Individual Own Occupation Disability Coverage for Kentucky Attorneys

Affordable KBA Rates from Metlife

KBA Member Semiannual Rates

<table>
<thead>
<tr>
<th>Monthly Coverage Amount:</th>
<th>$3,000</th>
<th>$5,000</th>
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<tr>
<td>40-49 yrs</td>
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✓ No Medical Exam (Under Age 50)
✓ No Tax Returns
✓ Apply for up to $10,000/month Coverage
✓ Residual Disability Coverage
✓ Industry Standard Disability Definition
✓ Easy Online Application

Visit www.NIAI.com/Attorneys for KBA quotes and application
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Cover photo by Charlie Moone with Moonesimage.  
Annual Convention Photos by Tim Webb.
It is impossible to begin this first page without thanking my colleagues at Graydon for allowing me the opportunity to serve as president of the Kentucky Bar Association (KBA) for a year. It is an honor to serve your KBA, and I could not take on this responsibility without Graydon’s support. It is equally important to point out that as busy as the year will be for me, the real work is done by Executive Director John Meyers and the KBA’s incomparable staff. Nothing happens without them, and every board of governors’ member is quick to express their gratitude to them after every meeting.

Through the year I’ll use this space to highlight the KBA’s people, purpose, and the benefits we provide to every lawyer. For instance, for the price of membership, you have the opportunity to fulfill CLE obligations free of charge through the Kentucky Law Update (KLU) program. This value is worth the price of membership alone, and we bring the KLU to you annually in nine locations around the Commonwealth. We have a membership of almost 19,000 lawyers, and a reasonable guess is that about 14,000 actively practice in Kentucky. More than 5,000 lawyers take advantage of the KLU program. That is a massive membership benefit that Mary Beth Cutter and her CLE team run like clockwork.

We also offer the KYLAP program, https://www.kylap.org/, for lawyers in need. In the past year or more, we enlisted a new 24/7 third-party provider (502-226-9373) to answer emergency and afterhours calls. Every lawyer in Kentucky now has a free and bona fide 24/7 resource for help. Yvette Hourigan leads the effort for this invaluable membership benefit.

The KBA Ethics Hotline places volunteer Hotline members in every Supreme Court district. Any KBA member can call the Hotline, https://www.kybar.org/page/EthicsHotline, and receive an informal ethics opinion which, if based upon an accurate statement of the facts, insulates the requesting lawyer from a complaint of misconduct based upon the same facts. We all face ethical issues every day. Hotline members work very hard to deliver timely and accurate opinions. That is an incredible member benefit, and Professor Bill Fortune has worked tirelessly to lead the Ethics Committee.

One unintended member benefit came in the guise of the imperiled Kentucky pension system, known as KERS. John Meyers and Michele Pogroskey were tenacious in developing and implementing a sound plan to extricate the KBA from the system. It was expensive, yes, but to remain in KERS would have been nearly fatal. We sacrificed cash reserves in combination with a bond issue to make it work. Employees had the chance to remain in or to leave KERS on an individual basis, and we set up new robust plan options. In the end, we improved our cash flow.
Kentucky lawyers deserve steadfast support.

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position a great deal and avoided very painful realities. It is less visible, but this is a huge member benefit because we can continue with the good work of the KBA.

Of course, there are many more benefits (cyber insurance and an encryption service coming soon!) and valuable KBA programs, and I will highlight several before the year is out.

ELEVATE & EDUCATE
Each year, the new president is encouraged to embrace and spotlight a positive theme that impacts our profession. This year, the Rule of Law and our role within it seems like a good place to start. The Rule of Law is why lawyers exist, and refreshing our collective memory feels timely. We have a unique responsibility to the Rule of Law because we are the keepers of law’s values and history as well as the stewards for the future. Political markers—right, left, and center, and other weaponized distinguishers—do not matter at all. Those are the shifting labels that are used at ground level. The Rule of Law is the umbrella that fosters them all. The Third Branch, and the lawyers who inhabit it, collectively hold that umbrella, and it is an important role.

The KBA’s role under that umbrella is not to be our collective conscience. The KBA cannot speak for us on matters of politics and advocate for cutting edge social reforms. Those things are beyond our mandate. The KBA, among many roles, can and does provide forums for ideas, for lawyers to gather and discuss, and to hear speakers on primarily legal topics from various points of view. In an age of ground level political silos and vilification, we can provide space for professional and civil discourse. We can disagree, argue (generally we’re pretty good at arguing), and most importantly, listen.

I have been in the KBA Board room for almost 10 years now. During that time, I’ve learned more in our board room about ‘being a lawyer’ from colleagues than I could have predicted. Over the years I have argued and agreed with so many Board members, from every part of the Commonwealth, and, as a result, I understand the importance and big picture of what we do far better than I ever could have learned on my own. Every discussion we have increases my own perspective. We have some entertaining and spirited discussions, but always defined by professionalism, and always polite. We engage as colleagues, not adversaries.

That is the KBA in a nutshell for me. It is a place where we can gather, disagree, and, ultimately, appreciate what we’ve learned in the process. In the Commonwealth, despite being a small state in population, we enjoy wide geography that often sees us at a distance from one another. The KBA’s umbrella, like the much larger Rule of Law, brings us together. We need that, we have that, and we need to steward the Rule of Law and the Kentucky lawyer’s place within it.

And, the beautiful woman on the cover with me is Vicki Prichard, an extraordinary mother, dog-lover, journalist, screenwriter, editor, and all-around story-gatherer. I am very lucky to exist in her orbit.

Terms Expire on the KBA Board of Governors

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

Any such petition must be received by the KBA Executive Director at the Kentucky Bar Center in Frankfort prior to the close of business on the last business day in October. Please visit the KBA website at www.kybar.org/petition to obtain a petition.

The current terms of the following Board Members will expire on June 30, 2020:

1st District
W. FLETCHER SCHROCK Paducah

2nd District
MATTHEW P. COOK Bowling Green

3rd District
MELINDA G. DALTON Somerset

4th District
BOBBY SIMPSON Louisville

5th District
EILEEN M. O’BRIEN Lexington

6th District
GARY J. SERGENT Covington

7th District
JUDGE JOHN F. VINCENT Ashland
Justice Michelle Keller has given a presentation lately to make suggestions on how lawyers can stay relevant in the evolving world of how civil disputes are resolved. Do you see in your practice a trend on the part of people with disputes to resolve that they would rather avoid courts and litigation? What can the Kentucky lawyer do to navigate successfully in this new environment?

First, Justice Keller is an asset to every Kentuckian, and her huge effort to create our Access to Justice program is all the proof needed. We could talk at length about that initiative, but to address your question, I do see changes, and they are happening in different ways in every aspect of civil conflict. Actual, good old-fashioned litigation has declined consistently for years. There are many reasons, including cost, time, and uncertain outcomes, to name a few. Because that trend does not mean that there are fewer problems to solve, however, all types of ADR have been increasing for years. It is also true that more and more people either avoid legal issues altogether, or proceed pro se. For small clients and individuals, mediation offers the chance to settle a matter early, and often without the expense of discovery wars, motion practice, and time lag that accompany litigation. For large entities and others, arbitration provides security for largely the same reasons of economy and access to specialized arbiters.

Some see the decline in civil litigation and jury trials as a threat to the American ideal that everyone deserves their day in court, or the right to present their argument to a jury of their peers. Some see it as a naturally occurring efficiency that people run toward, in order to avoid the cost and uncertainty of traditional litigation and juries. Regardless of the view, it is a fact of life.

Kentucky lawyers can and should train themselves to be effective advocates in these new arenas. Change comes to every profession, and being an effective advocate in mediation or arbitration requires somewhat different skills, or at least the deployment of existing skills in a slightly different manner. Like everything else, start with the CLE’s, and then seek formal training to understand the nuances, and don’t think you can wing it and be effective.

It takes a long time to become president of the KBA. You have had some time to think about what you would like to do in your year in office, a theme, a goal for the practicing bar to aspire to. Can you talk about that?

It does take a long time, but the time passes quickly. The people at the KBA and the lawyers who serve on committees and the Board of Governors are incredible. During the 2019-2020 year, I plan to talk a good deal about the big umbrella of the rule of law, why it is vital, and our role within it. This broad theme needs constant revisiting because, in part, as society becomes more complex and technology driven, remembering what made us successful in the first place is important. Within that general theme, I want to emphasize that the personal well-being of each and every Kentucky lawyer is important. A lawyer’s well-being is not just about avoiding discipline, which is of course important. It is about being proactive, engaged, knowledgeable, and a positive force in the communities where we live. To give our communities the benefits of those qualities, we need to be healthy, mentally and physically.

This well-being message isn’t about our wonderful KYLAP program; it is about the proactive and all-encompassing fitness to do what we do, and to do it well. Being updated and educated about the law is vital, but no more so than being a person that others want to look to for counsel, and deserving of that privilege.

Maybe the theme should be called “The Rule of Law and Attorney Well-being.”

There have been some pointed questions raised in the popular press about the KBA Client Security Fund. It has been suggested that compensation to aggrieved victims of
attorney theft be brought into line with the actual loss; that the bar essentially indemnify the victim. Is bar leadership reviewing the purpose and effect of the program? Could you share your thinking about that?

We are looking at the client security fund, and we want to do what we are able in order to compensate victims of unscrupulous lawyers. Our budget is limited and we are evaluating whether we can allocate more to this effort.

The victims who suffer a loss due to the intentional conduct of a lawyer cannot be covered by traditional malpractice insurance, even if the lawyer has insurance. And, by the way, whether or not a lawyer is insured is now stated plainly on the KBA’s public lawyer profiles at www.kybar.org, and every client should know whether the lawyers they engage are covered by insurance.

Nonetheless, if we are able to increase the client security fund, we intend to, and if we can provide more relief to victims, that is our goal.

Are we moving toward mandatory e-filing for Attorneys in Kentucky in line with the federal model?

This decision is above my pay grade, but I personally hope so, with the caveat that pro se individuals who need access to the courts must be able to have their documents scanned in by the clerk’s offices. Less paper is a good thing, and e-filing, once you do it, is so easy and efficient that it is hard to argue against the idea.

I should add that attorneys have an ethical duty to maintain technological competence (RPC1.1, Cmt. 6), and e-filing is becoming very baseline technology, rather than something sophisticated.

Your page on your law firm’s website describes you as a low-pressure litigator. Could you explain, and can you counsel here younger lawyers on the path you’ve come to rely on in dealing with clients and adversaries?

What that means to me is that I work hard, as so many others do, to be professional and effective, but not to internalize and pass on a client’s anxiety and anger to others. My role is to solve wide ranging problems for my clients, not to exacerbate or be an extension of their problem. Opposing counsel need to do their jobs also, and as long as we work by the rules and treat one another with respect, temperatures stay low and solutions present themselves. When lawyers bluster and use a loud temperament, it does not lead to better or faster resolutions, and to the contrary, often signals a weakness in the opposing legal position or opposing lawyer’s preparation.

For young lawyers, the message is to be well prepared, know the law that weighs in favor of and against your position, manage a client’s expectations, and to be respectful of the other party. Clients are experiencing difficulty in litigation. Our job is not to fan those flames and make it worse, but to help the client get through the fire and on to safety.

You had an interesting beginning as a lawyer. Can you talk about that and describe the lessons your history might have for newly-minted lawyers?

I admit that I was very naïve when it came to the actual practice of law, as I think many are. When I graduated from the University of Cincinnati College of Law, I wanted to work for myself, and I did. I rented space from other lawyers and opened an office in Cincinnati with nothing to do but sharpen pencils. A day later, two lawyers I rented the space from were literally arrested. It was surreal, and though I am not sure how that worked out for them, another young lawyer and I suddenly were responsible for loads of clients who needed help. I tried a case in my second week for a client that I had met once. The judge and opposing counsel were very fair, and everything turned out fine, but I did not know what I was doing. (An interesting fact is that the other young attorney and my classmate was Curt Hamilton, who practices in Henderson these days.)

What I learned through that and other early experiences is that this business is complicated, that mentors are vital, civility is paramount, and working in a silo is not good. Fairly quickly, I moved into an
office with five other attorneys, then to a firm with about 20, then to a firm with well over 100, and for the past 10-plus years I’ve found my home with Graydon.

Finally, whether a new attorney works alone or in a group, it is critical to be in constant and close contact with other attorneys, to listen and learn from others, and to participate in your legal community.

**You hire attorneys for your law firm. Can you describe the profile of the kind of person you’re interested in hiring?**

Graydon is lucky to have Shelby Thompson, our Chief People Officer (CPO) and leader of the hiring efforts, among other responsibilities. In general, we look for excellent talent in a person who is well rounded, community minded, and with an experience level that fits our needs. Diversity is a point of emphasis, but there really isn’t a one size fits all formula.

As we all know, the Great Recession of 2008 changed the legal landscape forever. Hiring practices changed, laterals became ever more valuable, and new lawyers found finding "the job" increasingly difficult. In 2019 people have adjusted, but it is still a different landscape than it was prior to 2008. I always worked with the theory that I had a license to practice, and therefore a parachute, I'd always be alright. I still believe that is true.

**You have been a bar governor for some time and have looked at dozens of disciplinary cases. Has there been a theme you can discern in the cases you’ve considered, and can you rate how well our system of legal education is preparing lawyers for the ethical rigors of the practicing law?**

I don’t think that legal ethics is something that is well absorbed in law school, frankly. The effort is there to teach ethics, and the MPRE tests the basic knowledge, but ethics is inherent in each person, and our rules are the practical application of an ethical person’s behavior within our profession. Applying the ethics we have and the ethical rules we learn takes time, and endless consideration. To practice law ethically is a daily grind. For young lawyers, it is important to know the rules, and also to ask mentors about how to apply them. Ask for advice when confronted with a quandary. The ethics Hotline, where I served for about six years, is invaluable.

I will add that a lawyer who tells me that he or she never faces an ethical quandary does not understand ethics. Ethical decisions happen every day in every lawyer’s active practice.

Returning to the theme of well-being, the vast majority of discipline cases come from attorneys with some kind of substance abuse or depression issue. While KYLAP is invaluable helping attorneys through the storm, we need to be better proactively helping attorneys stay healthy.

**For decades, the conventional line coming from northern Kentucky was that we were a stepchild of the Commonwealth; in, but not really, of Kentucky. To many in the state, northern Kentucky is that great big collection of small towns across the river from Cincinnati. Is there something of interest or surprise about the region you care to share with lawyers across the state? Have you found something unique about how law is practiced in the region?**

I have heard these things all of my life, truly; that people from the rest of the Commonwealth don’t view us as “Kentucky” enough, and that people from Cincinnati are afraid to cross the river, etc. It seems like sport to generalize a region in this way, but to me it’s all hogwash. Northern Kentucky is just as “Kentucky” as the rest of Kentucky, no more, no less. It would be like saying Louisville is sort of in Indiana, or that Bowling Green is really more interested in Tennessee, and on and on. Granted, we all have a variety of regional influences, and that is one of the things that make Kentucky unique.

Practicing law here is very interesting. Within 15 miles of my office in Ft. Mitchell I can reach three county courthouses (Campbell, Kenton, and Boone), two U.S. District Courts (EDKY and SDOH), the Sixth Circuit Court of Appeals, Hamilton County, Ohio, state courts, the Ohio 1st District Court of Appeals, the United States Tax Court, Lawrenceburg, Ind., and a few others. Add all of the administrative bodies present in the area that are connected to those courts and we have a rather dense environment for attorneys, despite the idea that we are a collection of small towns. I’m licensed in three states because I need to be, as many in Northern Kentucky/Greater Cincinnati are.

It is important to be mobile here, and to know where the good parking spaces are.

**ENDNOTES**

1. 496 U.S. 1 (1990)
Under our convention theme of “Passion with Respect,” this year’s event offered over 60 outstanding CLE programs. We were fortunate to have a great lineup of speakers representing a variety of topics including author and true crime enthusiast Paul Haynes and investigative journalist Billy Jensen, who helped complete Michelle McNamara’s book, “I’ll be Gone in the Dark: One Woman’s Obsessive Search for the Golden State Killer.” Former U.S. Deputy Attorney General Rod J. Rosenstein recounted his time as Deputy Attorney General and provided an overview of the history of that position. ‘me too.’ Creator and Time’s 2017 Person of the Year Tarana Burke, was the feature speaker on Thursday, June 13th. Joe Ranazzisi, attorney, pharmacist and whistleblower who oversaw the Office for Diversion Control for the Drug Enforcement Administration and fought against the opioid epidemic presented an enthralling session on the opioid crisis. United States Senator Rand H. Paul, Executive Director of the Justice Action Network Holly Harris and Representative Jason Nemes, discussed criminal justice reform at the State and Federal levels. Rachael Denhollander closed out the convention with her Q & A session discussing her being the first to accuse Dr. Larry Nasser for sexual misconduct.
KBA ANNUAL BANQUET

During the convention’s annual banquet held at the Galt House Hotel on Thursday, June 13, outgoing KBA President Douglas C. Ballantine presented the 2019 Distinguished Lawyer Award to Bowling Green attorney Charles E. “Buzz” English, Jr., and the Distinguished Judge Award to Supreme Court of Kentucky Deputy Chief Justice Lisabeth T. Hughes. President Ballantine also presented the President’s Special Service Award to Daniel T. Goyette. Chief Justice John D. Minton, Jr., presented the Chief Justice’s Special Service Award to Judge William Engle III for his extraordinary dedication to the Commonwealth and the Kentucky Court of Justice through service as Circuit Judge for the 33rd Judicial Circuit and as an invaluable member of the Retired Judges Program.

Following the awards, the KBA’s new Officers and Bar Governors for 2019-2020 were sworn into office by Chief Justice Minton. The new officers include J. Stephen Smith, Ft. Mitchell, as president; President-Elect Thomas N. Kerrick, Bowling Green; Vice President John David Meyer, Owensboro; Douglas C. Ballantine, Louisville, as immediate past president; and Young Lawyers Division Chairman Zachary A. Horn, Frankfort.

Bar Governors receiving the oath of office are Van F. Sims, Paducah, 1st Supreme Court District (SCD); Susan C. Montalvo-Gesser, Owensboro, 2nd SCD; James M. Ridings, London, 3rd SCD; J. Tanner Watkins, Louisville, 4th SCD; Mindy G. Barfield, Lexington, 5th SCD; Todd V. McMurtry, Ft. Mitchell, 6th SCD; and Rhonda J. Blackburn, Pikeville, 7th SCD.

Other Bar Governors who were recognized for their continuing service were W. Fletcher Schrock, Paducah, 1st SCD; Matthew P. Cook, Bowling Green, 2nd SCD; Melinda Gillum Dalton, Somerset, 3rd SCD; Bobby C. Simpson, Louisville; 4th SCD; Eileen M. O’Brien, Lexington; 5th SCD; Gary J. Sergent, Covington, 6th SCD; and Judge John F. Vincent, Ashland, 7th SCD.

Also honored during the event were retiring KBA President Ballantine; Immediate Past President William R. Garmer, Lexington; outgoing YLD Chair Jennifer S. Overmann, Edgewood; Bar Governors Howard O. Mann, Corbin, 3rd SCD and Amy D. Cubbage, Louisville, 4th SCD.

KBA MEMBERSHIP LUNCHEON

The annual membership luncheon was held on Friday, June 14, at the Galt House Hotel. Prior to the luncheon President Ballantine and Chief Justice Minton honored the attorneys who achieved senior counselor status. Following their ceremony the senior counselors attended the membership luncheon and watched a touching tribute to recognize their years of service. This year 208 attorneys were recognized as senior counselors. President Ballantine presented the Bruce K. Davis Bar Service Award to Roula Allouch, Cincinnati. President Ballantine later presented the 2019 Donated Legal Services Award to Margaret E. Keane, Louisville. The Nathaniel A. Harper Diversity Award was presented to Daniel P. Murphy, Jr., Lexington. To conclude the luncheon 2019 Annual Convention Chair Amanda G. Main and CLE Planning Committee Co-Chairs Eric M. Weihe and J. Tanner Watkins were thanked for all of their hard work and dedication to the 2019 KBA Annual Convention.
Rebecca R. Schafer of Louisville receives the 2019 Outstanding Young Lawyer Award from YLD Chair Jenna S. Overmann and Christopher Groeschen.

Jenna S. Overmann and Christopher Groeschen present the Service to Young Lawyers Award to retired Supreme Court of Kentucky Justice Bill Cunningham, center, during the YLD Luncheon.

Kyle Bunnell of Lexington receives the Outstanding Executive Committee Member Award from YLD Chair Jenna S. Overmann.

Incoming YLD Chair Zachary A. Horn presents YLD Chair Jenna S. Overmann with a plaque recognizing her service to the division over the past year.

YLD Chair Jenna S. Overmann presents Cincinnati attorney Christopher Groeschen with a plaque recognizing him as Outstanding Committee Chair.

Jenna S. Overmann presents a plaque to Pikeville attorney Seth Fawns with the Outstanding District Representative.

Bryce Rhoades of Covington receives the Young Lawyer Service to the Community Award from Jenna S. Overmann, left, and Christopher Groeschen.

Charles E. “Buzz” English, Jr., of Bowling Green, receives the 2019 Distinguished Lawyer Award from President Ballantine during the annual banquet.

KBA President Douglas C. Ballantine presents Daniel T. Goyette of Louisville with the President’s Special Service Award.

Outgoing Bar Governors Amy D. Cubbage, Howard O. Mann and Jenna S. Overmann receive plaques honoring their service on the KBA Board of Governors from President Ballantine.

Chief Justice John D. Minton, Jr., presents Judge William Engle III of Hazard with the Chief Justice’s Special Service Award during the annual banquet.
President Ballantine was presented with a plaque for his service as president during 2018-2019 by incoming KBA President J. Stephen Smith.

Fourteen of the KBA’s past presidents attended the annual membership luncheon held June 14 at the Galt House Hotel in Louisville.

Chief Justice John D. Minton, Jr., administers the oath of office to the members of the 2019-20 KBA Board of Governors.

Cincinnati attorney Roula Allouch receives the 2019 Bruce K. Davis Bar Service Award from President Ballantine during the membership luncheon.

Margaret E. Keane of Louisville receives the 2019 Donated Legal Services Award from President Ballantine during the membership luncheon.

President Ballantine present Amanda G. Main of Louisville with a plaque in recognition of her service as the 2019 KBA Annual Convention Chair.

Seth Fawns presents the Young Lawyer Division’s 2019 Nathaniel R. Harper Award to Daniel P. Murphy, Jr. of Lexington.

President Ballantine presents J. Tanner Watkins and Eric M. Weihe, both of Louisville, with plaques recognizing their service as the 2019 KBA Annual Convention Continuing Legal Education Co-Chairs.

President Ballantine presents Kentucky Supreme Court Deputy Chief Justice Lisabeth T. Hughes of Louisville with the 2019 Distinguished Judge Award.

President Ballantine passes the gavel to incoming KBA President J. Stephen Smith of Ft. Mitchell.

Incoming KBA President J. Stephen Smith addresses the attendees during the 2019 KBA Annual Banquet held on June 13.

Cincinnati attorney Roula Allouch receives the 2019 Bruce K. Davis Bar Service Award from President Ballantine during the membership luncheon.

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President Ballantine presented J. Tanner Watkins and Eric M. Weihe, both of Louisville, with plaques recognizing their service as the 2019 KBA Annual Convention Continuing Legal Education Co-Chairs.
The winner of the Kentucky Bar Association’s annual Law Day Competition received their award during the Membership Awards Luncheon held Friday, June 14, at the Galt House Hotel as a part of the 2019 Annual Convention. Law Day Committee Chairman Gailen W. Bridges, Jr., presented the award during the luncheon.

The Bowling Green-Warren County Bar Association was the recipient of the award for the Large Bar Category. The Bowling Green-Warren County Bar Association focused their celebration around this year’s theme, “Free, Speech, Free Press, Free Society.” They celebrated Law Day with a public ceremony held at the Capitol Arts Center and continued their tradition of holding a poster and essay contest for the schools in their area.

Thank you to all of the Bar Associations who participated in Law Day 2019.

President of the Bowling Green-Warren County Bar Association Darren Mexic, right, accepts the plaque from Gailen W. Bridges, Jr., honoring the Bowling Green-Warren County Bar Association in the Large Bar Category.
Thank You for Supporting the Inaugural Puppy Pit!

The inaugural puppy pit was a huge success during the 2019 KBA Annual Convention with several puppies being adopted and many attendees stopping by for a little lawyer well-being. We thank you for making this newly created event so popular. The puppy pit would not have been possible without Paws 4 the Cause as well as the sponsors, Kentucky Lawyer Assistance Program, KBA Young Lawyers Division, National Insurance Agency, Inc., Lawyers Mutual of Kentucky, the Kentucky Bar Association Animal Law Section and the University of Louisville Journal for Animal Science.
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KBA Business Law Section
KBA Ethics Committee
KBA Elder Law Section
KBA Family Law Section
KBA Health Care Law Section
KBA Immigration & Nationality Law Section
KBA Labor & Employment Law Section
KBA Law Practice Task Force
KBA LGBT Law Section
KBA Military Law Committee
KBA Public Interest Law Section
KBA Young Lawyers Division
Kentucky Department of Agriculture
Kentucky Distillers’ Association
Kentucky Lawyer Assistance Program
Kentucky Secretary of State Alison Lundergan Grimes
Louisville Urban League
Office of Kentucky State Treasurer Allison Ball

FEATURE SPEAKER
MIDDLETON REUTLINGER ATTORNEYS

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Covington

FOR NEXT YEAR’S

CONVENTION!

JUNE 24-26, 2020

NORTHERN KENTUCKY CONVENTION CENTER
Kentucky, Hemp, and the Law

BY: RYAN QUARLES KENTUCKY COMMISSIONER OF AGRICULTURE

Kentucky’s history is entwined with the history of hemp. In the nineteenth century, the legendary statesman Henry Clay grew hemp on his farm in central Kentucky. Many Kentucky farmers, including my great-grandfather, grew hemp for rope during World War II. In fact, the U.S. Department of Agriculture (USDA) produced a 1942 promotional video encouraging farmers to grow hemp. In it, a patriotic narrator describes how “in Kentucky, much of the seed hemp acreage is on river bottom lands . . . along the Kentucky River gorge.” And with more than 55,000 acres of hemp approved for cultivation in 2019 by the Kentucky Department of Agriculture (KDA), it’s clear that hemp is a crop that connects our past to our future.

Hemp has been in the news frequently of late, especially since the passage of the 2018 Farm Bill, which included The Hemp Farming Act of 2018. As one can imagine, legal issues abound when discussing the laws and regulations governing cannabis cultivation and marketing in the United States. To give an overview of the laws, history, and future of Kentucky’s hemp program, it might be helpful to review the program from its infancy, then to discuss what the KDA has done since 2016 to expand it to benefit farmers and businesses, and then to suggest what might come next.

THE HEMP COMEBACK BEGINS: 2013 - 2014

After several previous attempts, in 2013 the General Assembly enacted Senate Bill 50, which represented the product of considerable negotiations between the two legislative chambers. The Senate’s initial version of the bill would have vested primary responsibility for hemp program design and development in the Kentucky Department of Agriculture with oversight from the Commissioner of Agriculture.

After securing Senate passage by a vote of 31-6 on February 14, 2013, the bill went to the House of Representatives. By means of a House floor amendment, the House of Representatives changed SB 50 to take away much of the authority discretion that the Senate’s initial version had left in the Department of Agriculture. Instead, greater powers were placed in the hands of the Kentucky Industrial Hemp Commission and the Kentucky State Police. The House floor amendment placed the authority to promulgate administrative regulations (i.e., to design the hemp program’s structure), and to issue grower’s licenses, in the hands of the Commission. Criminal background checks would be performed by the Kentucky State Police; any applicant with a felony drug conviction within the previous 10 years would not be eligible for licensure. The House floor amendment also created a state-law definition of “hemp” that was expressly pegged to whatever tetrahydrocannabinol (THC) levels Congress relied upon in its definition of “marijuana” in the federal Controlled Substances Act, 21 U.S.C. 801 et seq.

On March 26, 2013, SB 50, as amended by the House, was approved by a vote of 88 to 4. Twelve days later the bill became law on April 7, 2013. The Kentucky legislature had done its part to create some breathing space within for hemp farming experimentation.
Without action from Congress, however, the longstanding federal prohibition against the cultivation of cannabis would keep things at a standstill.

The wait would soon be over. In early 2014, Congress included within the Agricultural Improvement Act (the “Farm Bill”) a two-page section that created an opportunity for state-level “agricultural pilot programs” to study the “growth, cultivation, or marketing” of hemp. For the first time in generations, farmers in Kentucky and across the nation would have an opportunity to experiment with a crop whose history was as old as the Commonwealth itself.

The “pilot program” concept Congress adopted with the 2014 Farm Bill had important implications for how Kentucky’s hemp program would develop. There were at least two notable points. The first was Congress’s definition of hemp as “the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”

Second, unlike the “program of licensure” for individual farmers that the 2013 General Assembly had authorized with SB 50, Congress did not create a federal system of licensure for private citizens. Indeed, Congress authorized only “agricultural pilot programs” conducted by a state department of agriculture and institutions of higher education.

Soon after President Obama signed the 2014 Farm Bill into law, the most urgent challenge was seed acquisition. Where would KDA and its program participants obtain the planting materials they needed? In early May, KDA learned that a quantity of hemp seeds were being detained by U.S. Customs and Border Protection agents at the United Parcel Service cargo facility in Louisville. With the planting season already underway, KDA’s leaders moved quickly to bring the issue to a head by filing a civil suit in the U.S. District Court for the Western District in Louisville. The dispute came to an end with an agreement that the hemp seeds would be allowed entry by means of a DEA import permit.

By the end of May, 2014, KDA had signed a “memorandum of understanding” with a number of farmers wishing to grow hemp within a principal-agent relationship with KDA. KDA also coordinated with representatives of several public universities in Kentucky. The first planting season was limited in scope because of the delays in seed acquisition and the challenges inherent in working with a new crop. Of the 33 acres that were planted in 2014, none resulted in a successful harvest.

The second year saw more success. In 2015, 922 acres were planted, with more than 500 acres harvested. One notable development from the 2015 growing season was the emergence of a new application of the plant—extracting certain chemical compounds, known as cannabinoids, from the floral part of the plant—alongside the traditional components of fiber and grain. One of those cannabinoids was cannabidiol (CBD), a chemical compound that was said to hold great promise in health and wellness products. To the surprise of many, almost half of the acreage planted in 2015 was attributed to farmers growing hemp for CBD rather than grain or fiber. Whether CBD and other cannabinoids would prove commercially viable—and what CBD’s legal status was under federal law—remained unclear.
CHALLENGES AT THE START OF A NEW ADMINISTRATION

When the author became agriculture commissioner in 2016, Kentucky’s hemp program remained in its infancy. Even then, it was evident that changes were needed. Although SB 50 placed responsibility for hemp program oversight and management Industrial Hemp Commission, its 26-member board had not convened for a meeting since May 2014. With no staff support, the Commission was unable to carry out its duties, which meant that responsibility fell to KDA and its employees to keep the program running throughout the latter half of 2014 and all of 2015.

It was obvious that big changes were needed if Kentucky’s hemp program would be able to survive—let alone for it to be able to grow to meet the needs of a widening community of Kentucky farmers and entrepreneurs who wanted to experiment with this new crop. Shortly after the author took office, KDA’s senior leadership was tasked with a top-to-bottom review of the hemp program and to come forward with recommendations for how to strengthen it.

In short, the goal was to build the best hemp program in the United States, with the strategic objective of making Kentucky an epicenter for hemp production in the decades to come. With other states hesitating to embrace hemp, Kentucky could use the first-mover advantage to build a critical mass of farmers and processors here in the Commonwealth. Should Congress choose to permit hemp’s full-scale legalization and commercialization at some point in the future, Kentucky would have a head start in the race to attract investments from around the world.

Three principles were laid down to guide the KDA’s work. First, it was imperative to build a strong, trusting, and mutually supportive relationship with the Kentucky State Police and other law enforcement agencies. Second, paperwork and administrative burdens required of program participants and of KDA needed to be reduced. Third, growers and processors were to be empowered. Above all, a mindset needed to be established to strive for continuous improvement in the program.

The first step was to create a first-ever written document that farmers and entrepreneurs could read to understand the “rules of the road.” Because SB 50 had vested authority to promulgate administrative regulations in the now-dormant Industrial Hemp Commission, which had not met in years, KDA itself could not promulgate regulations without first seeking a change in law from the General Assembly. In anticipation of that step, KDA’s staff dedicated hundreds of hours to hammering out a detailed policy guide that could fill the gap in the meantime. The product of the deliberations was the 25-page 2017 Policy Guide, released in October, 2016, which set the rules for the upcoming year’s growing season and served as a transparent prototype for future administrative regulations. For the first time, a member of the public could read, in black-and-white text, what the rules of the road would be.

The next step was to ask the General Assembly for some help in revising Kentucky’s legislative framework. Senate Bill 50 just wasn’t working, and this was true for at least three major reasons. The first reason was the structural misalignment between state law and federal law. While the 2013 General Assembly had enacted SB 50 with the expectation that Congress would adopt a system of individualized licensure of farmers, the 2014 Farm Bill’s “agricultural pilot programs” had restricted participation to state departments of agriculture and universities.

The second reason arose from structural deficiencies within Senate Bill 50. For instance, the Industrial Hemp Commission had not convened for a meeting since May 2014, in part because it was a major undertaking simply to achieve a simple-majority quorum of its 26 members. Additionally, because the Commission had no full-time staff support, it had proven almost impossible for that body to maintain any continuity of effort over time. And responsibilities that should have been assigned to an executive-branch agency with full-time employees, such as the promulgation of administrative regulations, had instead been placed in the Commission’s hands.

The third reason why SB 50 was deficient was that it did not answer important public-policy questions that needed a clear answer. For instance, after a hemp harvest was taken out of the fields, what rules would apply to the handling and possession of its components? Could any member of the public keep the leaf and floral materials? And what about live plants and viable seeds—would it be lawful for those to be in the possession of people who were not affiliated with KDA’s pilot program? SB 50 did not answer any of these questions.

LEGISLATIVE CHANGES LEAD TO EXPLOSIVE GROWTH

The 2017 General Assembly enacted a sweeping overhaul by passing Senate Bill 218 at KDA’s request.10 Without the enactment of SB 218, the subsequent explosive growth in Kentucky’s hemp program would not have been possible. The bill contained several important features that had emerged from the top-to-bottom review
undertaken the previous year. First, the Industrial Hemp Commission was scrapped; instead, its powers would be fully transferred to KDA. Importantly, this transfer of responsibilities included the authority to promulgate administrative regulations. In addition, under SB 218, KDA would receive ideas and input from stakeholders would be provided to KDA by means of a new 16-member Industrial Hemp Advisory Board, but KDA would not need to ask for its permission.12

SB 218 also drew a clear line separating from those activities that required a license (growing, handling, and processing it into a marketable product; and possessing living plants, viable seeds, leaf material, and floral material) from those that did not (buying a finished product derived from hemp; and possessing parts of the harvested plant other than viable seeds, leaf material, and floral material).13

Shortly after the Governor signed SB 218 into law on March 20, 2017, KDA went to work to formulate the administrative regulations that would give program participants an even clearer view of how the program would work. This work culminated in the promulgation of a separate guide for licensed growers, licensed processors, and affiliated university researchers.14

With the statutory and regulatory framework in place, KDA’s hemp program was ready for significant growth. In 2018, the number of acres planted more than doubled over the previous year, jumping from 3,200 to 6,700. In the 2019 growing season, the acreage is likely to double again, and the number of licensed growers has more than quadrupled, jumping from 210 in 2018 to almost 1,000 in 2019.

The economic impact numbers speak for themselves. At the end of 2017, Kentucky’s licensed processors reported $16.7M in gross product sales; in 2018, that number jumped to $57.75M. In 2018, the processors’ reported payments to farmers exceeded $17.5M, more than double the $7.5M that had been reported the previous year. And the number of full-time jobs reported by processors in 2018 was 281, more than triple the number (81) that had been reported the previous year. To date, more than $100,000,000 in capital investments has been reported by Kentucky processors, and that number is only expected to grow in the years to come.15

ANOTHER BIG STEP FORWARD

In April 2018, Senate Majority Leader Mitch McConnell (R-Ky.) introduced his Hemp Farming Act of 2018 during a joint press conference at KDA’s campus in Frankfort. The McConnell bill later was included in the 2018 Farm Bill which President Trump signed into law on December 20, 2018.

The 2018 Farm Bill lays the groundwork for even more expansion of Kentucky’s hemp industry by making some important changes in federal law. First, it removes hemp from the list of substances that are subject to the Controlled Substances Act of 1970. Second, it makes hemp growers eligible to participate, on equal terms with other crops, in funded research programs at USDA and for coverage under federal crop insurance programs. Third, it prohibits states from interfering with interstate shipments of hemp harvests passing through their jurisdictions.16

Instead of mandating a one-size-fits-all program for the regulation of hemp at the federal level, the Farm Bill instead adopts a “cooperative federalism” approach by allowing state departments of agriculture to remain in the primary regulatory role over the production of hemp within their jurisdictions. A state can submit a “state plan” for the regulation of hemp that is tailored to meet its unique needs. So long as the state plan meets certain minimal criteria established by Congress (for example, a sampling and testing program to verify that harvested hemp materials comply with the 0.3% delta-9 THC limit), each state remains free to regulate the crop as it sees fit.17

Fortunately for our farmers and processors, Kentucky’s existing hemp program already meets the federal requirements, which means that our program can continue without significant disruptions. The author submitted Kentucky’s State Plan, the very first in the nation, to USDA Secretary Sonny Perdue just moments after President Trump signed the bill into law. To date, numerous states have modeled their hemp programs on the framework we have built here in Kentucky.

Many challenges remain before us, but Kentucky continues to lead the way with hemp, just like it did in the era when our ancestors grew it generations ago.  

ABOUT THE AUTHOR
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ENDNOTES
2. See id. § 11.
3. See id. § 3.
5. See id. § 11(6).
6. Section 7606 of the 2014 Farm Bill is codified as 7 U.S.C. 5940.
7. If. at (b)(2).
8. See Section 7606(a)(1).
11. See KRS 260.862.
13. See KRS 260.858(3).
17. See id. §§ 7129, 7501, 11102.
18. See id. § 10114.
19. See id. § 10113 (creating a new Section 297B, “State and Tribal Plans”).
In 1992, the United States Supreme Court in Planned Parenthood of Southeastern Pennsylvania v. Casey upheld the precedent set in Roe v. Wade that the right to an abortion before a fetus attains viability is a constitutionally protected liberty interest of a woman. The Supreme Court went on to explain that states cannot interfere with this protected interest. However, the Supreme Court’s rulings have not stopped Kentucky—and other states—from attempting through legislation to curtail access to abortion services.

Kentucky defines viability as “that stage of human development when the life of the unborn child may be continued by natural or life-supportive systems outside the womb of the mother.” The Supreme Court recognized states have legitimate interests to protect the health of the woman seeking the abortion, as well as the life of the fetus that could become a child, and could pass legislation to further this legitimate interest as long as the state did not unduly burden the woman’s right to choose. The Supreme Court stated that “a finding of undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a
nonviable fetus.” The Court noted that a statute enacted for this purpose is invalid.\(^4\)

Arguably, the Planned Parenthood v. Casey decision is more important than Roe v. Wade because it not only reaffirmed the constitutional right to an abortion, but also provided guidance to states on how to regulate abortion access. The Supreme Court gave further guidance in Whole Woman’s Health v. Hellerstedt where it reiterated that viability is the point where states may begin limiting abortion access.\(^5\) The Court opined that states must weigh the stated governmental interest versus the burden imposed by the imposition of restrictive laws affecting a woman’s ability to obtain an abortion.\(^6\)

In recent years, state legislative bodies have begun passing targeted regulations of abortion providers, or TRAP laws. These laws specifically target facilities providing abortion services. Proponents argue these laws benefit the health and safety of women and unborn children. Opponents counter that these laws whittle away at a woman’s constitutional right to an abortion and are medically unnecessary. The 2019 Kentucky legislative session saw the passage of four bills impacting abortion access in the Commonwealth, continuing a recent trend by the General Assembly.

House Bill 5 was introduced to the House of Representatives on Jan. 10, 2019, and subsequently signed into law by Governor Matt Bevin on March 19, 2019. The Act’s stated purpose is to protect unborn children from discriminatory abortive procedures. Should a woman wish to obtain an abortion due to a fetal diagnosis of disability or due to sex, race, color, or national origin, she would be barred under this legislation to do so, unless a limited medical emergency exists. The American Civil Liberties Union (ACLU) challenged the legislation on March 14, 2019.\(^7\) The ACLU asserts the Act is unconstitutional, arguing that the state is banning abortion prior to viability in certain circumstances. Additionally, the Commonwealth is violating a woman’s Fourteenth Amendment right by seeking specific reasons for obtaining an abortion. Because the Act was granted on an emergency basis, the lawsuit sought a temporary restraining order so patients would not be turned away from abortion providers during the pendency of the lawsuit. A restraining order was issued by the U.S. District Court on March 20, 2019, temporarily enjoining the Kentucky governmental agencies from enforcing or complying with House Bill 5.\(^8\) In his order, Judge David Hale reiterates the holding of Casey is clear: ‘a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.”\(^9\) This restraining order was extended on March 27, 2019 through the date of a final ruling in the case.\(^10\)

Senate Bill 9, known as the Fetal Heartbeat Bill or Six Week Ban, was signed into law by Governor Bevin on March 15, 2019. This legislation requires abortion providers to determine whether a fetal heartbeat can be detected. This legislation modifies Senate Bill 5, signed into law in 2017, that prohibits abortion if the gestational age of the unborn child is 20 weeks or greater absent medical emergency. The Act defines a fetal heartbeat as “cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.” If this cardiac activity is detected, the provider is prohibited from performing the abortion, unless a medical emergency exists. However, a fetal heartbeat can occur at six weeks, prior to viability. The ACLU filed a verified amended complaint against this legislation on March 15, 2019.\(^11\) The U.S. District Court issued a temporary restraining order on March 15, 2019,\(^12\) which was extended on March 27, 2019 through the date of a final ruling.\(^13\) This legislative change in Kentucky modifies Senate Bill 5, signed into law in 2017, that prohibits abortion if the gestational age of the unborn child is 20 weeks or greater.

With the passage of Senate Bill 9, Kentucky joins other states in passing “six week ban” legislation. In 2013, North Dakota was the first state to enact this type of legislation. Lower courts ruled the legislation unconstitutional, relying on Roe v. Wade, and an appeal was rejected by the United State Supreme Court.\(^14\) Iowa passed a similar bill in 2018, which was later deemed unconstitutional.\(^15\) As of the date of this article,\(^16\) four states have enacted legislation in calendar year 2019 to ban abortion at six weeks: Kentucky, Mississippi, Ohio,\(^17\) and Georgia.\(^18\) Several other states have similar bills, moving within their respective chambers of government.

Senate Bill 50 was signed by Governor Bevin on March 26, 2019. This Act amends KRS 213.101 and codifies reporting requirements of abortions induced by prescribed medication. The legislation mandates that the abortion provider shall verbally inform the woman about the ability to reverse the medically induced abortion. Though no legal challenge has been brought against Senate Bill 50 to date, there is inconclusive data to substantiate that the abortion reversal process is effective.\(^19\)

House Bill 148, also known as the Human Life Protection Act, was signed into law on March 26, 2019. This Act states that should the United States Supreme Court reverse Roe v. Wade, or should an amendment to the United States Constitution be adopted restoring state authority to prohibit abortion, no person can provide abortion services in Kentucky. Any provider who violates the Act’s prohibition on abortion can be found guilty of a Class D felony. Kentucky joins several states who have enacted, or are in the process of enacting, such “trigger” laws.\(^20\)

Kentucky’s attempts to restrict access to abortion services are not limited to the recent 2019 bills which were passed. Prior legislation in Kentucky has been enacted regarding abortion access, some of which is currently ensnared in litigation. In 2016, Senate Bill 4 was signed into law. This Act requires women seeking an abortion to meet in person with the abortion provider 24 hours prior to the procedure in order to provide voluntary and informed consent. Prior to this Act, women were permitted to obtain this type of information over the phone. An amendment was added to Senate Bill 4 allowing the meeting to also be held via real-time telehealth visual services.

In 2017, House Bill 2 was enacted which required ultrasounds for women obtaining abortions and for providers to narrate and
describe the ultrasonic images. The woman must also listen to the fetal heartbeat at the time of the ultrasound. The ACLU challenged the law in 2017. The U.S. District Court granted summary judgment, finding House Bill 2 violated the First Amendment. Kentucky appealed to the Sixth Circuit Court of Appeals. On April 4, 2019, House Bill 2 was upheld by a 2–1 vote. The majority rejected the First Amendment argument and held that the law requires relevant information for the patient.

House Bill 454 was passed in 2018 and bans an abortion procedure known as D&E, or dilation and evacuation, except in cases of medical emergency. This procedure is typically used in the second trimester of pregnancy. The ACLU challenged this law in U.S. District Court in April of 2018. The case went to trial in Louisville on Nov. 13, 2018, and a decision is pending as of the date of this article.

In 2017, Kentucky nearly became the only state in the United States without an abortion clinic. Kentucky took aim at the only clinic in the Commonwealth, located in Louisville, when it threatened to revoke its licensure. The Commonwealth alleged the clinic did not have appropriate transfer agreements with other facilities. At issue was a 1998 statute requiring abortion facilities to have written agreements between acute care hospitals and ambulance services. Proponents of the law say it is necessary to protect patient safety. Opponents state it is another example of targeted restrictions of abortion providers to force a shutdown of the clinic. The ACLU filed its challenge in U.S. District Court on March 29, 2017. After a three day trial in September of 2017, the District Court struck down the law and regulation in a 2018 ruling. The Commonwealth appealed to the Sixth Circuit in February of 2019 and is still pending.

With the recent flurry of legislation, and subsequent litigation, this is an area of law that is developing day by day. It appears several states are in a race to make it to the United States Supreme Court on this topic. It is important to remember not only precedent set by Roe v. Wade, but also that set by Casey and Whole Woman’s Health. All of these cases play a critical role in the analysis of state laws restricting abortion.

ENDNOTES
3. KRS 311.720(16).
6. Id. at 2309.
9. Id.
16. The date of this writing was May 8, 2019.
17. Elizabeth Nash, A surge in bans on abortion as early as six weeks, before most people know they are pregnant Guttmacher Institute (March 22, 2019), https://www.guttmacher.org/article/2019/03/surge-bans-abortion-early-six-weeks-most-people-know-they-are-pregnant.
25. KRS 216B.0435.

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LEGISLATIVE UPDATE

OPEN COURTS:  
Section 14 of the Kentucky Constitution and Its Impact on Tort Reform and Other Litigation-Altering Legislation

BY: CHADWICK A. MCTIGHE AND DALLAS J. SELVY

All courts shall be open, and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.¹
The right of open access to the courts conferred upon Kentuckians by Section 14 of Kentucky’s Constitution takes on added importance in today’s era of tort reform and other efforts by the General Assembly to alter the paths to judicial relief. The issue of open access most recently was addressed by the Supreme Court of Kentucky in Commonwealth v. Claycomb.1 There, the court struck down Kentucky’s Medical Review Panel Act, which generally required all medical malpractice-related claims against health care providers to undergo pre-litigation review by a medical review panel. The court held that the statutory pre-suit requirements created an unconstitutional delay of a litigant’s right to seek judicial relief, in violation of Section 14 of the Kentucky Constitution.3

Reasonable minds can disagree as to the merits of litigation-altering legislation such as the Medical Review Panel Act. To some, such legislation is an infringement on the constitutional right to open access to the courts—or, worse, an effort to erect an outright barrier to the courthouse door. To others, tort reform and other legislation changing the playing field for certain types of litigation is a vital part of encouraging business development and leveling what is perceived as an unfair playing field for certain classes of defendants. The reality likely lies somewhere between the extremes. Regardless of one’s viewpoint, attorneys practicing in this Commonwealth would be wise to take note of limits imposed by the Constitution on the General Assembly’s ability to alter the landscape of certain types of litigation.

**OPEN ACCESS AND KENTUCKY COURTS**

*Claycomb* provides a succinct history of the constitutional right of open access to the courts and its application to contemporary legislative acts.4 As explained by the court, “For more than two and a quarter centuries, the language of Section 14 has appeared verbatim in all four of Kentucky’s constitutions...[but] the remedy guarantee provided for in Section 14 is an ancient right dating from Magna Carta in 1215.”5 The right to petition the courts for relief traces back to English common law and is a fundamental principle on which our common law is based.6

One significant question emerged during the lengthy history of this right: does Section 14 apply to limit only the judiciary, or does it prevent the legislature from limiting access to the courts as well?7 At least as early as 1829, Kentucky’s highest court recognized a duty of the judiciary to shield citizens from oppression and demonstrated a willingness to strike down legislation hindering the rights of plaintiffs to pursue judicial relief for alleged injuries.8 In the wake of extreme backlash over the perceived judicial usurpation of power—backlash that “nearly destroyed [the] court”—Kentucky’s highest court retreated a bit in the late 1800s, adopting the view that Section 14 limited only the judicial branch.9 Thus, for a time, the courts recognized no real limitation on the ability of the legislature to formulate structures affecting access to the courts.10

The pendulum swung back the other way in *Ludwig v. Johnson.*11 There, the court “establish[ed] the open-courts and jural rights doctrines in Kentucky jurisprudence.”12 Specifically, the court held that Section 14 must be read in conjunction with Section 26 of the Constitution and that doing so compels the conclusion that the legislature cannot limit access to the courts any more than can the judiciary.13 As a result, for nearly 100 years, Section 14 has been applied to all branches of Kentucky government.14 *Claycomb* confirmed that *Ludwig* remains in full force and that Section 14 applies to all branches of government.15

**COMMONWEALTH V. CLAYCOMB AND OPEN ACCESS**

In *Claycomb*, the Kentucky Supreme Court considered whether Kentucky’s Medical Review Panel Act violated Section 14 of the Kentucky Constitution. Having accepted transfer of the appeal to directly review the Franklin Circuit Court’s judgment invalidating the Act on several grounds, the Supreme Court was unanimous in striking down the law as violating Section 14. The majority opinion authored by Chief Justice Minton (and joined in full by Justices Hughes, VanMeter, and Venters) held that, because medical malpractice claims are actions for death and personal injury protected by Section 14, the Act’s pre-suit requirements constituted an unconstitutional delay on the right of access to the courts for those pursuing such claims. Leaving no doubt as to the effect of its ruling, the court made clear that the entirety of the Act “violates Section 14, and there is no set of circumstances...under which the Act would be valid.”16

*Claycomb’s* importance extends beyond the particulars of the Medical Review Panel Act. Under *Claycomb*, Section 14 prohibits all restrictions, and not just unreasonable limits, on a litigant’s right to seek “immediate redress for a common-law personal-injury claim in the adjudicatory forum of the claimant’s choosing.”17 Justice Keller’s concurrence (joined by Justices Cunningham and Wright) did not view Section 14 as precluding all pre-suit conditions that the General Assembly might establish in various contexts, but the concurring justices agreed that the Act “clearly interferes with a fundamental right to access the courts in an unreasonably broad way.”18 The court also explained that, while the General Assembly may provide means of adjudication other than through the courts, the alternate means cannot be mandatory, and the claimant’s waiver of right to immediate access to the courts must be both voluntary and meaningful.19

**RECENT LEGISLATION IMPLICATING SECTION 14**

The *Claycomb* court’s robust restatement of Kentuckians’ right to open access of the courts would seem to close the door to legislation potentially impairing the rights conferred by Section 14. Based on legislation introduced in the most recent legislative session, this does not appear to be the case.

For example, in the 2019 session, the General Assembly enacted HB 429. The legislation repealed all sections of the Medical Review Panel Act, and instead created a new section requiring plaintiffs to file certificates of merit in medical malpractice actions; the statute provides that:

1. [a] claimant commencing any action identified in KRS 413.140(1)(e), or against a long-term care facility as
defined in KRS 216.510 alleging that the long-term care facility failed to provide proper care to one (1) or more residents of the facility, shall file a certificate of merit with the complaint in the court in which the action is commenced.

(2) “Certificate of merit” means an affidavit or declaration that: (a) the claimant has reviewed the facts of the case and has consulted with at least one (1) expert qualified...to give expert testimony as to the standard of care or negligence....

This certificate of merit requirement applies to any action against a long-term facility or “a physician, surgeon, dentist, or hospital…for negligence or malpractice.”

House Bill 429 became law without the governor’s signature in March 2019 and takes effect on June 27, 2019. Notwithstanding the Court’s decision in Claycomb, the statute passed the House by a vote of 69–24 with seven members not voting, and the Senate by a vote of 37–0. Though the statute has exceptions, its general requirement that a plaintiff consult with (and presumably pay for) an expert to review and attest to the merits of the claim before filing a suit arguably may serve to deny or delay access to the courts for individuals pursuing these claims. It remains to be seen whether such delay may run afoul of Claycomb.

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towards comparable efforts to limit judicially recoverable outcomes by limiting judicially-recoverable outcomes for those pursuing personal injury actions. This bill was introduced in the Senate but was not voted out of committee.

Not all rights-altering bills introduced in the last session arose in the context of medical malpractice and personal injury actions. For example, Senate Bill 12 would have created civil immunity for property damage to a vehicle in connection with certain efforts to save a dog or cat in immediate danger of death.29 The bill passed the Senate by a vote of 33 to one (with three not voting) and was sent to the House Judiciary Committee where it was not called for a vote.

Senate Bill 2 presents a particularly interesting example of legislative efforts to alter the course of judicial remedies. The bill, in essence, provided that certain claims traditionally required to be brought in Franklin Circuit Court could be transferred elsewhere.30 The bill provides that an action that:

[i]ncludes a claim for declaratory judgment or injunctive relief, challenges the constitutionality of a Kentucky constitutional provision, statute, or administrative regulation, and is brought against any state official in his or her official capacity, including but not limited to any executive branch office agency, officer, and public servant as defined in KRS 11A.010, or the General Assembly….or the Legislative Research Commission, may be removed by one (1) or more of the defendants that are public offices, agencies, officers, or employees, to the Circuit Court of another county in Kentucky, subject to [certain] requirements.[3]

The new county in which the action would lie was to be determined by a random draw by the clerk of the court in the original county in which the action was filed.31 The bill passed the Senate 26 to nine (with two not voting) with certain provisions deleted. It was sent to the House Judiciary Committee but did not come up for a final vote. This bill, while not limiting access to courts in general, would potentially have limited access to a specific circuit court and arguably could serve as an unconstitutional delay.

CONCLUSION
The debate over tort reform and other legislative efforts to alter the terms on which plaintiffs can invoke their right to seek judicial redress for alleged injuries is unlikely to end any time soon. If the most recent legislative session is any indication, the debate may make its way back into the judicial system in the near future as well.28

ENDNOTES
2. 566 S.W.3d 202 (Ky. 2018).
3. See id. at 210–18.
4. Id. at 206–10.
7. Claycomb, 566 S.W.3d at 206.
8. See id. at 207 (citing various cases and authorities).
10. Werner, 280 S.W.2d at 215.
11. Claycomb, 566 S.W.3d at 207 quoting Werner, 280 S.W.2d at 216.
12. Id. ‘The jural rights doctrine essentially “states that the General Assembly has no authority to abolish or restrict a common law right of recovery for personal injury or wrongful death.”’ Taylor v. King, 345 S.W.3d 237, 242 (Ky. App. 2010).
13. Claycomb, 566 S.W.3d at 208 (quoting Werner, 280 S.W.2d at 216).
14. Id.
15. Id.
16. Id. at 218.
17. Id. at 213.
18. See id. at 219–21 (Keller, J., concurring). Justice Cunningham also authored a separate concurring opinion concluding that the Act violated the prohibition on special legislation contained in Section 59(5) of the Constitution. Id. at 218–19 (Cunningham, J., concurring).
19. Id. at 214.
21. KRS 413.140(1)(e).
22. 2019 Ky. HB 289.
23. Id.
24. Id.
25. Id.
26. Id.
27. Id.
29. 2019 Ky. SB 2.
30. Id.
31. Id.

ABOUT THE AUTHORS
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DALLAS J. SELVY is an associate in Stites & Harbison’s Louisville office, practicing in the business litigation service group. Selvy’s practice is focused on civil litigation and appellate practice. Prior to joining Stites, she was a staff attorney for the Honorable Irv Maze at the Kentucky Court of Appeals and previously served as an Equal Justice Works AmeriCorps Veterans Law Fellow at the Legal Aid Society where she represented indigent veterans in an array of civil actions.
One of my favorite parts of my job as Dean of the University of Louisville School of Law is interacting with our alumni. Our graduates are using their law degrees in many different ways, including as elected officials. I am grateful to these lawmakers for their public service.

In reflecting on the 2019 Regular Session of the Kentucky General Assembly, I reached out to our Louisville Law alumni who are serving in the Kentucky House and Senate to get their reflections on this most recent session and its impact on the Commonwealth.

I asked them each what they saw as the most significant piece of legislation passed. Their answers are below.

**REPRESENTATIVE McKenzie Cantrell 38th District**

Representative Cantrell points to the Kentucky Pregnant Workers Act.

“The pregnant worker new law gives guidance to employers on short-term, reasonable accommodations that employers can make to accommodate their pregnant workforce,” she says, adding that typical accommodations would be things like more frequent rest breaks, use of a footstool and more access to water. In addition to pregnancy, the law also provides for accommodations related to childbirth or related medical conditions.

“We really want to discourage litigation in this area because no one in society benefits from a woman who is pregnant or has just given birth to a child and is without a job, especially for something that could have been pretty reasonably handled for the short term that a woman is pregnant,” says Representative Cantrell.

**REPRESENTATIVE Jason Nemes 33rd District**

“I think the major legislative success is the school safety bill.

“After the school shooting in Marshall County in 2018, the House and Senate put together a bipartisan group of legislators to travel the Commonwealth and meet with interested groups and citizens. Those meetings led to a bill that is designed to make our schools safer.

“This coming session is a budget session and I look forward to ensuring that the new positions the bill called for are funded, which include more counselors to help identify and address students with mental and emotional needs, among other things.

“I am proud of the substantive result of the bill, but I am also proud of the way our citizens and government came together to thoughtfully address this very important issue.”
President Stivers also points to the passage of Senate Bill 1, the School Safety and Resiliency Act, which was introduced after the January 2018 shootings at Marshall County High School that killed two students and injured others.

“We took very a measured approach to bringing forth a piece of legislation, and it mirrored legislation in the house that was House Bill 1,” President Stivers says. “This was an effort by both House and Senate, Republican and Democrat, to really sit down and look and see what would be an effective way to better protect our schools, which ultimately means our teachers, staff and children.”

In the year after the shootings, members of a specially created School Safety Working Group traveled across Kentucky to meet with school system and county officials to gather their perspectives and recommendations. The group came away with a strong framework that included items such as hardening targets and increasing access to mental health care, says President Stivers.

With the passage of the bill, lawmakers have a year to inventory the needs of each school system in anticipation of next year’s budget session.

Senator Neal highlights the passage of Senate Bill 57, which expands the number of Kentuckians eligible to have low-level felonies expunged from their criminal records.

The new law, which went into effect July 15, expands previous criteria for expungement, reduces the application fee from $500 to $250 and allows for 18 months after a deposit of $50 to pay the balance of the application fee.

“It helps restore the rights, generally speaking, of those who have paid their debt to society. I think this is a step in the right direction,” says Senator Neal, who adds that he doesn’t think the new law has gone far enough.

Senator Neal also points to several other bills whose passage he sees as significant:

- Senate Bill 1, the school safety bill Representative Nemes highlights above;
- Senate Bill 6, which requires the disclosure of fees paid to executive branch lobbyists and prohibits executive branch lobbyist compensation contingent on awarding of a government contract or based on a percentage of a government contract awarded;
- Senate Bill 97, which requires the Kentucky State Police to create an online tracking system for sexual assault forensic evidence kits; and
- House Bill 11, which bans all tobacco, alternative nicotine and vapor products from schools.
The legal insights of Salmon P. Chase College of Law professors literally reach across the nation.

Professors have recently published or will publish articles in law reviews ranging geographically from the nearby to the southern border to the Pacific Coast. Topically, they cover issues such as free speech, police searches, vague legislation, and disabled workers.

**JENNIFER KINSLEY** will publish “Private Free Speech” in the University of Louisville Law Review and “Secondary Legislation” in the University of Cincinnati Law Review.

- “‘Private Free Speech’ focuses on the contributions the First Amendment free speech guarantee makes to the concept of privacy generally. It argues that the right of free expression contains both speech-enhancing and speech-protective components,” she says.
- “‘Secondary Legislation’ identifies gaps in the constitutional framework by which laws that are derivative, rather than original, are assessed by courts. It proposes changes in strict and intermediate scrutiny to import an efficacy requirement into the government interest and tailoring components of constitutional analysis.”

**MICHAEL MANNHEIMER** published “Decentralizing Fourth Amendment Search Doctrine,” in the Kentucky Law Journal [107 KY. L.J. 169 (2019)]. It argues that there is a close relationship between the “reasonable expectation of privacy” approach to Fourth Amendment search doctrine and a “trespass-based” approach.

- “Expectations of privacy and trespass constitute, not two distinct tests, but rather two points on the same evolutionary scale,” because “[o]ur notions of trespass have as their touchstone the very same social norms that form the backbone of the reasonable expectation of privacy test,” he wrote.

**LAWRENCE ROSENTHAL** published “Most-Qualified-Applicant Hiring Policies or Automatic Reassignment for Employees with Disabilities? Still a Conundrum almost Thirty Years after the Americans with Disabilities Act’s Enactment” in the Baylor Law Review [70 Baylor L. Rev. 715 (2018)].

- “[I]f disability rights advocates want employees with disabilities to have more than only the right to be considered for vacant positions, that outcome will most likely have to come from Congress, and not from the courts. And with the current leanings of the House [at the time the article was written], Senate, and president, that outcome seems unlikely,” he wrote of his analysis.

Combined, the articles cover a lot of territory – intellectual and geographic.
University of Kentucky College of Law partnered with the Kentucky Bar Association Young Lawyers Division to host “Why Choose Law Program” last summer. Five students ranging from high school juniors to college freshmen attended the two-day event in Lexington.

“It was an honor for UK Law to partner with Seth Fawns and Aida Almasalkhi, who represented the KBA Young Lawyers Division in planning such an impactful pipeline program for what may very well produce future attorneys, judges, business leaders, and elected officials across our Commonwealth,” said Danny Murphy, Assistant Dean of Community Engagement and Diversity at UK Law.

The students traveled from various parts of Kentucky and participated in events that illustrated the opportunities a career in law has to offer and what educational requirements must be met to reach their goals. Activities included attending an attorney panel discussion at Gatton College of Business and Economics that included an open discussion with several minority legal practitioners and a mock law class held by Christopher G. Bradley, Assistant Professor of Law at UK Law.

Participants also attended the annual Kentucky Bar Association Convention and the “Better NOT Call Saul” continuing legal education seminar regarding ethics. “I think the bar convention offered the participants a great opportunity to see all the different opportunities available in the field of law,” said Fawns. “Everyone at the convention was very friendly and supportive.”

Jimmi Nicholson, Director of Admissions at UK Law, joined on a panel by admissions representatives from the University of Louisville Brandeis School of Law and Northern Kentucky University Chase College of Law, spoke with the students about law school admission as well as various program opportunities, including the juris doctor (J.D.) degree program and dual degree programs: J.D./Master Public Health, J.D./Master Health Administration and J.D./Master Business Administration.

“I believe the program gives participants both an idea of what the profession of law has to offer and a way to get there,” said Fawns. “We also saw great benefit for the professionals who participated.” Fawns said that some of the discussion panel members have reached out to inquire about ways to help with other events and one of the panel members now serves on the KBA YLD Diversity and Inclusion team. “This profession, like all professions, benefits from diversity; if there is a way to bring people from diverse backgrounds, with different experiences, skills, and ideas together, the profession can continue to grow,” said Fawns.

Participants stayed overnight in a new dorm on UK’s campus, toured both campus and downtown Lexington, toured the courthouse and observed a high-profile murder trial case, and met with Rewa Zhakaria, an Assistant Fayette Commonwealth’s Attorney.

The students were immersed in a well-rounded program, met potential mentors in the legal profession and were exposed to many legal education and career opportunities. “(The students) recognized how unique the opportunities they had were, such as meeting with one of the prosecutors from the Office of the Fayette Commonwealth’s Attorney, and watching a live trial,” said Fawns. “The professionals involved also offered positive feedback; everyone was more than happy to help out with the program. I think that says a lot about how wonderful of a legal community we have in the Commonwealth.”

The KBA Young Lawyers Division “Why Choose Law Program” won third place in the American Bar Association’s Young Lawyers Division’s Embracing Diversity Challenge.
When I joined the Young Lawyers Division Executive Committee in 2012 I didn’t know what the YLD did or what I was getting myself into. I had just passed the bar and thought bar involvement might look good on my resume and honestly didn’t give it much thought beyond that. Seven years later I’m still involved, but for completely different reasons.

Since joining the YLD I’ve moved three times, bought a house, changed jobs twice, and traveled the long and difficult road from associate to partner in a law firm. During that time I’ve also had the pleasure (and sometimes displeasure) of serving on numerous boards of various other organizations. Some have been effective others dysfunctional, some active while others have been passive.

However, of all the boards and organizations I have been involved with, my involvement in the YLD has been among the most professionally and personally rewarding of my career. We are an organization of lawyers from all over the state, practicing in every area of the law, from big firms and in house to small firms and solos, who come together for the common purpose of doing good within the context of our profession. Our members have heterogeneous political affiliations, religious beliefs, ethnicities, and sexual orientations, yet those differences are a source of strength rather than weakness for accomplishing our shared mission.

As lawyers we have unique traits that make an organization of lawyers different from any other. We are the people who show up when things need to be done. We are the people who do the boring and often thankless tasks that significantly impact peoples’ lives. We are the ones other people call when they have a problem.

From Paducah to Pikeville and everywhere in between, lawyers are the bedrocks of most organizations and communities throughout the state. We dedicate countless hours to public service on top of honoring our family commitments and taking care of our clients. We are frequently the busiest people in the room, and when someone asks for help we usually ask how we can be of service. That is why as a group I think we contribute as much if not more to the health and vitality of civic society than any other profession.

However, there are down sides to being everything for everyone, and the go to person in a crisis. Lawyers take care of others, but frequently forget to take care of ourselves. According to a recent survey by the Florida Bar’s Young Lawyers Division: 39 percent of lawyers reported feeling anxiety and depression that significantly impacted their job or lasted more than four weeks; while 19 percent said they experienced anxiety only, and four percent reported depression only. Thirty-two percent did not experience either, and six percent weren’t sure.1

With numbers like this it is hard to deny that we are a profession in distress. People rarely come to us because life is great and they have no problems. Putting fires out is what we do. So there will always be an element of stress to being a lawyer. That being said there are more and less skillful ways of managing that stress and coping with it.

We all have different ways of coping with our stressful and demanding lives. Some people shop, eat, or watch television, others may drink or smoke; many do some combination of these activities to soothe and comfort themselves. According to a national study performed by the Hazelden Betty Ford Foundation in conjunction with the ABA Commission on Lawyer Assistance Programs, young lawyers are most at risk for substance abuse and mental health problems.2

YLD LOOKING TO THE FUTURE

Focusing on Lawyer Wellness
This national survey, similar to the Florida Bar Association's survey found that 28 percent of the lawyers responding experience depression, 19 percent experienced anxiety and 23 percent experienced stress, all higher rates than were reported in earlier studies. The study further found that 20.6 percent of the lawyers and judges surveyed reported problematic alcohol use, and by using a variation of the questionnaire that focused solely on the frequency of alcohol consumption found that 36.4 percent of the respondents qualified as problem drinkers.

These studies suggest that lawyers as a whole are not doing a very good job of skillfully coping with the stresses of the profession, and that young lawyers in particular suffer from not being adequately prepared to cope with that stress in healthy ways. About two years ago this disturbing data and my own experience as a young lawyer motivated me to reach out to Kentucky Lawyers Assistance Program Director, Yvette Hourigan, to see how the Young Lawyers Division and KYLAP might work together on issues relating to lawyer wellness. The goal was to create programs and resources that help lawyers develop good coping mechanisms early on, before they develop bad ones that lead to addiction, depression, and anxiety.

With little more than a few conversations with KYLAP (and the tireless dedication of Yvette Hourigan to lawyer wellbeing) and my hope for closer cooperation between the YLD and KYLAP, the Board of Governors is currently reviewing a plan to create a Lawyer Wellness Committee. The details of what this committee will look like are still being formulated, but we hope it will consist of various stakeholders, a YLD representative, and a member of the Kentucky Supreme Court. The hope is that this committee will be able to recognize the poor state of lawyer wellness and start exploring and implementing ways for lawyers to continue doing the most good but in a more sustainable and healthy way.

Therefore, the focus of my year as chair of the YLD will be the realization of the Lawyer Wellness Committee and the full participation of the YLD in its formation and ongoing efforts to improve lawyer wellbeing. If you would like to be a part of this project or any of the other wonderful programs sponsored by the YLD please contact me at horn@kchfirm.com. For more information about YLD programs you can visit https://www.kybar.org/page/YLD.

ENDNOTES
3. Id.
4. Id.

ABOUT THE AUTHOR
ZACHARY A. HORN is a managing partner of the law firm of Kirkland, Cain & Horn, PLLC, in Frankfort, Ky., where here practices in the areas of business law, civil litigation, banking, creditors’ rights, and bankruptcy. Horn is a graduate of Transylvania University, where he graduated with honors, and of the University of Kentucky College of Law, where he served on both the Moot Court Board and Bankruptcy Moot Court Board.

He is the current chair of the Young Lawyers Division and has served on its Executive Committee since 2012. In addition to his service on the Executive Board of the Young Lawyers Division, Horn is the secretary/treasurer of Kentucky Capital Development Corporation, a member of the Frankfort Rotary Executive Committee, the Franklin County Democrats Executive Committee, the Church of the Ascension (Episcopal) Vestry, the Episcopal Diocese of Lexington Executive Committee, and serves on the planning committee for the University of Kentucky/CLE Consumer Bankruptcy Law Conference.

Horn is also a frequent speaker and writer on issues ranging from attorney wellness and mindfulness in the law to more nuts and bolts issues relating to civil litigation and creditors’ rights.

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Reasonable minds can differ as to how best to organize a legal argument. Acronyms abound: IRAC, CREAC, TREAT, the list goes on. All of these structures are based on the traditional syllogism, which uses deductive reasoning to persuade the reader.

The traditional syllogism is so persuasive because it takes a major premise and connects it to a minor one; a general rule is then applied to a factual situation. But that’s just the Rule and Analysis part of the IRAC format. The I and the C, shorter and often overlooked, are also important to guide the reader through the syllogism, emphasizing the conclusions the writer wants the reader to draw.

In that way, what’s important to remember is that the traditional IRAC format are based on the concept of organizing your arguments so they are in an easy-to-follow and easy-to-anticipate format. It’s the anticipation aspect of organization that I want to focus on here.

Legal writing is not about creating a mystery or a sense of suspense; it’s about persuading. No one reading a legal document wants to be surprised at the writer’s conclusions or, even worse, confused as to what the writer is trying to say. Spoilers are welcome here.

Instead of hiding your conclusions from your reader, they should always know where they are headed and what their ultimate destination is. That’s why IRAC, CREAC, etc., start with a conclusion or issue statement, so the reader will know what the next few paragraphs will be about.

Similarly, the so-called “umbrella paragraph” is a great example of telling the reader where they’ll be going. It literally has a roadmap in it that details what you will argue and in what order. By including a well-organized introductory section, the reader is put at ease and can be easily led through the arguments that were outlined at the beginning of the document. So when writing a legal document, remember that your reader is more easily persuaded if they know where they are headed. That means having good umbrella paragraphs, issue and conclusion sentences before you introduce a new issue or argument, and strong thesis sentences that tell the reader what each paragraph is about. Don’t create a mystery the reader is left to solve because you might not like what they come up with.
Leverage Your Resources And Your Bar Dues

BY: AMY D. CUBBAGE

All lawyers are busy people, and it’s hard enough to address client needs, much less your law practice management needs. You need to find ways to leverage all the resources at your disposal, but it can be hard to have time to assess what resources are at your disposal. The KBA, as part of its long-term goals, has made it a priority to help aggregate resources to help Kentucky practitioners manage their practices in an efficient and ethical way.

First, check the Member Services section at the KBA’s website, kybar.org, under the tab “For Members.” You can find links to a host of service providers who have been vetted by the KBA and approved as Preferred Vendors. These vendors provide discounts as high as 25 percent to KBA members. Some of these services include financial services such as payroll processing and online payment processing, package delivery, website design, and car rentals. The KBA has also entered into preferred vendor relationships with insurance providers, including general liability, commercial liability, disability, and life insurers. Notably, the Board of Governors approved a new preferred vendor in its June meeting for the provision of cyber liability insurance. If you have not investigated cyber liability insurance, it is necessary in our increasingly necessary and interconnected online world both for the protection of your law practice and your clients. This coverage can provide coverage for cybercrime, system damage, privacy liability, media liability, and business interruption. A cyber policy and can also assist with incident response, incident reporting, network security, and court attendance costs related to any cyber liability. Many Kentucky practitioners are either unaware of this existence of this kind of coverage, or have not had the time to investigate it. Use of the KBA’s preferred vendor can be a reliable shortcut to getting this coverage in place.

Second, check the Practice Management section of the KBA website under the tab “Resources,” then “Resources for Lawyers.” This page of the website contains the dedicated Practice Management resources that KBA sections and task forces have created for your use over the years, from the inception of your law practice or a client engagement to the end of your practice. There are resources to help in opening client files, including a checklist for engagement letters and to help guide the informed consent process necessary for obtaining client conflict waivers under SCR 3.130(1.7). There are resources to help with your practice on a daily basis, including legal forms. The Law Practice Task Force is placing a priority on expanding the form offerings on the KBA website, so check back often to see when new forms are added. Finally, if you are nearing the end of your career, check the guide and forms prepared by the Task Force on Closed and Abandoned Practices, which summarizes ethical obligations and practical concerns in closing a practice.

Third, if you need online research resources, click on the “Casemaker” tab. Casemaker is an online case law database provided as a member benefit by the KBA. Casemaker will automatically recognize your login as a KBA member if you connect from the KBA website while logged in. Casemaker’s databases available to KBA members include all 50 states as well as federal statutory, administrative, and case law materials. This is a valuable benefit provided as part of your membership, supported by your bar dues.

Last, check out the general upgrades to the CLE section of the KBA website. The CLE department recently rolled out a website upgrade, which allows members to submit CLE credits online in addition to reviewing their CLE transcript. Once you submit a credit online, it will be reflected immediately. You will also find on-demand programming available, which allows you to meet your CLE requirements sitting right at your desk, as well as calendars of live offerings. The newly-expanded CLE page makes it easier than ever before to meet your annual requirements.

We all know the day-to-day management of law practice can be hard. KBA staff and leadership is making it a priority to help you with administrative tasks so you can focus on client service. Help can be just a click of the KBA website away. Be sure to take advantage of the benefits of your bar dues, and check out the available resources.

ABOUT THE AUTHOR

AMY D. CUBBAGE

is a member of the Louisville firm Ackerson & Yann and practices litigation in the areas of complex business and commercial litigation as well as Constitutional litigation. She is a frequent speaker on law and technology issues as well as attorney ethics issues. Cubbage was the 4th Supreme Court District Representative on the KBA Board of Governors for six years, where she sat on various Board committees and task forces. She is currently chair of the Rules Committee and the Judicial Evaluation Committee and is a member of the Task Force on Law Practice and the Committee on Diversity in the Profession.
Some Secure Communications Tools

BY: MICHAEL LOSAVIO

Now is probably a good time for us to revisit the nature of our secure communication systems. The enormous convenience of our cell phones and many communications applications for them, our laptops, and other devices makes us productive and connected all the time. Some, such as the “digital minimalists,” feel this is a bad thing we need to pare down. But others see it as the only way many in the practice of law can get away from the office, as the demands of the practice seem to expand to take up all the time you have. Better to file a brief on a cruise ship than to not go cruising at all…

The early opinions finding it was acceptable for lawyers to use email in compliance with our confidentiality obligations often came with caveats, though. Those opinions noted compliance was based on the current state of the technology, either expressly or by inference suggesting a later review as technology changes.

So it seemed appropriate to see what changes in our communications technologies might let us keep up with the changes that might threaten confidentiality. This is an absolutely huge field, as this information security of the modern world is just now catching up to the concerns and practices of lawyers on protecting information.

So just to begin this ongoing series of comments, I’m going to start with the applications you can download to your phone that, using Wi-Fi connections, will give you end to end encrypted communications. What more could you want?

Three popular applications for this are WhatsApp, Signal and Telegram. All are considered good, secure communications systems from the app on your phone to the same app on your recipient’s phone. End to end encryption securely encrypts your communications, whether voice or text, before it leaves your device and maintains

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that security until it is received and decrypted by the recipient. Unlike many other forms of communication-text and voice-these cannot be read through the channel, whether the service provider or a government agency.

Which would be your preference probably depends on clients. You can easily research the various features to see which is best for you. The various such applications, of which there are many, jockey for first place in the various comparison reviews each year.

For their other features you have to judge their use to you, based on the nature of your practice. You may set your device to let messages expire after a time, providing a bit of extra security. How you may store messages may also raise issues, as storage locally on another machine or in the cloud may or may not preserve the encrypted security of the messages.

For reviews on this, tomsguide.com, techworld.com, and techcrunch.com are all good sources for information on secure messaging apps. See, e.g., https://techcrunch.com/2018/12/25/cybersecurity-101-guide-encrypted-messaging-apps/

But remember, as several political figures have learned in the past few years, good confidentiality technology is only as good as your confidentiality practices. In that regard, this article from Wired Magazine is instructive: https://www.wired.com/story/encrypted-messaging-isnt-magic/

These tools can help us, but we still have to help ourselves. And that includes being sure our clients understand the risk and their responsibilities to preserve confidentiality when they use these tools. We might be startled by a text message from an inmate in a federal prison, but that may be from the TRULINCS system. The Trust Fund Limited Inmate Computer System application enables electronic messages to be exchanged between inmates and the general public, including counsel. But, as with most all such general inmate communications, whether telephone or email, it is monitored and the client must understand that. This applies to all clients, whether or not in custody.

As always, caution is advised.

Things to Come: Virtual Private Networks

ABOUT THE AUTHOR

MICHAEL LOSAVIO teaches in the Department of Justice Administration and the Department of Computer Engineering and Computer Science at the University of Louisville. Losavio holds a J.D. and a B.S. in mathematics from Louisiana State University.
Have you changed your KBA website member password lately?

Your password provides access to your KBA member profile and other “member only” info/services accessed through the website. A weak or infrequently changed password puts your information at increased risk of being accessed by unauthorized users.

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To change your password, log in to the KBA website, select Manage Profile in the top-right corner and then select “Edit Bio.”

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Visit www.kybar.org/membership to access the bar dues payment link. An administrative fee will be assessed.

The membership cycle runs July 1 - June 30 of each year. Payments are due this year on or before September 1, 2019. After that date, a late fee payment of $50 will be assessed. A notice of delinquency will be mailed after October 15 with an additional cost of $50 if dues are still unpaid.

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You depend on the Kentucky Court of Justice website for eFiling, CourtNet 2.0, trial court dockets, appellate court decisions and much more. To make the Judicial Branch’s website mobile responsive and easier to use, we’re overhauling the look and feel. Our first step is to move to a new web address in the coming weeks. You will automatically be redirected from courts.ky.gov to kycourts.gov.

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For more than 20 years, the Administrative Office of the Courts (AOC) hosted the Kentucky High School Mock Trial Tournament program. However, in 2012, as part of budget cuts to the judicial branch, the AOC cancelled funding for the program. Upon learning that the program was cancelled, Eastern Kentucky University (EKU) Mock Trial faculty members took over the program using university resources to keep the educational program going. After a few years, budget cuts to higher education made the arrangement increasingly difficult to sustain.

Attorney and teacher coaches active in the mock trial program decided to form the Kentucky High School Mock Trial Association, Inc., a 501(c)(3) nonprofit corporation, to be a permanent sponsor for the Kentucky High School Mock Trial program. The Association hosts a series of regional and state mock trial competitions designed to increase awareness of the law and justice system, foster a positive learning environment, and instill a love for competition and fair justice.

Since its formation, the main goal of The Kentucky High School Mock Trial Association, Inc., has been to facilitate accessibility of mock trial to high-school students throughout the state. While many high-school students would benefit from participating in mock trial competitions, there continue to be barriers to starting a mock trial program. The Association approached the Kentucky Bar Association for funding from the Kentucky Bar Foundation in 2018. The $5,000 grant allowed the organization to assist new programs with fee waivers and to send the state champion to nationals. Last year, 42 teams participated in the program with over 500 Kentucky high-school students competing. A recently-awarded $10,000 grant will allow the organization to continue these efforts, in addition to striving to increase socioeconomic inclusion and racial diversity in the mock trial community.

While the financial support of the Kentucky Bar Foundation has been tremendously helpful, Kentucky High School Mock Trial needs more than just funding from members of the Bar. In short, Kentucky High School Mock Trial needs you – members of the Bar – to take time from your busy schedules to volunteer your time, expertise, and mentorship to Kentucky’s youth. High-school faculty require assistance from local attorneys to serve as coaches for their young teams. Mock trial competition hosts need attorneys to serve as judges and provide constructive feedback to students on their performances.

Although the activity can be very time-consuming, veterans of the program recognize...
Over 18,000 attorneys are licensed to practice in the state of Kentucky. It is vitally important that you keep the Kentucky Bar Association (KBA) informed of your correct mailing address. Pursuant to rule SCR 3.035, all KBA members must maintain a current address at which he or she may be communicated, as well as a physical address if your mailing address is a Post Office address. If you move, you must notify the Executive Director of the KBA within 30 days. All roster changes must be in writing and must include your 5-digit KBA member identification number.

Members are also required by rule SCR 3.035 to maintain with the Director a valid email address and shall upon change of that address notify the Director within 30 days of the new address. Members who are classified as a “Senior Retired Inactive” or “Disabled Inactive” member are not required to maintain a valid email address on file.

There are several ways to update your address and/or email for your convenience.

Online: Visit www.kybar.org to make changes online by logging into the website and editing your profile.

Form: Complete the Address Changes/Updates form found at www.kybar.org, under the For Members tab, Members Request, Address Changes/Updates. Email completed form to kcobb@kybar.org OR mail to:

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

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

Address or e-mail changes?!
Notify the Kentucky Bar Association

Over 18,000 attorneys are licensed to practice in the state of Kentucky. It is vitally important that you keep the Kentucky Bar Association (KBA) informed of your correct mailing address. Pursuant to rule SCR 3.035, all KBA members must maintain a current address at which he or she may be communicated, as well as a physical address if your mailing address is a Post Office address. If you move, you must notify the Executive Director of the KBA within 30 days. All roster changes must be in writing and must include your 5-digit KBA member identification number.

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Kentucky Worker’s Compensation Hall of Fame Dinner Held in Mid-May

The inaugural Kentucky Workers’ Compensation Hall of Fame dinner was held on May 16, 2019, at the Clarion Hotel in Lexington, Ky. Nearly 230 attendees celebrated the induction of 20 members representing all aspects of Kentucky’s workers’ compensation industry including former judges, board members, attorneys, insurance company representatives, a physician and a court reporter. Eleven inductees were inducted posthumously. Those members inducted posthumously include Kelsey E. Friend, Sr., Woodrow W. Burchett, G. Chad Perry, Hon. Thomas A. Nanney, Thomas Allen Mitchell, Dr. William H. Anderson, Hon. Glenn L. Schilling, Richard “Dick” Adams, Hon. Lawrence “Larry” Smith, Judge Otto Wolff and Larry L. Johnson. Living inductees include Hon. Donna H. Terry, Peter J. Glauber, Thomas Bennett Clark, Hon. Sheila C. Lowther, Hon. J. Landon Overfield, Thomas Lewis, John E. Anderson, Larry B. Clevinger and Joseph A. Soergel. The recipients were honored for their positive contributions to the workers’ compensation system over their illustrious careers. Net proceeds of the event went to Kids’ Chance of Kentucky.
Family of posthumous inductee Lawrence "Larry" Smith with Steering Committee Members Tim Wilson and McKinnley Morgan.

When you need to settle your case, don’t settle on your mediator.

The Sturgill Turner Mediation Center is equipped with experienced, AOC certified mediators and superior conference facilities, allowing us to provide prompt, quality mediation services. Located in Lexington and available for mediations statewide. Learn more about mediators Hank Jones, Pat Moloney and Steve Barker at STURGILLTURNERMEDIATIONCENTER.COM.
Kentucky Bar Association members wishing to participate in the 2019 Bar Leadership Conference will soon have the chance to apply. Applications for this event will be sent out in early August. Additional details about the conference, including speakers and programming are available on our website.

October 22, 2019 Visit www.kybar.org for more information.
The Kentucky Bar Association continues to present the Bench & Bar magazine in audio version through the KY NFB-NEWSLINE®. The KY NFB-NEWSLINE® audio information service is available to eligible subscribers by dialing a toll-free telephone or local call number on a touch-tone telephone; Newsline Mobile App on your i-Device; or on the web at www.nfbnewslineonline.org. Eligible individuals include those who cannot use conventional print because of a visual impairment; learning disability; physical impairment restricting the use of fingers, hands or arms; or other conditions causing limited access to print information.

For more information, visit our website at: http://www.nfbnewsline-ky.org and our Facebook page at: https://www.facebook.com/audionewskentucky/
The Kentucky Bar Foundation (KBF) awarded $260,000 in 2019 grants at its annual Fellows and Partners for Justice Society Luncheon on June 13th. Thanks to the generosity of Kentucky attorneys and judges, the 2019 KBF grants will support 32 nonprofit organizations as they work to provide access to justice and law-related education across the Commonwealth. At the luncheon, the Bar Foundation also recognized 24 new KBF Life Fellows, 7 new KBF Fellows, and 2 new Partners for Justice Society members whose generosity helped make this year’s grants and those in the future possible.

Your $30 Contribution Makes a Difference!

As the nonprofit, charitable arm of Kentucky’s legal community, the Kentucky Bar Foundation provides a way for Kentucky lawyers and judges to unite and make a big difference across our Commonwealth. On your KBA dues statement, you will have the option to support the Kentucky Bar Foundation by making a $30 Sustainer Contribution. Last year, nearly 5,000 attorneys collectively contributed $149,000, which helped make this year’s grants possible.

The Kentucky Bar Foundation Board
Member Don Rodgers was one of nearly 150 attendees honoring donors and celebrating grant recipients.

Glenda Harrison, Executive Director of the Kentucky Access to Justice Commission, accepting a check from Kentucky Bar Foundation Secretary/Treasurer Allison J. Donovan for a project designed to educate court clerks in all 120 Kentucky counties on the difference between legal information and legal advice.

George E. Meng accepting an award from Chief Justice John D. Minton, Jr., in honor of his $10,000 contribution to the Kentucky Bar Foundation.

Kentucky Bar Association President J. Stephen Smith accepting his Life Fellow plaque from Chief Justice John D. Minton, Jr.

Abby Drane, CEO of Centerstone, provided a moving presentation before accepting a grant check for a collaborative project between the courts and treatment professionals aimed at improving outcomes for Kentucky’s abused and neglected children and their families.

Photo Credit: Stephani Elizabeth Photography
2019 Grants
"Providing Help Today and Hope for Tomorrow"

Brighton Center, Inc., Northern Kentucky
Reducing Legal Barriers for Opportunity Youth
$10,000

CASA of Madison County
Court Appointed Special Advocates
$2,000

Catholic Charities of the Diocese of Owensboro
Immigration Clinics and Housing/Budgeting Presentations to Vulnerable Populations
$10,000

Catholic Charities of Louisville, Inc.
Immigration Legal Services for Low-Income Earning Persons
$10,000

Centerstone Kentucky
Improving Child Welfare and Court Collaboration
$10,000

Chrysalis House, Inc., Statewide
Accessing the Court System and Resolving Legal Issues for Chrysalis House Women
$7,500

Credit Abuse Resistance Education (CARE) Programs, Statewide
$8,000

Doctors & Lawyers for Kids, Jefferson County
Doctors & Lawyers for Kids at Smoketown Family Community Wellness Center
$10,000

Family Enrichment Center, South Central Kentucky
Supervised Visitation Services
$5,000

Friends of the Jefferson County Public Law Library
Fresh Start Expungement Program
$10,000

Holly Hill Child & Family Solutions, Northern Kentucky
Supervised Visitation Support
$5,000

HOTEL INC, Warren County
Preferred Tenant Program
$10,000

The Institute for Compassion in Justice, Inc., Central and Eastern Kentucky
Rural Central and Eastern Kentucky Educational Advocacy Program
$15,000

Kentucky Access to Justice Commission
Legal Advice v. Legal Information: A Guide for Court Clerks
$3,000

Kentucky Equal Justice Center
Building the Bridge to Citizenship: Lawful Permanent Residence
$11,000

Kentucky High School Mock Trial Association, Inc.
Kentucky High School Mock Trial Program
$10,000

Kentucky Resources Council
Enhancing Access to Environmental Legal Services for Low-Income Individuals and Communities
$5,000

Kentucky YMCA Youth Association
Kentucky Youth Assembly and Kentucky United Nations Assembly
$15,000

La Casita Center, Inc., Louisville Metro
Legal Services and Outreach
$10,000

Legal Aid of the Bluegrass, Central and Northern Kentucky
Roadmaps to Justice
$10,000

Legal Aid Society, Inc., Jefferson and Surrounding Counties
Veterans Legal Assistance Program
$10,000

Lotus, Western Kentucky
Be BRAVE: Court Preparation Activity Books for Children
$8,000

Micah Legal Services, Inc., Fayette County
 Fee Subsidies for Indigent Clients
$7,500

The Nest-Center for Women, Children & Families, Central Kentucky
The Nest's Interpersonal Violence Legal Project
$10,000

Prodigal Ministries, Inc., Statewide
Client Advocacy and Support
$7,500

Sanctuary, Inc., Western Kentucky
Sanctuary, Inc. Domestic Violence and Sexual Assault Victims – Emergency Protective Order Services Project
$3,000

University of Pikeville, Eastern Kentucky
Judicial Speaker Series
$3,500

KBF Law School Scholarships
(Chase College of Law $10,000; UK College of Law $10,000; U of L School of Law $10,000)
$30,000

KBA Distinguished Judge Award on behalf of Justice Lisabeth T. Hughes, Louisville
Jefferson Family Recovery Court
$2,000

KBA Distinguished Lawyer Award on behalf of Charles “Buzz” E. English, Jr., Bowling Green
University of Kentucky College of Law’s Trial Advocacy Board
$2,000

TOTAL AWARDS - $260,000
KYLAP Hosts Lawyers in Recovery Meetings in Northern KY and Lexington

The Kentucky Lawyer Assistance Program offers weekly open recovery meetings for lawyers, law students and judges in Northern Kentucky and Lexington. The Northern Kentucky Lawyers in Recovery meeting is held at 5:00 p.m., on Tuesdays at 510 Washington Avenue, Newport, KY 41071. Please bring your own coffee. The Lexington Kentucky Lawyers in Recovery meeting is held at 7:30 a.m. on Wednesdays at the Alano Club downtown, 370 East Second Street, Lexington, KY 40508.

All meetings are open to law students, lawyers and judges who are already involved or who are interested in a 12-step program of recovery, including but not limited to Alcoholics Anonymous, Narcotics Anonymous, Overeaters Anonymous and Al-Anon. Come meet other attorneys and network. All meetings and contacts are confidential. SCR 3.990.

For additional information, please contact us.
web: www.kylap.org • call: (502) 226-9373
e-mail: abeitz@kylap.org

You can now support the KYLAP Foundation, Inc., through AmazonSmile!

AmazonSmile is a website operated by Amazon with the same products, prices, and shopping features as Amazon.com. The difference is that when you shop on AmazonSmile, the AmazonSmile Foundation will donate 0.5% of the purchase price of eligible products to the Kentucky Lawyer Assistance Program, Foundation, Inc., when you make it the charitable organization of your choice.

Visit www.amazon.com/smile, select Kentucky Lawyer Assistance Program Foundation, Inc., and start shopping now!

KYLAP to Present at All Nine KLU Locations this Fall

KYLAP is excited to partner with the Diversity Equity and Inclusion (DEI) Committee to present "Lawyer Well-being and Inclusion: It's Everybody's Bar," during the 2019 Kentucky Law Update. KYLAP Director, Yvette Hourigan, and DEI Committee Co-Chairs David Slone and Allison Connelly will present along with a panel of representatives discussing diversity, equity, and inclusion (and why equity is such an important part of that equation), the impact of implicit bias (even when it’s subconscious), and how to level the playing field.

You can now support the KYLAP Foundation, Inc., through AmazonSmile!
All of those who volunteer to present at our programs are appreciated and the vast majority of those who take the time and put forth the energy to assist the KBA in its continuing legal education efforts do a fantastic job. We could not do what we do without these volunteers. I could go on and on about our appreciation of what an excellent job they do. BUT, every once in a while there is a volunteer who goes above and beyond all expectations. Madison Sewell is one of those luminaries.

Madison Sewell is an Assistant United States Attorney in the Western District of Kentucky. Madison has also worked as an Assistant Federal Defender, Trial Attorney for the Department of Justice Environmental Crimes Section, and as a teacher at Henderson County High School, where he founded one of the state’s first criminal law programs for high school students. Madison has a B.A. in mathematics and philosophy from Yale University and a J.D. from Stanford Law School. Yes. We have been quite lucky to have him.

Madison has been volunteering to do the Federal Court Update at Kentucky Law Updates for years and he has consistently been one of the highest evaluated presenters. His materials are always outstanding, and without fail, his presentations and PowerPoints are humorous and informative. He wakes us up, makes us laugh, and teaches us something. Madison has travelled from his home in Henderson all over the state year after year. His vast legal knowledge, love of the law, and enjoyment of teaching shine through and are contagious. That is why the CLE Commission awarded the 2019 Thomas B. Spain Award for Continuing Legal Education to Madison Sewell. It is a small gesture given what he has given us over the years and is well deserved.

The Thomas B. Spain Award, named for the first Supreme Court Liaison to the CLE Commission, is presented annually by the CLE Commission for outstanding voluntary contributions of time and talent to the planning, organization and implementation of KBA CLE programs. The recipient of the award exhibits exemplary contributions of time, expertise, quality materials and presentations for speakers, as well as frequency of participation and overall professionalism. Madison Sewell more than fits the bill and we applaud him for his efforts over the years.


ABOUT THE AUTHOR
MARY BETH CUTTER serves as the Kentucky Bar Association’s Director for Continuing Legal Education. Cutter received her B.A. with distinction from Centre College, and her Juris Doctorate from the University of Kentucky College of Law. Following her admission to the Kentucky Bar, she was engaged in private practice, focusing primarily in the areas of health care, civil litigation, employment, real estate, and domestic law. She has been with the Kentucky Bar Association since November of 2008.

Interested in assisting with a CLE? Have ideas for a program? Contact Mary Beth Cutter, KBA Director for CLE at mcutter@kybar.org, or any member of the Continuing Legal Education Commission.

2019-2020 CLE COMMISSION MEMBERS

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Reporting and keeping track of your CLE is now even easier! You can quickly report your attendance and apply for CLE programs online. No more paper forms. No more checks. No more postage. Just follow these simple steps!

Is your CLE program approved?
Find out at “Accredited Programs / Search”

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CHOOSE “Submit a Program for Approval”
(IT ONLY TAKES A COUPLE MINUTES)

BE ON THE LOOKOUT FOR AN e-mail approving your program.

Yes

CHOOSE “Submit New Credits” AND WATCH YOUR CLE BALANCES GROW.

Still have questions or need more information, visit www.kybar.org/SubmittingCreditforApprovalInfo
DON’T FORGET...

The deadline to report your CLE credits timely earned for the 2018-2019 educational year is AUGUST 10, 2019.

You must have a total of 12.0 CLE credits including 2.0 ethics credits by June 30, 2019, to have met the annual requirement.

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

Did you know that the KBA has 26 sections that members can join?

For more information on our sections and how to join visit www.kybar.org/sections.
IN MEMORIAM

MITCHELL CHARNEY, devoted husband, father, and grandfather passed away at his home. Charney originally from Lynbrook, N.Y., moved to Louisville in 1962 and never left. A graduate of the University of Louisville and the University of Louisville School of Law, Charney was a partner at Goldberg and Simpson law firm since 1981. He was the past president of both the Jewish Family and Vocational Services and the Ronald McDonald House and served long terms on the boards of Jewish Hospital, Kentucky Youth Advocates and the Metro United Way. One of the foremost authorities in adoption law across the United States, he received the prestigious WLKY Spirit of Louisville Foundation Bell Award in 1993. He is survived by his best friend and wife of 48 years Barbara; his son Jason and wife Leslie, and two daughters; Carrie and husband Mike, Kim and husband Simone. Charney was a passionate “Grumps” for his six grandchildren, Emma, Piper, Harley, Palmer, Sebastiano, and Stella.

The preceding memoriam for Mitchell Charney is based upon information obtained from the Courier-Journal, which published the obituary on April 21, 2019. To access the obituary in its entirety, visit: https://www.legacy.com/obituaries/louisville/obituary.aspx?n=mitchell-charney&pid=192621565&sbid=7131.
DONALD L. FRAILIE, II, 76, of Ashland, passed away Oct. 31, 2018, in Community Hospice Care Center. He was born Sept. 24, 1942, in Ashland, Ky., a son of the late Donald L. Frailie and Nellie Reynolds Frailie. In addition to his parents, he was preceded in death by his loving wife of 33 years, Karen Wolfe Frailie, in 2003; and a brother, James D. Frailie, in 2005. Frailie graduated from the University of Kentucky College of Law in 1974, and practiced law for many years while also teaching business law and accounting at Ashland Community and Technical College. Survivors include his daughter, Mary Elizabeth Frailie, of Ashland; brother, Peter T. Frailie and wife, Cora, of Russell; mother in law, Mary E. Wolfe, of Lexington; and a host of nieces, nephews, extended family members and dear friends.

WALTER LAVON PORTER (“BUB”), of Louisville, KY, age 77, passed away on May 27, 2019. He was born on April 20, 1942, in South Bend, Ind., and raised in Fort Wayne, Ind., by his late parents, Charles L. Porter and Lottie Bee Porter. He is survived by his dearly loved children, sons-in-law and grandchildren: Elizabeth Roberts and John Michael Wurth and their children, Roxanne, Elise, Harper Sue, and Judah Oliver; Charles Arch Porter and Margaret Bee and Joshua Poe, with child Katherine Sofia Poe, and Margaret’s children, Henry Isaac Miller, and Charli Bee Miller. He is also survived by his sister and brother-in-law, Coralee Deanna and Jerry Koerner. Walter graduated from North Side High School, Fort Wayne, Ind., in 1960. He received a B.A. from University of Louisville in 1964. After a brief time in the Marine Corps, he returned to Louisville where he attended the Brandeis School of Law and graduated in 1969 with a J.D. He practiced law in Louisville, primarily as a defense attorney for insurance companies, defending insureds who were sued for personal injury claims. He was a member of the law firm of Barnett, Porter, and Dunn. In the last 12 years of his life he had a loving relationship with Margaret Sue Stacy, who is a very patient, sweet woman.

THEODORE LOUIS MUSSLER, JR., died May 19, 2019, at University Hospital following a short illness. A lifelong resident of Louisville, he was born to Theodore and Anita Hanke Mussler on Sept. 18, 1940. Ted graduated from St. Xavier High School, the University of Louisville, and the University of Louisville’s Brandeis School of Law. He was a member of the Louisville Bar Association, as well as belonging to the American Trial Lawyers Association in which he was very active as a convention and seminar lecturer. As a lifetime member of The Kentucky Academy of Trial Attorneys (KATA, now the Kentucky Justice Association), Ted was a member of the Board of Governors from 1979. Ted was also a member of KATA’s President’s Club. He was on the DePaul School Board of Directors, starting in 1984 and was president in 1989. From 1984 through 1986, Ted was on the Board of Advisors, the Allan and Donna Lansing School of Nursing and Health Sciences of Bellarmine College. In addition, in 2004, Mussler received the Kentucky Bar Association Pro Bono Service Award. When Ted was not in court, he was holding court at Check’s Café. Ted leaves behind his loving wife Louisa Weeks Henson; children John Christian (Erin), Stephen Lindsey, Jennifer Leigh (Chris), Patrick Ryan (Erin), and two daughters of the heart, Aferdita and Teuta Sherifi, and his beloved niece Sarah Riggle; grandchildren Cameron, Samantha, and Caroline; sisters Melanie Wafzig and Yvonne Seibert; brother Douglas Mussler (Janet); sister-in-law Susan Henson Baker (Nick) and brother-in-law Ed Henson (Gail); and numerous nieces, nephews, and friends who were family. He is also survived by Franny and Zooey, his adored fur friends.

M. Lynne Osterholt, 73, born April 8, 1945, died after a short illness, on March 2, 2019. Born in Fresno, Calif., Lynne was the daughter of the late Bernard John and Ann Bauer Osterholt. Lynne was a graduate of Sacred Heart Academy, Ursuline College, University of Louisville, and the University of Kentucky, where she earned a Bachelor of Arts, Master of Arts, a PhD in French Literature, Kappa and was awarded the Concours National De Francais Prix D’Honneur. Lynne was a very well-respected attorney who practiced for more than four decades with an emphasis in family and criminal law. Lynne served on the Board of Directors of the Louisville Bar Association and the Home of the Innocents, and was a member of the Kentucky Bar Association and Louisville Bar Association. Lynne is survived by her brother, Bernard John “Jack” Osterholt (Lynn Hawke), Deputy Mayor of Miami-Dade County, FL; her nephew, John Perrin Osterholt, of New York City, NY; and Denise M. Cunningham, her paralegal of 40 years.

The preceding memoriam for Theodore Louis Mussler, Jr. is based upon information obtained from the Courier-Journal, which published the obituary on May 26, 2019. To access the obituary in its entirety, visit: https://www.legacy.com/obituaries/louisville/obituary.aspx?n=theodore-louis-mussler&pid=192981904.

The preceding memoriam for M. Lynne Osterholt is based upon information obtained from the Courier-Journal, which published the obituary on March 8, 2019. To access the obituary in its entirety, visit: https://www.legacy.com/obituaries/louisville/obituary.aspx?n=m-lynne-osterholt&pid=191761899&fbid=25098.
ELPO Law Attorney Sarah Jarboe is participating in the 2019 class of ELEVATE Kentucky. ELEVATE Kentucky offers young professionals in-depth personal and professional development while fostering a better understanding of challenges facing our Commonwealth. The program is offered through the Leadership Kentucky Foundation. Jarboe is a partner at English, Lucas, Priest & Owsley, LLP, in Bowling Green, Ky. Her primary practice is in the area of environmental law. She holds a B.A. from the University of Louisville and a J.D. from Vanderbilt Law School. She is one of 25 members in the ELEVATE Kentucky Class of 2019 from across the state.

Forrest Ragsdale is the newest Frost Brown Todd (FBT) member, joining the firm’s expanding franchise and hospitality industry team. Ragsdale brings more than 35 years of legal experience in the franchise and hospitality industries, including 15 years as general counsel for national restaurant brands including Long John Silver’s and A&W. He has extensive corporate compliance experience and has counseled consumer brands in the hotel, restaurant and retail sector. Ragsdale will continue his relationship with Long John Silver’s in his new role at FBT.

Embry Merritt Shaffar Womack, PLLC, is excited to announce the addition of Sami C. Oudeh to their growing practice. Oudeh joins the firm as an associate attorney in the Lexington office. He will concentrate his practice in the areas of civil litigation and business transactions. He received his J.D. graduating cum laude from Northern Kentucky University Salmon P. Chase College of Law and received his B.A. in international studies from the University of Kentucky.

Dinsmore & Shohl LLP is strengthening its public finance offerings in Louisville with the addition of partner Mark S. Franklin, a Louisville Magazine Top Lawyer. Franklin comes to Dinsmore from Stoll Keenon Ogden where he practiced more than 10 years as bond counsel, issuer’s counsel, borrower’s counsel, underwriter’s counsel and lender’s counsel. His work has spanned public utilities to arena finance to nonprofit educational institutions. Franklin received his J.D. from the University of Louisville after earning his B.A. in accounting from the University of Kentucky.

Managing Intellectual Property magazine has named three Kentucky Stites & Harbison, PLLC, attorneys to the 2019 “IP Stars” list. The publication recognizes the most highly regarded intellectual property attorneys in the U.S. “IP Stars” further separates honorees into two categories, trademark stars and patent stars. Kentucky (Patent Stars): Joel T. Beres, Mandy Wilson Decker and David W. Nagle, Jr. Kentucky (Trademark Stars) include Joel T. Beres and David W. Nagle, Jr. Managing Intellectual Property magazine also selected Decker for the 2019 edition of Managing Intellectual Property’s “Top 250 Women in IP.” This is the fifth time Decker has been honored on this list. The “Top 250 Women in IP” list recognizes the leading women IP lawyers at the international level.

Managing Editor, Bench & Bar, 514 West Main Street, Frankfort, KY 40601 or by email to sroberts@kybar.org. Digital photos must be a minimum of 300 dpi and two (2) inches tall from top of head to shoulders. There is a $10 fee per photograph appearing with announcements. Paid professional announcements are also available. Please make checks payable to the Kentucky Bar Association.

Have an item for Who, What, When & Where? The Bench & Bar welcomes brief announcements about member placements, promotions, relocations and honors. Notices are printed at no cost and must be submitted in writing to: Managing Editor, Bench & Bar, 514 West Main Street, Frankfort, KY 40601 or by email to sroberts@kybar.org. Digital photos must be a minimum of 300 dpi and two (2) inches tall from top of head to shoulders. There is a $10 fee per photograph appearing with announcements. Paid professional announcements are also available. Please make checks payable to the Kentucky Bar Association.

ELPO Law Attorney Sarah Jarboe is participating in the 2019 class of ELEVATE Kentucky. ELEVATE Kentucky offers young professionals in-depth personal and professional development while fostering a better understanding of challenges facing our Commonwealth. The program is offered through the Leadership Kentucky Foundation. Jarboe is a partner at English, Lucas, Priest & Owsley, LLP, in Bowling Green, Ky. Her primary practice is in the area of environmental law. She holds a B.A. from the University of Louisville and a J.D. from Vanderbilt Law School. She is one of 25 members in the ELEVATE Kentucky Class of 2019 from across the state.

Forrest Ragsdale is the newest Frost Brown Todd (FBT) member, joining the firm’s expanding franchise and hospitality industry team. Ragsdale brings more than 35 years of legal experience in the franchise and hospitality industries, including 15 years as general counsel for national restaurant brands including Long John Silver’s and A&W. He has extensive corporate compliance experience and has counseled consumer brands in the hotel, restaurant and retail sector. Ragsdale will continue his relationship with Long John Silver’s in his new role at FBT.

Embry Merritt Shaffar Womack, PLLC, is excited to announce the addition of Sami C. Oudeh to their growing practice. Oudeh joins the firm as an associate attorney in the Lexington office. He will concentrate his practice in the areas of civil litigation and business transactions. He received his J.D. graduating cum laude from Northern Kentucky University Salmon P. Chase College of Law and received his B.A. in international studies from the University of Kentucky.

Dinsmore & Shohl LLP is strengthening its public finance offerings in Louisville with the addition of partner Mark S. Franklin, a Louisville Magazine Top Lawyer. Franklin comes to Dinsmore from Stoll Keenon Ogden where he practiced more than 10 years as bond counsel, issuer’s counsel, borrower’s counsel, underwriter’s counsel and lender’s counsel. His work has spanned public utilities to arena finance to nonprofit educational institutions. Franklin received his J.D. from the University of Louisville after earning his B.A. in accounting from the University of Kentucky.

Managing Intellectual Property magazine has named three Kentucky Stites & Harbison, PLLC, attorneys to the 2019 “IP Stars” list. The publication recognizes the most highly regarded intellectual property attorneys in the U.S. “IP Stars” further separates honorees into two categories, trademark stars and patent stars. Kentucky (Patent Stars): Joel T. Beres, Mandy Wilson Decker and David W. Nagle, Jr. Kentucky (Trademark Stars) include Joel T. Beres and David W. Nagle, Jr. Managing Intellectual Property magazine also selected Decker for the 2019 edition of Managing Intellectual Property’s “Top 250 Women in IP.” This is the fifth time Decker has been honored on this list. The “Top 250 Women in IP” list recognizes the leading women IP lawyers at the international level.
Rose Grasch Camenisch Mains PLLC is pleased to announce the election of attorneys Melissa Anne Stewart and H. Derek Hall as members of the firm. Stewart, chair of the firm’s estate planning and probate practice, focuses her practice on the areas of estate planning, estate and trust administration, elder law, and estate and trust litigation. Stewart received her B.A. from The University of the Cumberlands and her J.D. from The Ohio State University College of Law. Hall focuses his practice on the areas of mergers and acquisitions, real estate, corporate governance and transactions, and financings for both lenders and borrowers. Hall received both his B.A. and J.D. from the University of Kentucky, where he was valedictorian of his law school class.

David L. Place is proud to announce the founding of The Place Firm, PLLC, in Elizabethtown. Place is a nationally recognized voice on issues of ERISA, FEHBA and other healthcare subrogation and reimbursement matters. Prior to founding his own firm, Place spent the last seven years as director of the nation’s largest plaintiff only lien resolution company. This service to the plaintiff’s bar followed nearly 15 years as an ERISA recovery attorney for the Louisville law firm Gibson & Sharps. Place now exclusively represents plaintiff attorneys in confronting these claims so they can maximize the results of their work for their injury victim clients. Place earned his J.D. from the Louis D. Brandeis School of Law at the University of Louisville and his B.S. from Longwood University.

Reminger Co., LPA, is pleased to announce that Ralph E. Burnham and J. Kelly Ratliff have joined their Fort Mitchell, Ky., office. Burnham practices in all areas of civil litigation, and primarily focuses in the areas of blasting construction, mining, commercial explosives, and transportation in both state and federal courts. He is also an approved mediator with the Hamilton County, Ohio, Court of Common Pleas. Ratliff practices in all areas of civil litigation and primarily concentrates his practice on representing blasting, construction, mining, and transportation companies in both state and federal courts. Ratliff has experience defending clients in lawsuits concerning various claims, including property damage claims; multi-property claims concerning quarry, surface mining, and construction operations; water well claims; landslide and subsidence claims; and personal injury and wrongful death cases. Ratliff’s practice and litigation experience also includes defending motor carriers and drivers against wrongful death and personal injury claims as well as numerous companies in the aviation industry.

Fultz Maddox Dickens PLC (FMD) is pleased to announce that Jeffrey A. Hamilton has joined the firm as counsel. Hamilton graduated from Xavier University, Cincinnati, Ohio (B.S.B.A., Economics, 1987), cum laude, after completing the program in only three years; University of Notre Dame Law School (J.D., 1990), cum laude and is a member of the Illinois Bar and Kentucky Bar. Prior to joining FMD, Hamilton was a partner at Reed Weitkamp Schell & Vice PLLC for 20 years where his practice was concentrated in the areas of commercial real estate and finance. Hamilton has experience in hotel loan financings, commercial leasing, and real estate purchase transactions.

Fisher Phillips announces 11 practice group and industry team leaders, including new leaders in Louisville, Ky., where partner Todd Logsdon, will lead the workplace safety and catastrophe
management practice group with Charlotte, N.C., partner Travis Vance. In 2018, Fisher Phillips grew its attorney head count by 6.3 percent, nearly doubling its lawyer growth rate in 2017. The growth, felt across the firm’s U.S. offices, is fueled by national attention to workplace issues.

Fund for the Arts has elected Stites & Harbison, PLLC, attorney Terry Wright to its Board of Directors. He will serve a three-year term. Fund for the Arts is a regional nonprofit committed to building a vibrant community through the power of the arts. The fund supports diverse arts organizations and initiatives with the mission of enhancing economic development, education and the quality of life for everyone by generating resources, inspiring excellence and creating community connections. Wright is a member (partner) of Stites & Harbison and chair of the intellectual property & technology service group. He is a registered patent attorney based in the Louisville, Ky., office whose practice focuses on designing and implementing intellectual property protection strategies.

Josh Beam joins the team of attorneys in McBrayer’s Lexington office. Beam has been in private practice for seven years and worked in the legal sector for 12 years before and while attending law school. The range of his work includes estate planning, probate, and corporate law. He enjoys the opportunity to serve others by helping them through conversations about their end-of-life wishes to provide peace of mind through estate planning.

Cornelius & Collins, LLP, is pleased to announce the addition of its newest associate attorney, Deron L. Johnson. His practice will be concentrated in general civil litigation. Johnson is a graduate of Vanderbilt Law School and the University of Kentucky and is admitted to practice before all state courts in Tennessee and Kentucky and the U.S. District Court for the Middle District of Tennessee.

KET’s Commonwealth Fund for KET Inc., the fundraising arm of the statewide public television network, has announced the appointment of four new members to its board of directors, including one of the four founding partners of English, Lucas, Priest & Owsley, LLP. The announcement verified that Michael Owsley will be joining the board as of May 2019. The Commonwealth Fund for KET supports the mission and work of KET by managing and raising contributions that support local productions, educational services and the acquisition of PBS and other national programs. KET is the nation’s largest public television network reaching more than 5.5 million people in eight states daily via television, online and mobile. Owsley is considered an authority on education law and policy. He served as the past president of the Bowling Green Chamber of Commerce, director of the Kentucky Chamber of Commerce, chair of the Leadership Kentucky Foundation and director of the Kentucky Council on Economic Education.

Frost Brown Todd recently promoted managing associates Ben Hager and Jana Syrcle to members. Hager is part of the tax, benefits and estates team and Syrcle works in finance. They are two of nine attorneys across FBT’s 12 markets named member. Hager counsels clients on tax and corporate law out of the Lexington office. A substantial part of Hager’s practice involves joint ventures, limited liability companies and partnerships, including within the context of venture capital, private equity and real estate equity funds. Syrcle concentrates her practice on representing lenders in real estate and other asset-based loans, construction loans, and working capital facilities and serving as bond counsel for industrial revenue bonds. Syrcle has experience representing manufacturing clients in drafting and negotiating supply agreements, terms and conditions, confidentiality agreements, and sourcing and tooling agreements. She works out of the Lexington office.

Adams, Stepner, Woltermann & Dusing, PLLC, is pleased to announce that Thomas A. Sweeney has joined the firm as of counsel attorney. Practicing in the Greater Cincinnati area since 1979, he is an experienced litigation attorney with a general civil litigation practice. His practice involves all aspects of litigation with particular emphasis in representing both plaintiffs and defendants in personal injury, product liability and medical malpractice litigation. Sweeney has been voted by his peers as one of Cincinnati and Northern Kentucky’s leading lawyers in each of the last 10 years. Admitted to the Kentucky Bar in 1979, he received his undergraduate degree from Northern Kentucky University in mathematics (B.S.) in 1976 and graduated from the Salmon P. Chase College of Law (J.D.) in 1979.

Embry Merritt Shaffar Womack, PLLC, is excited to announce the addition of D. Eric Lycan to their growing practice. Lycan joins the firm as of counsel in the Lexington office. Lycan is general counsel for the Kentucky House Republican Leadership. He has represented the Republican Party of Kentucky, and the campaigns of McConnell for Senate, Andy Barr for Congress and Governor Matt Bevin. He concentrates his practice in the areas of election and campaign finance, commercial litigation, energy litigation, business tort litigation, and regulatory compliance. He received his J.D. from the University of Kentucky College of Law (1995) and his B.A. from Centre College (1992).
Mattingly Ford Title Services LLC and Mattingly Ford P.S.C. are pleased to announce that Mason E. Willoughby has joined the Louisville office and law firm. He will be practicing in the area of real estate law, title and closing transactions. Willoughby is licensed in Kentucky with a degree from the University of Kentucky College of Law School.

Lawyers of Color has named Stites & Harbison, PLLC, attorney Demetrius Holloway to its inaugural Nation's Best list for 2019 in the Southern Region. Lawyers of Color is a nonprofit devoted to promoting diversity in the legal profession and advancing democracy and equality in marginalized communities. The Nation's Best honorees were chosen due to their exemplary accomplishments and commitment to diversity and inclusion efforts in the legal community. In addition to this award, The American Diabetes Association (ADA) of Kentucky has elected Holloway to its Community Leadership Board. The ADA was founded in 1940 and is a leading nonprofit health organization that provides diabetes research, information and advocacy. Holloway is a member (partner) of Stites & Harbison based in the Louisville, Ky., office. Holloway represents employers in the defense of employment-based claims asserted under both Kentucky and federal law including, but not limited to, claims asserted under the ADA, ADEA, FMLA, Title VII and the Kentucky Civil Rights Act. Holloway is chair of the Diversity Committee and is a member of the firm’s Recruiting Committee.

Frost Brown Todd recently promoted managing associates Tommy Gleason and Allison Weyand to members. Gleason is part of the business litigation team and Weyand works in the product, tort and insurance group. They are two of nine attorneys across FBT’s 12 markets named member. Gleason has experience in complex litigation matters involving breach of contract, business torts and general commercial disputes in state and federal courts. He also regularly represents clients in arbitration proceedings. Gleason attended law school at the University of Notre Dame. Weyand focuses her time on fire and explosion litigation, insurance bad faith, drug and medical device litigation, and product liability defense. On the products liability side, she represents clients in matters in a variety of industry sectors, ranging from medical devices to automotive and agricultural equipment manufacturers. Weyand also has experience defending insurers in bad faith, unfair claims settlement practices, and coverage disputes. She is based in the Louisville office.

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The Lawrence Firm, PSC, is proud to announce that attorney Lindsay Lawrence is the co-recipient of the YLS Community Service Award from the Cincinnati Bar Association. The YLS Community Service Award encourages young lawyers, law firms and legal organizations to become involved in the community service efforts of the Cincinnati Bar Association and the community at large. Lawrence represents individuals and their families in Kentucky and Ohio in the areas of medical malpractice and personal injury.

LaJuana S. Wilcher, an environmental attorney and partner with English, Lucas, Priest & Owsley, LLP (ELPO), in Bowling Green, spoke at “The Fork Not Taken: A Two Forks Retrospective” in Denver. Sponsored by Colorado Trout Unlimited, Water Education Colorado and the Metropolitan State University of Denver, the program focused on the 1990 U.S. EPA veto of the proposed Two Forks Dam under the federal Clean Water Act, and long-term water management implications of the decision. Wilcher was EPA's Assistant Administrator for Water at that time and provided behind the scenes insights on the legal and factual considerations leading to the decision. Wilcher, a frequent speaker at national and state environmental law events, is co-chair of ELPO Law's Environmental Law Practice Group.

O’Bryan, Brown & Toner is pleased to announce that Morgan N. Blind has joined the firm. Blind was born and raised in Somerset, Ky. She graduated, summa cum laude, with a B.S. in business administration from the University of Louisville. She went on to earn her law degree from the University of Louisville Brandeis School of Law graduating magna cum laude. Blind is licensed in Kentucky and Indiana. Her primary area of practice is insurance defense litigation with a focus on medical malpractice.

Lockaby PLLC is pleased to announce that Tamara J. Patterson has joined the firm as an associate attorney. She received her J.D., cum laude, from the University of Kentucky College of Law in 2017; where she was the online content manager for the Kentucky Law Journal. Patterson also received her M.A. in Theology from St. Vladimir’s Orthodox Theological Seminary in Yonkers, N.Y., in 2005, and her B.A. in history and Russian language from the University of Florida in 2000. Patterson bolsters the firm’s growing business litigation and personal-injury defense practices as well as its established labor-and-employment practice, representing employees, employers, and management in all kinds of workplace disputes, including discrimination, retaliation, harassment, and wage-and-hour claims, and advising and counseling employers and HR representatives on the wide range of personnel issues that arise during the employment lifespan.

Leadership Kentucky recently selected Stites & Harbison, PLLC, attorney Dustyn Jones as one of 25 participants for the Elevate Kentucky Class of 2019. Elevate Kentucky is a leadership development program designed for millennials and young professionals. Jones is an attorney based in the Lexington, Ky., office. She is a member of the insurance regulatory compliance and health care service groups. She devotes her practice to insurance product review and regulatory matters, and healthcare transactions, contracts, reimbursement and regulatory compliance. She is a member of the American Bar Association’s Health Law Section and the Fayette County Bar Association’s Young Lawyers’ Division.

Vice Cox & Townsend PLLC (VCT) is excited to welcome W. Robert Meyer, Gary R. Weitkamp, Robert B. Vice, Sr., and Britney Kristofeck as attorneys with the firm. Meyer joined VCT in March 2019 with a practice focused on commercial real estate transactions, commercial and residential foreclosures, workouts, judgment enforcement, collections, and bankruptcy matters. Meyer represents national and regional lenders and loan servicers in the federal bankruptcy courts and state courts of Indiana and Kentucky, and lenders, landlords, and equity investors in commercial real estate acquisition, leasing, and financing matters. Weitkamp joined VCT in June 2019. Weitkamp's practice is concentrated in the areas of mergers and acquisitions, closely-held business, business contracts, and federal and state tax planning and litigation. Vice joined VCT in June 2019. Vice’s practice is focused on real estate finance and development, corporate finance, commercial loan and equity transactions, and partnership law and taxation, and he has substantial experience representing financial institutions, community development organizations, and real estate developers, including in the use of historic rehabilitation tax credits, low-income housing credits, and New Markets Tax Credits. Kristofeck joined VCT in June 2019. Prior to joining VCT, she practiced with Frost Brown Todd LLC in the area of commercial mortgage-backed securities. She graduated from the University of Louisville Brandeis School of Law. She earned her undergraduate degree from Bellarmine University and formerly served as the vice chair of the real estate section of the Louisville Bar Association.

Mitchel Denham, a partner in DBL Law’s Civil Litigation practice group, has been selected as one of 55 Leadership Kentucky Class of 2019 participants. Now in its 35th year, Leadership Kentucky is comprised of seven three-day sessions where participants gather to gain insight on the Commonwealth’s challenges and opportunities. Denham’s practice focuses on the areas of health care, administrative law, state and federal government investigations, open records, general civil litigation, election law, and white-collar crime. He earned his J.D. from the University of Kentucky College of Law and his B.S. from Centre College. He serves as treasurer of the Norton Children’s Hospital Foundation board and is a regular volunteer with the Bluegrass Center for Autism.
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Prior to joining Straw-Boone Doheny Banks Bowman & Mudd, Michele McKinney worked as a staff attorney for a Jefferson County Family Court Judge. She is a Louisville native and received her B.A. from Western Kentucky University. She worked as an editor and writer before earning her J.D. from Salmon P. Chase College of Law at Northern Kentucky University. She serves as vice president of the Board for UP for Women and Children, volunteers for CASA of the River Region, and enjoys spending time with her family. She is a member of the Kentucky Bar Association, as well as the Louisville Bar Association Family Law Section and the Women Lawyers Association of Jefferson County.

The American Institute of Steel Construction (AISC) recently honored Stites & Harbison, PLLC, attorney David B. Ratterman with the 2019 Lifetime Achievement Award at the North American Steel Construction Conference. The Lifetime Achievement Awards honor individuals who have provided outstanding service to AISC and the structural steel design/construction/academic community for a sustained period of years. Ratterman spent 30 years as AISC secretary and general counsel, serving under four presidents, 15 board chairs, and hundreds of board and committee members. Ratterman is a senior member (partner) of Stites & Harbison in the construction service group. His practice focuses on general construction law, with particular emphasis on the fabricated structural steel industry.

Retired Circuit Judge William R. Harris (UK LAW ’67) announces his resignation from the Supreme Court Trial Commission and has closed his civil mediation practice and is enjoying full time retirement.

Graydon is excited to announce the hiring of Daniel E. Tobergte to lead the firm’s new economic development services team. The former CEO of Northern Kentucky Tri-ED brings over 33 years of regional, state, national, and international development experience to his new role, as well as an extensive network of working relationships with business and community leaders. Tobergte will coordinate the efforts of a team of eight Graydon attorneys that offer extensive economic development services from site selection and organizational planning to financing and incentives, all designed to enhance negotiation leverage, minimize business costs, and offer compliance management for incentives. He earned his J.D. from Northern Kentucky University’s Salmon P. Chase College of Law and his B.S. and M.S. from Eastern Kentucky University.

The Ohio Association of Justice recently awarded Covington attorney Richard D. Lawrence the Craig Spangenberg Distinguished Advocate Award for his lifetime of work as a trial lawyer representing individuals catastrophically injured by medical malpractice and other acts of negligence. The OAG annually presents the award -- named after the renown Cleveland litigator Craig Spangenberg -- to a lawyer whose life’s work, both professional and personal, exemplifies the objectives and ideals of the Ohio trial lawyers’ association. Lawrence is a retired member of the prestigious Inner Circle of Advocates, an organization of the top 100 plaintiff trial lawyers in the United States, and the International Society of Barristers, an organization of the top trial lawyers in the world.

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