in 1984 and his J.D. degree from the Salmon P. Chase College of Law-Northern Kentucky University in 1998.

Berkley & Schuler, PLLC announces the opening of an office in the Hamburg area of Lexington. The founding members are Joshua G. Berkley and Joseph P. Schuler. Both are UK law graduates. They are focusing their practice in the areas of civil litigation, estate planning and probate/estate administration and family law areas.

The law firm of McMurry & Livingston, PLLC in Paducah announces that Whitney J. Denson has joined its office as an associate attorney. Denson graduated from the University of Alabama, magna cum laude, with a bachelor of science in geography, and received her J.D. from the University of Kentucky College of Law in 2013. She is a member of the Kentucky and McCracken County Bar associations.

The law firm of SUTTON LAW & ASSOCIATES, PLLC announces that Stacey M. Nienaber has been hired as an associate attorney. Nienaber graduated from the University of Kentucky in 2003 with a B.S. degree in sociology and from the Salmon P. Chase College of Law in 2006. She is admitted to practice in all state courts in Kentucky. Nienaber brings a wealth of experience to the firm and will focus her law practice in the business law, litigation, estate planning and probate/estate administration and family law areas.

Bingham Greenebaum Doll LLP announces that W. Logan Wilson has joined the firm’s Lexington office. Wilson will serve as a member of the firm’s corporate and transactional practice group, as well as the real estate practice group. Wilson is a graduate of the University of Kentucky where he received his degree in finance and management in 2010 and his law degree in 2013. He also received his certificate in international business from the Grenoble...
Graduate School of Business in 2009. Wilson serves several local organizations, including as a member of the board of directors for the Lexington Philharmonic. He served as a law clerk for Bingham Greenebaum Doll LLP in the year leading up to completion of his law degree.

Duane Cook and Associates, PLC, in Georgetown, announces that Ryan Quarles has joined the firm as an associate. Quarles received his J.D. from the University of Kentucky School of Law in 2010. Additionally, he holds master’s degrees in agricultural economics and in diplomacy and international commerce from UK, as well as a master’s degree in higher education administration from Harvard University. He is an advisory board member with Kentucky Bank in Scott County and teaches state and local government at Georgetown College. Quarles was elected to the Kentucky General Assembly in 2010 and 2012, where he represents Scott, Owen and part of Fayette County. Ryan’s practice will focus primarily on economic development, administrative law and regulatory matters, higher education legal issues, business law, estate planning and agribusiness law.

O’Bryan, Brown & Toner, PLLC, is proud to announce the opening of their new law office in Indianapolis. The office is located in the Keystone Crossing area at 3003 East 98th Street, Suite 131, Indianapolis, IN 46280. The practice continues to focus on civil defense litigation primarily in the areas of medical and professional liability, insurance, commercial, products liability and general liability. The firm’s Louisville office address remains the same, located at 455 South Fourth Street, Suite 1500, Starks Building, Louisville, KY 40202.

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McBrayer, McGinnis, Leslie & Kirkland, PLLC is pleased to announce that Margaret S. Barr has joined the firm’s Lexington office as an associate. Barr focuses her practice in estate planning & administration with an emphasis on corporate related issues. She understands that estate matters are very personal and is dedicated to providing hands-on attention to the professionals she represents so that their estate matters are handled the right way in every case.

The law offices of Hazelrigg & Cox, LLP, announces the addition of Mark R. Brengelman as a partner. Brengelman will focus his practice on government services and the representation of health care practitioners before licensure boards and in other professional regulatory matters. Previously, Brengelman retired as an assistant attorney general where he represented professional licensure boards and prosecuted administrative disciplinary actions.

Brengelman has been a continuing education presenter for 16 state and national organizations including the Office of the Attorney General – Administrative Hearings Branch, Kentucky Bar Association, State Government Bar Association, Legislative Research Commission, the National Attorneys General Training and Research Institute, the University of Kentucky College of Dentistry, University of Louisville School of Dentistry, and Georgetown College. He is also a KRS Chapter 13B certified hearing officer and a guardian ad litem for the Woodford County Family Court. Brengelman holds bachelor’s and master’s degrees from Emory University in Atlanta and a J.D. degree from the University of Kentucky College of Law. Hazelrigg & Cox, LLP, is an established law firm tracing its history in Frankfort over 100 years.

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W. Keith Noel has joined the law firm of Sutton Law & Associates, PLLC, as a partner. Noel was previously a partner at the law firms of Keating Muething & Klekamp and Sutton Rankin Law. He has 25 years of experience as a trial lawyer in Kentucky and Ohio courts and is a member of Best Lawyers in America. Noel will continue to concentrate his practice in the areas of personal injury and business litigation. He may be reached at 859-916-5882 or knoel@suttonattorneys.com.

IN THE NEWS

Wyatt, Tarrant & Combs, LLP is pleased to announce that Dayo Seton has been selected from a record number of applicants for the Leadership Louisville Center’s Ignite Class of 2014. The award-winning program provides unmatched training and exposure for emerging leaders in our community. Seton concentrates his law practice in commercial litigation, including labor and employment, commercial and individual tort law and intellectual property.

Frost Brown Todd Member Philip J. Schworer has been elected to serve as chairman of the Kentucky Bar Association’s energy and environmental law section. Schworer represents business and industry in all aspects of environmental, health and safety, and toxic tort issues. His practice includes: environmental litigation (defense of governmental enforcement actions, citizens suit defense; Superfund and toxic tort claim defense); environmental due diligence and negotiations associated with corporate acquisitions and divestitures; and compliance counseling (confidential health and safety auditing and research regarding compliance with environmental, health and safety laws and regulations).

Bingham Greenebaum Doll LLP is proud to announce that attorney Michelle Browning Coughlin has been named to Business First of Louisville’s 2013 Forty Under 40 list. The award recognizes outstanding young professionals in the Louisville area. For the 2013 honors, Coughlin was selected from more than 480 nominees. Coughlin focuses her practice in the areas of intellectual property, privacy and data security. In addition to her professional leadership within the firm and through organizations such as the International Trademark Association and the American Health Lawyers Association, she is also passionate about serving the community. Coughlin has also been named a member of the Leadership Louisville Center’s Ignite Louisville Class of 2014. She graduated with a law degree from the University of Louisville Louis D. Brandeis School of Law in 2009.

Wyatt, Tarrant & Combs, LLP, announces that Allen C. Platt III has been appointed to the Indiana Arts Commission by Gov. Mike Pence through June 30, 2017. Platt is a member of the firm’s real estate & lending service team and concentrates his practice in the areas of commercial litigation, business law, and real estate. He is a member of the grants committee of the Horseshoe Foundation of Floyd County, as well as the former president of the New Albany Rotary Club, Carnegie Center for Art & History, and Floyd County Bar Association. Platt also received the Arts Council of Southern Indiana’s Heartbeat Award in 2004.

Dinsmore & Shohl’s Jeremy S. Rogers has been appointed to serve on the State Archives and Records Commission by Gov. Steve Beshear. The State Archives and Records Commission oversees the records retention schedules of public agencies and helps to determine the importance and potential uses for records. Rogers has been appointed to fill one of the four positions that represent citizens of Kentucky. The commission is made up of members from government agencies and the public to ensure that all groups are fairly represented. At Dinsmore, Rogers is a partner in the litigation department. His trial and litigation experience is in a wide range of matters, including business disputes, constitutional law, personal injury, employment, insurance, and criminal defense. Rogers will serve on the commission through September 2017.

At its Oct. 30, 2013 meeting, the Kentucky Registry of Election Finance unanimously re-elected Craig C. Dilger to serve as its chairman, marking an unprecedented seventh consecutive term for the Louisville attorney. His service as chairman marks the longest continuous period of service as chairman in the registry’s history. Dilger, a Republican, was first appointed to the registry by then-Gov. Fletcher from names submitted by organizations demonstrating a nonpartisan interest in fair elections and informed voting. He was re-appointed to the registry by Gov. Beshear on Oct. 29, 2008, and again on Nov. 21, 2012. He previously served two consecutive terms as vice-chairman of the registry. Dilger is a Louisville native, and a graduate of Bellarmine University and the Salmon P. Chase College of Law. He is a member of the business litigation practice with the law firm of Stoll Keenon Ogden PLLC. The registry is charged with administering Kentucky’s campaign finance laws, including those relating to all candidates who run for election in 2014. Kentucky law requires the disclosure by a candidate of contributions to and expenditures by the campaign.

Mary Burns has been promoted to vice president of trust services and trust counsel at Johnson Trust Company.

Leslie Rudloff, senior counsel for Physicians Committee for Responsible Medicine in Washington, D.C., was a panelist at Barry University School of Law’s The Interconnectivity of Human, Earth and Animal Rights seminar on Oct. 18, 2013. She addressed legal efforts to end the use of live animals in medical education.

Bardenwerper Talbott & Roberts, PLLC, partner and member, John C. Talbott, who focuses his practice in commercial real estate lending and development, was chosen and recently participated in the Leadership Kentucky Class of 2013. Leadership Kentucky, a non-profit educational organization, brings together a select group of professionals possessing a broad variety of leadership abilities, career accomplishments, and volunteer activities to gain insight into complex issues facing all areas of the state. By forging new relationships among community and regional leaders in this process, graduates bring a fresh and informed perspective to their communities, companies, and firms, serving as important participants in the unified effort to shape and direct Kentucky’s future.

Middleton Reutlinger is pleased to announce that Elizabeth S. Gray (“Libby”) has been selected for the inaugural Lead GLI class, a new business leadership program. This program is designed for participants to enhance business leadership skills and their awareness of Greater Louisville’s business community. Gray is a director and member of Middleton Reutlinger’s business litigation practice group.

The 2013 supplement to the “Kentucky Estate Planning, Wills and Trusts Library: Forms and Practice Manual,” co-authored by Bingham Greenebaum Doll LLP attorneys Mark H. Oppenheimer and Jeremy P. Gerch, has been released. The manual provides estate planning professionals with resources that identify effective strategies for optimum planning and serves as a guide to implementing streamlined and efficient client engagement through the use of integrated, systemized forms. The first edition of the manual, written by Oppenheimer, was published in 2008, with updated editions published annually. In addition to his work in the original edition, Oppenheimer contributed to the updates published in 2011, 2012 and 2013. Gerch is a more recent contributor, having contributed to the 2012 and 2013 manual updates.

The 2013 supplement and update to the “Kentucky Estate Planning, Wills and Trusts Library: Forms and Practice Manual” is available now through Data Trace Publishing Company. Data Trace specializes in producing professional
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Oppenheimer, managing partner of Bingham Greenbaum Doll LLP’s Louisville office, is a member of the firm’s estate planning practice group and corporate and transactional practice group. He concentrates his practice on business succession, estate planning and estate administration for individuals, families and businesses.

Gerch is a partner in Bingham Greenbaum Doll LLP’s Louisville office and is a member of the firm’s Estate Planning Practice Group. He has extensive experience working in trusts and estates.

Wyatt, Tarrant & Combs, LLP, announces that Lisa E. Underwood, a partner in the firm’s Lexington office, has been elected to a three-year term on the Commerce Lexington Board of Directors. Prior to rejoining Wyatt, where she began her legal career in Kentucky, Underwood served as the executive director of the Kentucky Horse Racing Commission from 2006-2012. Underwood is a member of the firm’s corporate and securities service team. She also leads the firm’s equine and gaming team. Commerce Lexington Inc. seeks to promote economic development, job creation, and overall business growth in Lexington and its neighboring communities, while strengthening its existing businesses through the many programs and services that the organization offers.

Dinsmore & Shohl’s David T. Schaefer has accepted an invitation to join the International Association of Defense Counsel (IADC). The IADC is a prestigious invitation-only group that is made up of attorneys who stand out in the corporate and insurance defense practice area. Schaefer was nominated and sponsored by current members and the submission was approved by the membership committee and board of directors. Schaefer is a partner in the firm’s litigation department and focuses his practice in the area of product liability. He has extensive experience defending a wide variety of clients, including automotive, pharmaceutical and medical device companies, in product liability cases. Schaefer also handles insurance coverage and general litigation matters, including asbestos and premises liability cases. He is the chair of the firm’s product liability subgroup. Schaefer joins other Dinsmore attorneys who are also IADC members.

Taft Stettinius & Hollister LLP is pleased to announce that Taft partner Robert E. Rich was inducted into the University of Kentucky, College of Arts and Sciences Hall of Fame on Oct. 11, 2013. Rich received this honor having demonstrated distinguished professional accomplishments, outstanding character and commitment to community service. Rich, along with the Honorable Albert B. Chandler, Dr. Marcus T. McEllistrem, Dr. Paul G. Sears and Dr. Jane Vance, will join the ranks of the current 32 alumni and eight emeritus faculty A&S Hall of Fame Members. Rich is a partner in Taft’s private client and health and life sciences groups. He practices in tax, health care law and estate planning. Rich received his B.A. from the University of Kentucky and his J.D. from Harvard University. Rich currently resides in Wyoming, Ohio.

Carolyn Taggart, a partner in Porter Wright Morris & Arthur LLP’s Cincinnati office and an alumnus of both Miami University (1973) and University of Cincinnati College of Law (1978), has been named to the Good Samaritan Hospital Foundation Board of Trustees. Founded in 1986, the Good Samaritan Hospital Foundation operates exclusively to steward philanthropic gifts for Good Samaritan Hospital and the health care needs of the Greater Cincinnati community.

Wyatt, Tarrant & Combs, LLP, is pleased to announce that Jeffrey Yussman has been named Treasurer of the Special Needs Alliance (SNA). The national nonprofit association of attorneys serves individuals with disabilities and their families. Among the criteria of SNA membership is relevant legal experience in the fields of disability and elder law, and active participation with national, state, and local disability advocacy organizations. Yussman concentrates his law practice in the areas of estate planning and administration, business succession planning and charitable planning. He has a passion for planning for individuals with special needs and has extensive experience in the preparation and administration of special needs trusts for people with physical and mental illness. In addition to serving as chair to Wyatt’s government benefits and special needs practice division, he is a fellow of the American College of Trust and Estate Counsel, a member of the elder law committee of the American Bar Association, and a member of the National Academy of Elder Law Attorneys.

Gov. Steven L. Beshear appointed Rebekkah Bravo Rechter to the Workers’ Compensation Board in June 2013 to fill the unexpired term of Lawrence Smith. She previously worked as a staff attorney to Justice Bill Cunningham of the Kentucky Supreme Court. Rechter earned her B.A. from Johns Hopkins University and her J.D. from Georgetown University Law Center. She is a member of the Florida and Kentucky Bar associations, and is a former chair of the KBA Young Lawyers Division.

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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>
<thead>
<tr>
<th>Name</th>
<th>City</th>
<th>State</th>
<th>Deceased Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arthur E. Abshire</td>
<td>Lexington</td>
<td>KY</td>
<td>Nov. 24, 2013</td>
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<tr>
<td>E. Gerry Barker</td>
<td>Sellersburg</td>
<td>IN</td>
<td>Oct. 31, 2013</td>
</tr>
<tr>
<td>Samuel Paul Chandler</td>
<td>Whitesburg</td>
<td>KY</td>
<td>Oct. 8, 2013</td>
</tr>
<tr>
<td>Virginia Ann Curry</td>
<td>Mount Eden</td>
<td>KY</td>
<td>Nov. 28, 2013</td>
</tr>
<tr>
<td>John W. Fleck</td>
<td>Louisville</td>
<td>KY</td>
<td>Oct. 29, 2010</td>
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<tr>
<td>Lois A. Gruhin</td>
<td>Columbus</td>
<td>OH</td>
<td>Sept. 28, 2013</td>
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<tr>
<td>Harry B. Miller Jr.</td>
<td>Lexington</td>
<td>KY</td>
<td>Nov. 11, 2013</td>
</tr>
<tr>
<td>Wilfrid A. Schroder</td>
<td>Wilder</td>
<td>KY</td>
<td>Oct. 26, 2013</td>
</tr>
<tr>
<td>Kenneth W. Smith</td>
<td>Lexington</td>
<td>KY</td>
<td>Nov. 7, 2013</td>
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</tbody>
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**Thomas E. Schwietz**

Retired United States Air Force Colonel Thomas E. Schwietz, 81, of Shelbyville and formerly of Louisville, died Friday, Oct. 19, 2013, at his residence. A native of Saint Paul, Minn., he was the son of the late Stephen and Elizabeth Kantack Schwietz. In addition to his parents he was preceded in death by his son, Eric Michael Schwietz M.D.; and five of his six older siblings. He served as a pilot and air commander with the United States Air Force from 1955 through 1984, where he received numerous decorations including Legion of Merit, Distinguished Flying Cross and Bronze Star Medal. Schwietz earned an undergraduate degree in philosophy from the University of Notre Dame and Masters of Science degrees in Public Administration in 1964 and International Affairs in 1971 from George Washington University. He also attended the National War College from 1970 to 1971. In 1990 he earned his Juris Doctorate from the University of Louisville Louis D. Brandeis School of Law. Upon graduation from law school, he served as an assistant Commonwealth attorney for Jefferson County, and was a partner in the Louisville law firm of Keats and Schwietz from 1994 until his retirement in 2008. He volunteered with the AARP as a tax return preparer and had a life-long passion for golf, starting when he was the Minnesota State Junior Champion during his senior year in high school.

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*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.
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