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I have read the outgoing President’s Page messages in the past and have always been struck by how each and every outgoing President comments on how fast the year went flying by. I have to admit as I read them I was a little skeptical of the comment. But now it’s my turn for my last President’s Page and now, I too, realize how quickly a year can pass.

We’ve had a very busy year. The Officers and the Board of Governors have been busy, so this is the perfect time to recount some of the highlights of the past year. Our emphasis through everything that the Board of Governors has done this year has been to enhance the practice of law throughout the Commonwealth.

Abraham Lincoln’s quote at the beginning of this column was brought to mind by our recent effort to develop future leaders of the KBA. A highlight of the past year was the recent inaugural Leadership Conference at CastlePost in Lexington. Buzz English was the chairman of the Leadership Conference committee that put the conference together. This committee began putting the conference together last August. Through many meetings and with a lot of hard work they developed an outstanding conference.

The idea of the conference started with people saying, “I always wanted to be involved with the KBA, but I just didn’t know how to go about it.” So we thought we would hold a conference that would help raise the level of awareness for members. The conference started with an introduction by me followed by a brief talk by Chief Justice John Minton. Next, our Executive Director, John Meyers, explained the various functions of the KBA, what the department heads do on a daily basis and just how the department function.

That was followed by panel discussion put together by our chair, Buzz English. The panel was composed of several leading lawyers from all over the Commonwealth who answered the question: “What does it mean to be a lawyer and a leader?” The panel included: State Senator Robin Webb; Executive Director of the Louisville Bar Association, Scott Furkin; President of the Kentucky Justice Association, Phil Grossman; a Past President of the Kentucky Bar Association, Doug Farnsley; a present member of the Kentucky Bar Association Board of Governors, J. D. Meyer; and the Vice President of the Kentucky Defense Counsel Inc., Claire Parsons. The discussion by this group was animated and riveting and gave the entire conference a special meaning to what it means to be a lawyer and a leader in the Commonwealth. The message from the panel was simple yet profound, “GET INVOLVED AND STAY INVOLVED.”

The panel was followed by a presentation on the qualities required for leadership, presented by People Pinnacle Founder Susan Rogers. Rogers specializes in developing leadership skills, with emphasis of the involvement of diversity and inclusion. She spoke to us about the “other kind of smart.” She explained to us that while intellect is a quality that is important for leadership, perhaps even more important, is “emotional intelligence” and getting along with people. That quality is perhaps more important than intellect alone. She then led the group though some exercises that helped explain the meaning of emotional intelligence.

Finally, the day was capped off by our featured speaker, Jim Woolery. Jim is currently...
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the head of King & Spalding’s mergers & acquisitions and corporate governance practice. Prior to joining King & Spalding, Jim was a partner with Cravath, Swaine, & Moore. He has also been the co-head of the J.P. Morgan Chase & Co. North American Mergers and Acquisitions department. The Wall Street Journal recently referred to Jim as, “one of the biggest names in mergers and acquisitions.”

Jim grew up in Ashland and is a graduate of the University of Kentucky College of Law. He gave us a tremendous talk on making every relationship we have an important relationship. He said it is important to recognize that everything we do makes us who we are, not only as lawyers but as people. He said we should act with an eye not toward the immediate future or the “short game” as he called it, but with an eye toward the future and “the long game.” It was an inspirational talk.

The participants in the conference were all enthused at the end of the day and I have gotten the commitment of those who are in line to follow me as President of the KBA, that they are not only going to continue the Leadership Conference as an annual event but to expand it in the coming years.

In addition to the Leadership Conference, the officers and Board of Governors have been involved in many other projects throughout this past year. This is a good time to recount the accomplishments of the past year, of the Officers and Board of Governors of the KBA.

The delivery of justice by our courts is essential to all of us, and in an effort to assist our courts in this administration of justice we are kicking off our first statewide judicial survey this summer. Bar Governor Amy Cubbage has been in charge of this effort. We believe this effort will benefit both the judiciary and practicing lawyers and help all of us to continue to work at top levels to perform the number one job of both judges and lawyers: TO PROVIDE JUSTICE TO EVERYONE IN THE COMMONWEALTH OF KENTUCKY.

Our Judges have not had a raise in over 10 years. It is essential to the operation of a judicial system that Judges and their staff personnel receive adequate compensation. With that in mind we formed a committee, early last fall, to assist Chief Justice John Minton, in getting his message to the Legislature about the need to ensure appropriate compensation for our judiciary and members of their staff. Our efforts culminated with a group of lawyers from all over the Commonwealth, representing the KBA, gathering in Frankfort in February. We had a lunch at the Capitol with many legislators attending. We talked with the legislators about the need for a properly funded Judiciary, both now and in the future. The legislators heard the message of Chief Justice Minton, and the result is the Judiciary in Kentucky will be getting their first raise in over 10 years.

To many people across the Commonwealth, the term justice is an abstract concept, for the simple reason that many of our citizens can’t afford to hire a lawyer because they don’t have the money to hire a lawyer. For this reason we wholeheartedly supported Justice Michele Keller in her efforts before the legislature to get funding for the Access to Justice Commission, so that even the least among us can get access to a lawyer and thereby achieve justice. The legislature came through for us and provided funding for the Access to Justice Commission.

Lawyers as a profession have a profound problem with many among us struggling with depression, and alcohol and drug abuse. Fortunately, the KBA has been at the forefront in dealing with this very serious issue with our Kentucky Lawyer Assistance Program (KYLAP). We are providing increased funding for KYLAP. This program, led by Director, Yvette Hou-rigan, is one of the leading programs in the United States and year after year provides effective assistance to our members who are dealing with depression and alcohol and drug abuse.

Like the rest of the Commonwealth, the KBA has been affected financially with the problems in the State Retirement System. The KBA staff is participating in the Kentucky Retirement System. An increasing amount of the KBA budget has been allocated to the required employer contributions necessitated by the plan’s critical underfunding. If the KBA were to stay in the plan, next fiscal year’s contribution would increase by nearly 70 percent or almost $1 million. In order to protect the KBA from continuing increases, the KBA staff and Board of Governors have worked to implement an alternate retirement and health plan for the employees that will be far more cost-effective. This withdrawal from the Kentucky Retirement System will allow the KBA to continue to provide high-quality member services with more stable funding.
Young lawyers are essential to the growth and progress of the KBA. In order to recognize this fact, we are in the process of proposing a rule that will allow the Chair of the Young Lawyers Division, who presently sits on the Board of Governors, to not only sit on the Board but also participate in the disciplinary process as a voting member.

Our Continuing Legal Education Department, directed by Mary Beth Cutter, continues to do an incredible job of providing continuing legal education in the form of the New Lawyer Program presented twice a year and in our Kentucky Law Update provided in nine different locations around the Commonwealth every year.

An additional point of focus was to help increase the efficiency in our law offices so that we are better able to serve our clients. With that in mind, we instituted a task force on law office management headed by Bob Young, with English, Priest, & Owsley, of Bowling Green. The goal of the task force was to get the message out to all of our members on how to more effectively run our law offices with a special emphasis on the use of technology. We have published articles on this topic in every issue of the Bench & Bar this past year.

And of course, this year we look forward to our KBA Annual Convention, which will be held in Lexington in June. Our convention theme is, “More than a Lawyer.”

We are proud of that theme because it fits all of our members so well. Each of you are “More than a Lawyer” in what you do for your clients in your practice every day, and for what you do for your communities outside of the law practice.

We have a first class lineup of speakers, and it’s going to be a great convention. So be sure to register and be here in Lexington in June to attend the convention and to also enjoy all of the beauty and energy that the city of Lexington and central Kentucky provide.

So, with that, I bid you goodbye as your President. It has been a great honor that you bestowed on me and it has been a lot of fun. I want to thank my lovely wife Kim for her support, help and advice. Like in everything I do, I couldn't do it without her. The officers and Board of Governors have been integral and invaluable partners in all of the accomplishments of the past year. I also want to thank my office staff, Leigh Reed and Shannon Williams for all of their help. And finally, I want to thank the entire staff of the KBA for all of the great work they do for all of us every day.

All the best,

[Signature]

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.

The Current Terms of the Following Board Members Will Expire on June 30, 2019:

1st District
Van F. Sims Paducah

2nd District
J. D. Meyer Owensboro

3rd District
Howard O. Mann Corbin

4th District
Amy D. Cubbage Louisville

5th District
Mindy G. Barfield Lexington

6th District
Todd V. McMurtry Ft. Mitchell

7th District
Rhonda Jennings Blackburn Pikeville
The Kentucky Bar Association invites its members to the 2018 Annual Convention scheduled for Wednesday, June 13 through Friday, June 15, at the Lexington Convention Center in downtown Lexington. This year’s event will offer over 50 CLE programs and provides up to 18.5 CLE credits, including 7.0 ethics. The convention offers many activities for members to attend throughout the three-day event. Annual Convention events and other convention items are highlighted over the next couple of pages.

For More information on how to register, as well as CLE speakers and sessions, visit www.kybar.org/2018AC. Members can also review pages 22-41 in the March 2018 Bench & Bar.
The following awards will be presented on Friday, June 15, at our Membership Luncheon at the Hyatt Regency Hotel:

- **Bruce K. Davis**
  - Bar Service Award
  - *Harry Scott Davis*
  - *Louisville*

- **Arnold S. Taylor**
  - Chief Justice’s Special Service Award
  - *Crestview Hills*

- **Grant M. Helman**
  - Chief Justice’s Special Service Award
  - *Louisville*

- **Michelle Browning Coughlin**
  - Nathaniel R. Harper Award
  - *Louisville*

- **Richard W. Hay**
  - Distinguished Lawyer Award
  - *Somerset*

- **Marilyn S. Daniel**
  - Donated Legal Services Award
  - *Versailles*

- **Carl N. Frazier-Sparks**
  - CLE Award
  - *Arkansas*

- **Thomas B. Spain**
  - CLE Award
  - *Carl N. Frazier-Sparks*
  - *Arkansas*
Tuesday, June 12

**Memorial Service** 3:30-4:30 p.m.
Christ Church Cathedral
166 Market Street, Lexington
The Kentucky Bar Association will celebrate the lives and legacies of those KBA members who have passed since June 1, 2017, during its 27th Annual Memorial Service.

Wednesday, June 13

**Kick-Off Event** 4:45-6:45 p.m.
Limestone Hall, At The Historic Courthouse
215 West Main Street, Fourth Floor
Complimentary with registration
Pre-registration required
Sponsor:

Join us at Limestone Hall, At The Historic Courthouse, in the heart of downtown for an evening of fun and laughter as you dine on food provided by Napa Prime and visit with colleagues. This venue is the home of the former Fayette County Courthouse that has been renovated into Lexington’s newest event space. Make plans now to come see the venue restored to its original beauty and elegance.

Thursday, June 14

**Bench & Bar and Young Lawyers Division Joint Reception** 5:00-6:15 p.m.
Heritage Pre-Function
Lexington Convention Center
Complimentary with registration
Pre-registration required
Sponsor:

Catch up with justices, judges and attorneys from throughout Kentucky gathering for conversation and refreshments. During this time-honored social event, attendees will gather for food and camaraderie. The reception will take place just prior to the annual banquet, which we hope you will make plans now to attend.

**KBA Annual Banquet** 6:30 p.m.
Heritage East/Center
Lexington Convention Center
$65 per person
Join us for the 2018 KBA Annual Banquet where you can enjoy a delicious meal and celebrate the investiture of the KBA’s new officers and bar governors. We will also present awards to the 2018 Distinguished Judge, Distinguished Lawyer and the Chief Justice’s Special Service Award recipients.

Opening the event will be a performance by the Kentucky Refugee Ministries Lexington Children’s Choir, the beneficiary of this year’s public service project. The entertainment will conclude with a performance by Sony Recording Artists, The Acoustikats, founded in 1993 by Dr. Jefferson Johnson as a subsection of the University of Kentucky Men’s Chorus. The premier all-male a cappella ensemble in the Commonwealth of Kentucky will provide entertainment during dinner and after the presentations. This group of 12 young men has been featured on national television as a part of NBC’s “The Sing-Off” a cappella competition and has performed in countless venues across the United States from the shores of Hawaii to “Elvis Week” in Memphis, Tennessee. Check out these ‘Kats on Facebook, Twitter, and Instagram to follow them on their musical journey!
Let the tributes begin! We’ll honor the recipients of the KBA’s Annual Bruce K. Davis Bar Service Award, Donated Legal Services Award, Thomas B. Spain Award and the Nathaniel R. Harper Award during this traditional luncheon hosted on the convention’s closing day. We’ll also recognize past KBA presidents, present our annual Law Day Awards, and honor the many Senior Counselors who achieved this special status in 2018.

**Barnes & Noble Bookstore at KBA Annual Convention**

We invite you to shop the Barnes & Noble Bookstore at the KBA Annual Convention, where you will find several publications from our featured presenters as well as a wide range of topics of interest to the legal community. The bookstore is located in the lobby of the Bluegrass Ballroom across from our registration area.

Several speakers will be signing books this year, so make sure to check the listing in the registration area for who is participating.

**2018 Annual Convention Exhibitors**

- Association of Corporate Counsel-KY Chapter
- Barnes & Noble
- Casemaker
- David Meers
- Dean Dorton
- GilsbarPRO
- ImageQuest
- Kentuckiana Court Reporters
- Kentucky Bar Foundation
- Kentucky CASA Network
- Kentucky Lawyer Assistance Program
- Kentucky Press Association
- Kentucky Refugee Ministries
- Lawyers Mutual Insurance Company of Kentucky (LMICK)
- National Insurance Agency, Inc.
- NKU Chase College of Law
- Office of the Secretary of State
- SMART START
- Young Lawyers Division

**Kentucky Bar Association**

**2018 New Lawyer Program**

June 13-14, 2018

in conjunction with:

**MORE THAN A LAWYER**

Lexington Convention Center

For more information, visit [https://www.kybar.org/page/nlpdatesandlocations](https://www.kybar.org/page/nlpdatesandlocations)

**Guidebook**

IS BACK FOR THE 2018 ANNUAL CONVENTION

Thanks to the generosity of Casemaker, our app will again be available for the 2018 Annual Convention. The app allows attendees to view the convention agenda, access materials for programs, view maps for events and receive up to the minute notices on any event or programming changes. Make sure to download it on day one and stay up to date throughout the three day event! More information on the app coming soon.

**KBA Membership Awards Luncheon**

**Patterson Ballroom, Hyatt Regency Hotel**

Let the tributes begin! We’ll honor the recipients of the KBA’s Annual Bruce K. Davis Bar Service Award, Donated Legal Services Award, Thomas B. Spain Award and the Nathaniel R. Harper Award during this traditional luncheon hosted on the convention’s closing day. We’ll also recognize past KBA presidents, present our annual Law Day Awards, and honor the many Senior Counselors who achieved this special status in 2018.

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

SCR 3.640 New Lawyer Program
Visitors to the Kentucky Bar Association’s Convention in May will recognize several new faces as well as old friends. All in all, it’s a group that is an excellent example of a truly collaborative profession.

The convention is a chance to discover and nurture the relationships that thrive in the Kentucky legal community. There are opportunities to engage and learn from one another, whether you’re a seasoned attorney with decades of experience or a first-year associate.

In the following pages, you’ll find our partners at the convention, including our Sponsors and Supporters. These partners have been instrumental in making our annual event possible. We are deeply grateful for their support and encourage you to support them in their endeavors.

A special Thank You to everyone who has contributed to the success of this year’s convention. We extend our heartfelt gratitude for their dedication and commitment to the legal profession.

We hope you enjoy this edition of the Kentucky Bar Association’s Convention Guide and look forward to seeing you at the convention this year.
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WHAT EVERY JUDICIAL CANDIDATE NEEDS TO KNOW ABOUT THE NEW CODE OF JUDICIAL CONDUCT

BY: JUSTICE LAURANCE B. VANMETER AND JIMMY A. SHAFFER
n January 2018, the Kentucky Supreme Court revised the Code of Judicial Conduct ("SCR 4.300 (2018)"). This revision became effective on January 31, 2018, and is the first major overhaul of SCR 4.300 since 1998. Much of the terminology and provisions of SCR 4.300 (2018) are similar to those in the former version. The most noticeable difference between the two is that the current version contains four Canons instead of five, since former Canons 1 and 2 were combined into Canon 1, with subsequent Canons renumbered accordingly.

The impetus for the revision was a number of federal decisions, starting with the Supreme Court’s decision in Republican Party of Minnesota v. White, 536 U.S. 765, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002). Following White, the canons governing the political and campaign activities of judges and judicial candidates came under increased scrutiny and constitutional challenges nationwide. These challenges pitted the interest states have in protecting the independence, integrity, and impartiality of the judiciary against the considerable protections of the First Amendment. They also challenged the states’ interest in electing their judges and in maintaining bipartisan elections.

Kentucky’s Code of Judicial Conduct did not avoid this scrutiny. The federal cases which have addressed Kentucky’s Canon governing judicial political activity are Carey v. Wolnitzek, 614 F.3d 189 (6th Cir. 2010) and Winter v. Wolnitzek, 834 F.3d 681 (6th Cir. 2016). Both of these Sixth Circuit cases have district court opinions and orders, some appealed and some not, such that it became increasingly difficult to know what the rules were. With the coming 2018 elections, rather than attempt to go back and amend the existing Code of Judicial Conduct, a decision was made to adopt the American Bar Association’s most recent Model Code of Judicial Conduct. The process entailed the assembling of a committee, comprised of judges from all levels (District, Circuit, Court of Appeals, and Supreme Court), a retired judge, a law professor, and three attorneys, to look at the ABA’s Model Code and recommend modifications that may comport with Kentucky law. The next step was to roll out a draft to the District, Circuit and Court of Appeals judges for review and comment. The final step was the modification and adoption by the Kentucky Supreme Court.

While the structure of the Code has changed somewhat, what has not changed is the overarching purpose, which is to ensure an independent, fair and impartial judiciary by establishing standards for ethical conduct. To that end, the Code provides guidance to judges and judicial candidates and a basis for regulating conduct that would impair that purpose. Because the changes are so extensive, one article is insufficient to cover them all exhaustively. Obviously, every judge and judicial candidate is advised to read and educate themselves on all provisions. If, after doing so, a judge or candidate has questions concerning a rule or application to a course of action, he or she should contact the Ethics Committee of the Kentucky Judiciary. This article will highlight some of the structural changes and additions and then focus on those provisions that will most affect those running for judicial office.

The Code has always contained a Terminology section. SCR 4.300 (2018) adds and sometimes redefines terms, which should bring greater clarity in understanding the black letter Rules. The added definitions are: “contribution” (both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure); “domestic partner” (person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married); “impartial, impartiality and impartially” (absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge); “impending” (imminent or expected to occur in the near future); “independence” (freedom from influence or controls other than those established by law); “integrity” (probit, fairness, honesty, uprightness, and soundness of character); “pending” (commenced and continuing through any appellate process until final disposition); and “personally solicit” (a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, social media, or other means of communication). The new Terminology section helpfully adds a citation to each Rule wherein the terms appear.

SCR 4.300 (2018) has an added “Scope” section, which is essentially an instructional guide for interpreting the Rules. This section advises that the comments are not rules themselves but provide guidance, give examples of permitted and prohibited conduct, and identify aspirational goals for judges. This section further advises that the Rules are rules of reason, should be applied consistent with the law with due regard for all relevant circumstances, and are not meant to impinge on the independence of judges in making judicial decisions. While the Rules are binding and enforceable, not every transgression should result in the imposition of discipline, as any discipline should be reasonable and reasoned considering the seriousness of the transgression, the facts and circumstances at the time of the transgression, the extent of any pattern of conduct, previous violations and the effect on the judicial system or others.

The Application section is now much more detailed in defining the different categories of judges and which provisions of the Code apply to which judges. It distinguishes between full-time judges and three different categories of part-time judges, including continuing part-time judicial officers who serve repeatedly on a part-time basis (master commissioners, domestic relations commissioners and trial commissioners); periodic part-time judges (retired/senior judges on temporary assignment and those who are appointed by the Chief Justice pursuant to Kentucky Constitution §110(5)); and pro tempore part-time judges who serve only sporadically. While every provision of the Code applies to all full-time judges, all three categories of part-time judges are exempt from Rules 3.8(A) (appointment to fiduciary positions), 3.9 (service as arbitrator or mediator), 3.10 (practice of law), and 3.11(B) (financial, business or remunerative activities). Continuing and periodic part-time judges are also exempt from Rule 4.1(A)(1) through (7) (political and campaign activities), except while they are serving as judges.
continuing part-time judge may practice law in the court in which he or she serves, while a periodic part-time judge may not. This section requires compliance with Rule 3.8 (appointment to fiduciary positions) and 3.11 (financial, business or remunerative activities), within 90 days after the Code becomes applicable to the judge.

Canons 1, 2 and 3 address, respectively, judges’ obligations (i) to uphold the independence, integrity and impartiality of the judiciary; (ii) to perform the duties of office impartially, competently and diligently; and (iii) to conduct personal and extrajudicial activities to minimize risk of conflict with judicial obligations. Clearly, these Canons and their rules are extremely important and comprise the vast bulk of SCR 4.300 (2018). However, since Kentucky will hold nonpartisan elections for a Supreme Court Justice, two Court of Appeals Judges, at least 14 Circuit Court Judges (both civil/criminal and family), and all District Court Judges on November 6, 2018, with primary elections on May 22, 2018, Canon 4 contains significant rules that every judicial candidate needs to know.

The Comments to Rule 4.1 were extensively rewritten and modified from those in the ABA Model Code to reflect the Sixth Circuit decisions addressing Kentucky’s Code. Significantly, Winter v. Wolinizek, 834 F.3d 681, 689 (6th Cir. 2016) is featured prominently.

RULE 4.2, POLITICAL AND CAMPAIGN ACTIVITIES OF JUDICIAL CANDIDATES IN PUBLIC ELECTIONS, a combination of “shall” and “may” rules, is a completely new Rule, with the exception of 4.2(4), requiring candidates to take reasonable measures to ensure that other persons do not do what the candidate is prohibited from doing. This was previously in the commentary but is now a black letter rule. The new provisions require candidates to act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary; and review and approve content of all campaign statements and materials before dissemination. The new provisions allow candidates, unless prohibited by law, to establish campaign committees; and to speak on behalf of their own candidacy through any medium.

RULE 4.3, ACTIVITIES OF APPLICANTS FOR APPOINTIVE JUDICIAL OFFICE, allows applicants to communicate with the appointing or confirming authority, and to seek endorsements for the appointment from any person or organization. The Comment to the Rule warns against the applicant making any pledges, promises, or commitments inconsistent with the impartial performance of adjudicative duties of the office.

RULE 4.4, CAMPAIGN COMMITTEES, requires those candidates who establish campaign committees pursuant to Rule 4.2(B)(1) to direct the committee to solicit and accept only contributions permitted by law, not to solicit or accept contributions more than 200 days before the applicable primary or general election, not to solicit contributions after a general election, and to comply with...
all statutory requirements for disclosure, reporting, and divestiture of campaign contributions. 25

RULE 4.5, ACTIVITIES OF JUDGES WHO BECOME CANDIDATES FOR NONJUDICIAL OFFICE, referred to as the “resign to run” rule, requires a judge to resign upon becoming a candidate for a nonjudicial elective office. 26 However, the Rule does not require a judge to resign upon becoming a candidate for a nonjudicial appointive office, providing compliance with the other provisions of the Code. 27

In closing, it would be negligent not to address the issues related to social media and campaigning. In 2010 the Judicial Ethics Committee released Judicial Ethics Opinion JE-119. 28 This Opinion gave a qualified “yes” to the question of whether it is permissible for judges to participate in social media. It is important to note that the Opinion advised that participation in social media was permissible, but it also advised judges to be “extremely cautious” in their participation. Since 2012, when the Judicial Conduct Commission began keeping statistics on complaints related to social media, it has received 36 such complaints. In 2014-2015, the Commission issued two reprimands to judges for “liking” the Facebook pages of candidates for judicial or political office, considering these “likes” as endorsements. It would be prudent of any candidate, or any judge for that matter, to consider that what they are prohibited from doing in the physical world, they are also prohibited from doing in the virtual world.

In election years the Judicial Conduct Commission sees a noteworthy increase in complaints related to campaign activity. In 2014, the last significant election year for judges in Kentucky, 11 percent of the complaints received by the Commission were related to campaign activity and five of the seven published sanctions that year were for violation of campaign rules. With the changes in the Code, it will be especially important for candidates to know the Rules and convey them to their campaign committees and others assisting them in their campaigns for judicial office.

ENDNOTES

1. Kentucky Supreme Court Order 2018-003 (entered January 18, 2018), designated “An Order Amending SCR 4.300, the Kentucky Code of Judicial Conduct.” This Order was amended a week later by Order 2018-004 to make some minor clerical corrections.


3. In White, the Court struck down a prohibition on judicial candidates announcing their views on disputed legal and political issues.

4. In Winter, the Sixth Circuit struck down provisions prohibiting candidates from campaigning as members of political organizations, making speeches for or against political organizations or candidates, and making misleading statements. The Court upheld the prohibition on candidates acting as leaders or holding office in political organizations, publicly endorsing or opposing candidates for public office, soliciting funds or making assessments or contributions to political organizations or candidates, and making false statements. The Court remanded a provision prohibiting candidates from making pledges, promises or commitments inconsistent with the impartial performance of adjudicative duties.

5. Rule 4.1(A)(1)
6. Rule 4.1(A)(3)
7. Rule 4.1(A)(4)
8. Rule 4.1(A)(5)
10. Rule 4.1(A)(6)
11. Rule 4.1(A)(7)
12. Rule 4.1(A)(10)
15. Rule 4.1(A)(11)
16. Rule 4.2(A)(2)
17. Rule 4.2(A)(3)
18. Rule 4.2(B)(1)
19. Rule 4.2(B)(2)
20. Rule 4.3(A)
21. Rule 4.3(B)
22. Rule 4.4(B)(1)
23. Rule 4.4(B)(2)
24. Rule 4.4(B)(3)
25. Rule 4.4(B)(4)
26. Rule 4.5(A)
27. Rule 4.5(B)

ABOUT THE AUTHORS

JUSTICE LAURANCE B. VANMETER was elected to the Kentucky Supreme Court in November 2016 from the 5th Appellate District, comprising Anderson, Bourbon, Boyle, Clark, Fayette, Franklin, Jessamine, Madison, Mercer, Scott, and Woodford Counties. Upon taking office on Jan. 2, 2017, he became just the third Justice to have served at all four levels of the Kentucky unified court system. Prior to being elected to the Supreme Court, Justice VanMeter served 13 years as a Judge of the Kentucky Court of Appeals, having been elected in November 2003, and being re-elected unopposed in 2006 and 2014. He received his undergraduate degree with a major in history in 1980 from Vanderbilt University, and his law degree in 1983 from the University of Kentucky College of Law, where he was a member of the Order of the Coif and the Kentucky Law Journal.

JIMMY A. SHAFFER is the executive secretary to the Judicial Conduct Commission. She is a 2002 graduate of Chase College of Law. She is a member of the Kentucky Bar Association and the National Center for State Courts Center for Judicial Ethics.
The quote at the beginning of this article foreshadows the ultimate result of the early attempts at voluntary associations of Kentucky lawyers: an effective lawyer disciplinary system for our state. In the beginning, there was no bar association to exercise any influence or power over the practice of law in the Commonwealth. Rather, the Court exercised control over the Bar and individual lawyers through its rules and rulings.

THE BEGINNINGS

The Kentucky Bar Association seal proudly bears the date 1871, presumably its date of founding. There was a meeting held that year in Louisville, but no organization was actually formed. Instead, a group of lawyers, unhappy about a decision of the Court of Appeals, got together to discuss and criticize the ruling. They apparently were organized enough to precipitate one change: the General Assembly changed the law and rejected the offending court ruling at its next meeting.

But the group that met in 1871 did not build upon its enthusiasm and success. It did not formally organize, did not name itself, and did not meet again. It would be over a decade before lawyers would again come together for a similar common purpose. This time they did organize. In 1882, lawyers gathered in Louisville, adopted a constitution and bylaws, and named the organization the “Kentucky Bar Association.” Most importantly, this first constitution contained the seeds of the KBA’s current disciplinary system in its Article III which provided for a committee named “On Grievances.”

But this group died out after only three meetings. Once again another decade passed before another attempt to organize was made. In 1901, lawyers from Louisville and Northern Kentucky met and formed the “Kentucky State Bar Association,” the name difference an apparent attempt to distinguish the organization from the one formed in 1882. Nonetheless, the constitution and bylaws this group adopted were based on the previous group’s documents. These founding materials contained another embryonic piece of Kentucky’s current lawyer disciplinary system, Article X. Article X provided:

The Committee on Grievances shall receive the complaints which may be made in matters affecting the interests of the legal profession, the practice of the law and the administration of justice and report the same to the Association with such recommendations as it may deem advisable. The proceedings of this committee shall be deemed confidential and kept secret, except so far as reports of same shall necessarily and officially be made to the Association.

This is the beginning of the confidentiality provision within the existing Kentucky lawyer disciplinary system. Today the confidentiality rule is found in Supreme Court Rule (SCR) 3.150.

The early bar association fought for the better part of 30 years toward a self-regulating bar, and toward a system with lawyers being involved in the disciplinary process rather than exclusively a court. The effort was successful when the Kentucky General Assembly passed the Bar Act in 1934, granting power to Kentucky’s highest court to regulate the practice by Rule.

Prior to the Bar Act, lawyer discipline in Kentucky generally consisted of show cause or contempt proceedings in circuit courts. For example, the earliest example of lawyer discipline in the Commonwealth is Rice v. Commonwealth where an attorney was found...
guilty by the circuit court of altering a document and, consequently, disbarred.

THE JUDICIAL ARTICLE OF 1976
From 1934 to 1976, the Court of Appeals governed the practice of law in Kentucky via Rules of the Court of Appeals (RCAs). That all changed with the 1976 Judicial Article.9

In addition to revamping the Commonwealth's entire system of courts, the Article gave the Supreme Court of Kentucky the power to regulate and discipline members of the bar:

The Supreme Court shall have the power to prescribe rules governing its appellate jurisdiction, rules for the appointment of commissioners and other court personnel and rules of practice and procedure for the Court of Justice. The Supreme Court shall, by rule, govern admission to the bar and the discipline of members of the bar.10

In a nutshell, the Court governs admissions to the bar via SCR 2, lawyers via SCR 3, and judges via SCR 4. Within SCR 3, the Court delegated its authority over lawyer discipline to the Kentucky Bar Association. SCR 3.025 is simply entitled, "Kentucky Bar Association." This is the Rule which created and articulated the mission of the entity we know today as the Kentucky Bar Association.

The mission and purpose of the association is to maintain a proper discipline of the members of the bar in accordance with these rules and with the principles of the legal profession as a public calling, to initiate and supervise, with the approval of the court, appropriate means to insure a continuing high standard of professional competence on the part of the members of the bar, and to bear a substantial and continuing responsibility for promoting the efficiency and improvement of the judicial system.

The Court also created a Board of Governors in SCR 3.070: "The Board is the governing body of the Association and the agent of the Court for the purpose of administering and enforcing the Rules." The Court then created the position of Bar Counsel in SCR 3.155: "The Board shall appoint a Bar Counsel and such Deputy Bar Counsel as may from time to time be appropriate. Bar Counsel shall be responsible for investigating and prosecuting all disciplinary cases and such other duties and the Board may designate."

Those "other duties" are substantial. In addition to disciplinary matters, Office of Bar Counsel (OBC) handles restorations and reinstatements; provides support to the Clients’ Security Fund, Legal Negligence, and Fee Arbitration; handles overdraft notices for unpaid dues and unauthorized practice of law matters; and provides support to the Attorneys’ Advertising Commission.

There are eight attorneys currently in OBC with a combined practice experience of 150 years; 93 of those years represent experience in OBC. OBC attorneys have served as prosecutors, public defenders, in-house ethics counsel, regulatory counsel for a state agency, and in the general private practice of law.

TODAY AND THE FUTURE
The Court reviews the Rules on a regular basis, with most proposed changes working up through the Board of Governors Rules Committee to the Court. The Court holds a Rules hearing on any proposed Rule changes each year at the annual KBA convention. While the Rules do get tweaked on a regular basis, there are no known massive overhauls to the disciplinary system currently in the works.

Judges and attorneys are encouraged to acquire a better understanding of how the disciplinary system works—and become invested in assisting in "maintaining a proper discipline," as SCR 3.025 provides. This may mean confronting the difficult task of reporting misconduct. SCR 3.130(8.3)(a) requires an attorney to report misconduct if the attorney "knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." The Ethics Hotline is an available resource to any attorney who is unsure whether to report a fellow attorney. SCR 3.530(2) provides "[a]ny attorney licensed in Kentucky . . . who is in doubt as to the ethical propriety of any professional act contemplated by that attorney may request an informal opinion."11

When the Rule requiring the reporting of misconduct went into effect in 2009, there was a fear of a flood of complaints from attorneys. That fear was not realized. Most attorneys struggle with the idea of reporting a colleague, which is understandable. But contrary to the fears, the Rule has not been used as a weapon.

There is a classic case which demonstrates the reason for the Rule: the serial attorney-thief. Years before the enactment of the Rule, an attorney misappropriated from an estate. The theft was discovered, but the matter privately settled. The other attorney involved did not report the theft. The inevitable happened. That first attorney stole from another estate. This is the example cited by OBC when people complain they don’t like the so-called "snitch" rule.

Importantly, attorneys serve a necessary purpose in disciplinary matters. The OBC routinely relies on information and testimony from lawyers. Lawyers actively involved in upholding the integrity of the Bar are both crucial for the process, and crucial in maintaining the level of respect integral for the success of the profession.

Reinstatement matters are of particular concern. As mentioned above, OBC handles all reinstatement matters. These can be complex pieces of litigation which make case law. While few and far between, when they happen, they are significant.

SCR 2.300(6) provides the basic legal requirement for reinstatement after suspension: an applicant “has the burden of proving by clear and convincing evidence that he/she possesses the requisite
character, fitness and moral qualification for re-admission to the practice of law.” In a somewhat repetitive section, one of the factors to be considered is “good moral character.” SCR 2.300(6)(d).

There is a long history of case law behind SCR 2.300(6) and (7) that fleshes out these criteria. One factor crucial to the reinstatement inquiry is the opinion of others, with an emphasis on those in the applicant’s community. The operative questions become whether the applicant is trustworthy, revered, reviled and/or avoided.

The Character and Fitness Committee of the Kentucky Office of Bar Admissions actually conducts the investigations in reinstatement matters. That office may contact any interested party including any Kentucky attorney about a pending reinstatement matter. Cooperation with that office is important to both the OBC and the Kentucky Office of Bar Examiners. If any Kentucky lawyer is aware of an application for reinstatement, has a strong opinion on the matter but has not been contacted by the Committee, it is the recommendation of the OBC that the Committee be contacted and informed.

Lastly, the Bench & Bar and the KBA website are excellent sources of information on the disciplinary process.

ENDNOTES

1. During fall 2017, I had the opportunity to go to almost all of the Kentucky Law Updates and present a program on Bar History. My aim was to trace some of the elements of our current lawyer disciplinary system to the present, using history to tell the story.

2. Constitution, By-Laws, Roll of Members and Proceedings of the Kentucky State Bar Association at Its Organizational Meeting Held in Louisville, Kentucky, November the Nineteenth, Nineteen Hundred and One, Together with a Resume of the History of the First State Bar Association, 1881-1884; and Facts Leading up to the Formation of the Present Kentucky State Bar Association, prepared by Edward J. McDermott at the Request of the Association, 5-7 (June 1910)


5. Id.

6. Id. at 99.

7. Proceedings of the Thirty-Third Annual Meeting of the Kentucky State Bar Association held at Lexington, Kentucky, July 5 and 6, 1934 (Lexington, 1934), 53-54; Rules for Bar Given by Court of Appeals,” Louisville Courier-Journal, June 27, 1934, Section 1, page 12, column 5.

8. 57 Ky. 472 (472 B. Monroe 376) (1857).

9. Ky. Const. §109-124, The Judicial Article; KRS § 21A.160 “The Supreme Court has power to provide for the organization, government and membership of the state bar of Kentucky and to adopt rules and regulations to govern conduct and activity of the state bar and its members.”


11. Information about Ethics and the Ethics Hotline may be found at www.kybar.org under the “Resources” pull down tab, then under “Ethics,” and “Ethics Hotline.”

12. SCR 2.000; Information about the Kentucky Office of Bar Admissions and the Character and Fitness Committee may be found at www.kyoba.org.
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Kentucky Defense Counsel
This article discusses the attorney disciplinary process, to demystify or debunk, to the extent those are attainable goals, the attorney disciplinary process from the Respondent lawyer’s perspective.

**Kentucky Bar Association is Not a Monolithic Organization**

The attorney disciplinary process is quite bureaucratic, has multiple levels each with different jurisdiction and authority, different levels of review, etc. It is a regulatory process created by attorneys, for attorneys, and to be enforced by attorneys. The major players in the attorney disciplinary process are: (1) Office of Bar Counsel, (2) Inquiry Commission, (3) Trial Commissioner, (4) Board of Governors, and (5) Supreme Court.

Kentucky is a strong separation of powers State so that the admission to, and the regulation of, the practice of law is solely within the authority of the Supreme Court.

In some jurisdictions, such as California, the legislature plays a greater and direct role in the regulation of the practice of law, not so in Kentucky. By comparison, every other disciplinary agency in Kentucky, e.g., regulating physicians, barbers, nurses, veterinarians, etc., are established and regulated by the General Assembly. However, the General Assembly may not regulate the practice of law. Any statute attempting to do so exists only because the Supreme Court permits it. For example, the General Assembly may criminalize the unauthorized practice of law but cannot define what constitutes the practice of law.

**Rules of Professional Conduct**

Any discussion of the attorney disciplinary process must mention the Rules of Professional Conduct, which go from Rule 1.1 to Rule 8.5, all found at SCR 3.130. The Rules establish the lowest, not the highest, conduct required of attorneys. It is common, and good practice, to create protocols beyond those required by the Rules for the protection of both attorney and client. For example, until 2009, attorneys would have clients sign contingent fee agreements, even though the client’s signature was not required under the previous version of Rule 1.5.

**Confidential Process**

Attorney disciplinary proceedings are confidential pursuant to SCR 3.150. The Rule contains a number of exceptions, but the main point is that an attorney disciplinary proceeding generally becomes public after a Trial Commissioner or the Board of Governors makes a finding that the attorney has committed a violation of the Rules and the recommended sanction is public discipline. Since the great majority of attorney disciplinary cases are resolved before proceedings before a Trial Commissioner or the Board, for all practical purposes, disciplinary proceedings are confidential proceedings.
INFORMAL AND FORMAL PROCEEDINGS

Informal disciplinary proceedings occur at the Inquiry Commission level. Disciplinary inquiries may originate from multiple sources, clients, former clients, other attorneys, judges, or friends and family of all of the above. There is no standing requirement for the filing of a Bar Complaint, as there would be for a plaintiff filing a legal malpractice case.

Formal disciplinary proceedings occur when the Inquiry Commission authorizes the issuance of a Charge. That would come after the conclusion of the informal proceedings. Few cases that begin at the informal stage end up as formal disciplinary proceedings. A formal disciplinary proceeding invokes the jurisdiction of a Trial Commissioner, the Board of Governors, and the Supreme Court.

OFFICE OF BAR COUNSEL

Throughout the disciplinary process, from the Investigative File stage, if any, all the way through any review before the Supreme Court, the prosecutor is the Office of Bar Counsel. That Office is composed of Chief Bar Counsel, a number of Deputy Bar Counsels, and support staff.

One of the bigger mistakes an attorney may make is viewing the Office of Bar Counsel as the enemy. They are not the enemy. They are doing a job. Consistent with their own ethical obligations, they want to maximize the available outcome. That is their job. However, the Office of Bar Counsel is only one part of a broader Kentucky Bar Association in attorney disciplinary proceedings.

Respondent attorneys sometimes seek to personalize the process by believing that the reason the proceedings are moving forward is because of some personal animus from Bar Counsel towards the attorney, or that somehow the KBA, generally, is “Out to get me.” That is a poor attitude, reflects subjectivity run amok, and has the unfortunate consequence of the Respondent attorney not necessarily addressing the merits of the case.

INQUIRY COMMISSION

The Inquiry Commission functions at the initial stage of any disciplinary proceeding. In most instances, disciplinary cases are dismissed or otherwise resolved at this stage.

The Inquiry Commission sits as a combination quasi-grand jury and quasi-trial court ruling on a Motion for judgment on the pleadings. The Inquiry Commission may resolve factual issues and does have some discretion in resolving disciplinary matters. However, all of the resolutions which are available to the Inquiry Commission are private. If the disciplinary inquiry finds significant factual issues and a significant potential for a degree of public discipline, the matter may become the subject of a formal disciplinary proceeding with the issuance of a Charge.

The Inquiry Commission has a number of options available to it in resolving a case. It may dismiss a Bar Complaint, dismiss a Bar Complaint with conditions, e.g., attend the Enhanced Professional Education Program (EPEP), (which is essentially Ethics “Traffic School”), require the reimbursement of fee, etc. Alternatively, the Inquiry Commission may dismiss a Bar Complaint and issue a Warning Letter. The Warning Letter is not discipline. The Inquiry Commission may impose one degree of discipline, a Private Admonition. The Inquiry Commission may also impose conditions on the Private Admonition as it would with a Dismissal.

An attorney has the right to reject a Private Admonition. In general, rejecting a Private Admonition is unwise. If a Private Admonition is rejected, then formal disciplinary proceedings are automatically invoked, with the issuance of a Charge, the appointment of a Trial Commissioner, the conducting of an evidentiary hearing, and proceedings before the Board of Governors and before the Supreme Court. Essentially, an attorney would reject a Private Admonition if they believed, with almost certainty, that the Supreme Court is going to dismiss the case.

TRIAL COMMISSIONER

Formal disciplinary proceedings begin with the issuance of the Charge. After the attorney files an Answer, and assuming consensual resolution efforts are unsuccessful, a Trial Commissioner is appointed by random draw. Trial Commissioners are typically private practice attorneys, although in some instances, retired Judges have served.

An attorney disciplinary proceeding is not like a legal malpractice case. There is no pretrial discovery, no interrogatories, document production requests, and depositions may only be taken by leave of the Trial Commissioner. There are no dispositive Motions for summary judgment. If an attorney does not have sufficient resources to retain defense counsel, they may request the KBA appoint counsel.

The Trial Commissioner stage is the only step in the process when an evidentiary hearing is held. However, since all levels of review above the Trial Commissioner are de novo, if the Trial Commissioner makes an evidentiary ruling to exclude certain evidence, the Respondent attorney should present the evidence by avowal to preserve it for de novo consideration by the Board and the Court.

The evidentiary hearing is a typical civil court bench trial where the Judge is sitting as the trier of fact. Typically, there are brief opening statements; the Bar goes first because it carries the burden of proof, followed by the Respondent’s proof. Although the Trial Commissioner makes a finding of guilt or innocence, and proposes a sanction if a finding of guilt, there is no separate guilt phase and penalty phase, it is all wrapped into one proceeding. Therefore, if the Respondent presents character evidence, that evidence concerns any sanction, and not guilt or innocence. In general, a trial may go two days.

After the hearing, and the preparation of the transcript, each side submits Memorandums on behalf of their respective positions. Operating under the military maxim of “You do not let your opponent pick the field of battle,” the Memorandum on behalf of the Respondent should not merely respond to the argument of the KBA, but should present the Respondent’s position and arguments. The Respondent should not let the KBA decide what is, or is not, important for the Trial Commissioner to consider.
The Trial Commissioner makes Findings of Fact, Conclusions of Law, and, if finding the attorney guilty of any Count of the Charge makes a Recommendation of sanction. By Supreme Court Rule, the recommendation of the Trial Commissioner is advisory only, and is subject to de novo review by the Board of Governors and by the Supreme Court.

There are instances where a Respondent attorney has obtained a successful outcome before the Trial Commissioner, and the Respondent believes they are now done and can “rest on their laurels” for the rest of the process. A dangerous approach. A race is not over until you cross the finish line. Concluding the Trial Commissioner process is just one lap of a multi-lap race.

**BOARD OF GOVERNORS**

The Board of Governors is the governing body of the KBA. The Board, through its Officers and Bar Governors, is responsible for the administration of the Kentucky Bar Association. The Board also has a disciplinary function. In attorney disciplinary cases, the Board considers cases that have been appealed by either Bar Counsel or the Respondent attorney following proceedings before the Trial Commissioner. And, if the attorney did not respond to the Charge, the Board would consider the case as a default case. The Board also considers the applications of suspended attorneys seeking reinstatement following evidentiary proceedings before the Character and Fitness Committee of the Kentucky Office of Bar Admissions.

Following a Trial Commissioner’s Hearing and the Trial Commissioner rendering its Recommendation, either side may seek review before the Board of Governors. The review before the Board may be either de novo or appellate review. Proceedings before the Board are more like a regular civil appeal in that there is briefing and oral argument.

**SUPREME COURT**

After the Board makes its Recommendation, either the Office of Bar Counsel or the Respondent attorney may file a Notice of Review and Brief with the Supreme Court.

The other side files a Brief in response. It is rare for the Supreme Court to grant oral argument in an attorney disciplinary case. Review before the Supreme Court is de novo. The Supreme Court has the right, even if neither side asks for review, to invoke sua sponte review, although that would also be rare.

The Supreme Court is the last step in the disciplinary process. Some attorneys will tell you that they are going to go to Federal Court in their disciplinary case. Unless the case has significant First Amendment ramifications, there is a federal abstention doctrine by which the Federal Courts will typically abstain from getting involved in State Bar discipline.

**BAR COMPLAINTS, BAR COMPLAINANTS AND RESPONDENT ATTORNEYS**

Generally speaking, good news from the KBA never comes by certified mail. However, the biggest mistake an attorney may make in a disciplinary inquiry is to over-react as doing so may create a problem where none existed, or create a big problem out of a small problem.

Generally, attorneys who receive disciplinary inquiries fall into two categories: (1) subjective and willing to admit it; or (2) subjective and deluding themselves into thinking they are objective. It is difficult, if not impossible, after receiving notice of a Bar Complaint, for anyone to objectively look at the situation and respond appropriately. This does not mean every lawyer who receives a Bar Complaint needs to retain an attorney; but the benefit of a separate “set of eyes”, or at least an outside perspective, is helpful.

Generally, most Respondent attorneys in Bar disciplinary proceedings are either solo practitioners or practitioners in small firms. This is not because of any inherent bias against solo practitioners or small firms by the organized Bar; it is that attorneys who are on their own or in a small firm do not have the ready resource of advice or mentors.
Disciplinary proceedings are not like civil proceedings where there is a requirement of standing and privity. The source of a Bar Complaint can pretty much be anybody: current client, former client, adverse party, adverse attorney, Judges, the Inquiry Commission itself, or a friend, neighbor, relative, etc., of any or all of the above. And, the issue has been complicated by Kentucky’s adoption of the reporting Rule in 2009 set out in Rule 8.3. That Rule has many exceptions and there is a detailed KBA Ethics Opinion, KBA E-430, which discusses in detail that Rule. That Rule is not a self-reporting Rule. The only time you must report adverse action to the KBA is if you have been disciplined in another jurisdiction where you are licensed, you are convicted of Class A Misdemeanor, or convicted or plead guilty to a Felony.

Bar Complaints from former clients, current clients, other lay people, etc., have certain basic characteristics. For many reasons, Bar Complaints are typically conclusory, factually incomplete and inaccurate; in particular, people rely on independent recollection rather than documents of record, correspondence, etc. Additionally, a chief problem of Bar Complaints is that the Bar Complaint attempts to take the attorney out of proper factual context. That is where the importance of “making a good first impression” comes into play when filing the Response.

Another problem with Bar Complaints is that typically there is no reference to any Rule of Professional Conduct allegedly violated. Much like an indictment that did not contain reference to any criminal statute. Essentially, the attorney is served with a Bar Complaint which alleges that certain conduct occurred, and the person filing the bar complaint believes that conduct was unethical. Therefore, the Respondent attorney must first figure out what conduct is being alleged, and, what Rule, if any, would apply to that conduct. That is why it is important to be familiar with the Rules of Professional Conduct. Bar Counsel, who reviewed the Bar Complaint, are familiar with the Rules but, unless it is an Inquiry Commission Complaint, the Respondent will not be told what ethics rules are implicated.

Bar Complaints may also come as a result of Orders entered in civil and criminal cases, such as an Order of Contempt, CR 11 Order, CR 37 Sanction Order in discovery, etc. While any factual determinations made in such Orders may create offensive collateral estoppel problems for the Respondent attorney, there are different issues in play in attorney disciplinary cases. As a consequence, you will still have flexibility in presenting an explanation of the underlying conduct in a disciplinary proceeding.

CONSENSUAL RESOLUTION

Attorney disciplinary proceedings may be resolved by agreement pursuant to SCR 3.485. The Rule requires that the KBA must agree with the terms of the consensual resolution before the proposed consensual resolution may be presented to the Supreme Court. Essentially, consensual resolution bypasses whatever remaining procedural steps are out there, typically avoiding a Trial Commissioner’s Hearing and review before the Board of Governors. Once the Trial Commissioner’s Hearing is held, the option for consensual resolution is pretty much gone.

When the Motion is prepared, it is first approved internally within the Office of Bar Counsel, and then must be approved by the Immediate Past President of the KBA and the Chair of the Inquiry Commission. If all agree, then the Motion may be submitted to the Supreme Court. The KBA will file a Response indicating agreement to the consensual resolution.

The Supreme Court exercises de novo review of all such matters and, in most instances, accepts the consensual resolution.

RECIPROCAL DISCIPLINE

If an attorney is licensed in another jurisdiction, and receives discipline in that other jurisdiction, the attorney is subject to reciprocal discipline in Kentucky pursuant to SCR 3.435. Generally speaking, the Supreme Court will impose in Kentucky the same discipline imposed in the other jurisdiction unless the attorney is able to show that the misconduct in the other jurisdiction warrants “substantially different discipline” in Kentucky. That is a tough, though not impossible, burden to meet.

KYLAP

Unfortunately, statistics tell us attorneys are more likely than other professionals to have issues with depression, alcohol and substances abuse, and all the problems those conditions may cause. Regrettably, attorneys are human, and are subject to the same human frailties of everyone else, but actually more so because of the nature of our profession.

KYLAP, the volunteer-driven Kentucky Lawyer Assistance Program, is a good program. It is part of the Bar Association, and serves attorneys with alcohol, substance abuse and/or mental health issues but maintains confidentially of its records separate from the KBA and its disciplinary arms. The Supreme Court has provided a very strong confidentiality provision concerning contacts made by attorneys to KYLAP and if you contact KYLAP before any disciplinary inquiry, you remain below the KBA disciplinary radar. KYLAP is not going to report you to the KBA Office of Bar Counsel. That is not KYLAP’s function.

Frequently, however, an attorney’s first contact with KYLAP is after the attorney receives a disciplinary inquiry, or perhaps multiple disciplinary inquiries, because the attorney is having problems with alcohol, drugs, mental health, etc. An attorney in a disciplinary proceeding who has an issue regarding alcohol, drugs or mental health that contributed to the conduct at issue, is going to be involved in KYLAP, either voluntarily, before any discipline is imposed, or, by Order of the Supreme Court, in the event of discipline.

ETHICS HOTLINE

The Supreme Court has established the KBA Ethics Committee pursuant to SCR 3.530. The Hotline is an important resource so that an attorney may determine if his or her contemplated conduct is ethically compliant.

However, there are significant limitations on the scope of an Ethics Hotline Opinion. An Ethics Hotline Opinion may only be provided to the attorney requesting the
opinion regarding their own prospective conduct, not the conduct of other counsel. And, most significantly, the Ethics Hotline Opinion may only address legal ethics issues. Unfortunately, in the actual practice of law, issues rarely only involve legal ethics. The ethics hotline cannot advise you on matters of substantive law or procedural law outside of legal ethics.

**CLIENT SECURITY FUND**

Pursuant to SCR 3.820, the Supreme Court has adopted the Clients’ Security Fund [CSF]. It is not a substitute for a legal malpractice case. And, claims against the CSF are not based on simple negligence. There must be fraudulent or dishonest conduct of the attorney that led to financial loss by the client. A CSF claim is usually accompanied by a Bar Complaint, with the resolution of the CSF claim waiting until the resolution of the disciplinary inquiry.

**KBA FEE ARBITRATION**

The Supreme Court has also established a mechanism under SCR 3.810 for the arbitration of fee disputes between an attorney and client, and between attorneys only. The process is voluntarily in that both attorneys, or both attorney and client, must agree to participate, or the arbitration cannot go forward. KBA Fee Arbitration is an underused resource and provides a nice avenue in lieu of civil litigation.

**LEGAL NEGLIGENCE ARBITRATION**

The KBA has provided an alternate mechanism for addressing legal negligence claims set out SCR 3.800. Generally speaking, if there is an administrative mechanism within the Kentucky Bar Association, that should be preferred over civil litigation.

**MEDIATION AND ARBITRATION**

The Supreme Court has also adopted a general mediation and arbitration procedure under SCR 3.815 for disputes between attorneys. The process may be either mediation, binding arbitration or non-binding arbitration. This appears to be an underused procedural route within the KBA.

**REINSTATEMENT**

Technically, there are two ways an attorney may be suspended: (1) administrative suspension for not paying Bar dues or maintaining CLE, or (2) disciplinary suspension. Technically, an administratively suspended attorney seeks Restoration, while a disciplinarily suspended attorney seeks Reinstatement. The path to Restoration is easier than Reinstatement.

The significant time periods are: suspensions of 180 days or less are subject to automatic reinstatement, suspensions of 181 days or more must go through the Character and Fitness Committee of the Kentucky Office of Bar Admissions, and if an attorney is suspended for more than five years, the attorney will have to take a version of the Bar Examination as a condition of reinstatement.

Reinstatement proceedings have one evidentiary hearing, which is before the Character and Fitness Committee. Many attorneys wrongly believe that the Committee is part of the KBA. It is not. It is a separate arm of the Supreme Court. The Kentucky Office of Bar Admissions administers the Bar Exam, reviews all Bar Applications of persons seeking to take the Exam for the first time, and reviews the reinstatement applications of all attorneys seeking reinstatement. Bar Counsel participate in the reinstatement process before the Committee, the Board, and the Court. As with the disciplinary process, review before the Board and before the Court are de novo. Unfortunately, because of the multi-layers of review, an attorney reinstatement case will routinely take more than a year or so to make its way through the system.

Reinstatement proceedings are often more emotional and difficult for the attorney than an attorney disciplinary proceeding. The attorney must relive, address and respond to matters in their past which led to their suspension. The presentation of a reinstatement case is not just a repeat of the earlier disciplinary proceeding. Different factors and different considerations are in play. The burden of proof is on the attorney seeking reinstatement and there is no presumption that the suspended attorney is of good moral character.

**CONCLUSION**

As a practical matter, no attorney wants to know anything about the attorney disciplinary process unless he or she must. And, since attorneys don’t want to have to deal with the KBA, many feel that the less they know, the more comfortable they are. That is not really a good idea. Firstly, attorneys need to be familiar with the Rules of Professional Conduct. Secondly, if an attorney does receive a disciplinary inquiry, prior familiarity with the process renders him or her better able to respond.

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**ABOUT THE AUTHOR**

**PETER L. OSTERMILLER** is a sole practitioner concentrating in legal ethics and professional responsibility matters. For the last 30 years of his 37 years of practice, he has represented attorneys in attorney disciplinary and reinstatement proceedings, parties in attorney’s fee dispute proceedings, parties in lawyer and judicial disqualification matters, and judges in judicial ethics matters. He is a member of the Association of Professional Responsibility Lawyers. He received his undergraduate degree from the University of Louisville and his J.D. from the Louis D. Brandeis School of Law.
The following attorneys are recognized as Academy Members for Excellence in the field of Alternative Dispute Resolution

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With more than 40,000 square miles and almost 14,000 lawyers, Kentucky is a large commonwealth with a lot of lawyers. So it could be possible to have missed some of the recent news from Northern Kentucky University Chase College of Law. In case you missed it:

CHASE WILL HAVE AN INTERIM DEAN
Michael Whiteman, who is co-acting dean and associate dean for law library services and information technology, will become interim dean on June 1. He will bring a wide range of experiences – teaching, chairing committees, and directing aspects of day-to-day operations – to overseeing how Chase continues to best prepare students to become lawyers. He has been a faculty member since July 2002, and has taught criminal law and legal research. Dean Whiteman holds a Juris Doctor from the University of Louisville, a Master of Science in Library and Information Science from Simmons College, and a Bachelor of Arts from Concordia University. He was admitted to practice in Massachusetts.

THE COLLEGE HAS A NEW SCHOLARSHIP FUND
The Chase College Foundation has created a new scholarship in memory of W. Roger Fry, a prominent Cincinnati lawyer and civic leader who was graduated from Chase in 1966 and was a longtime trustee of the college foundation. Individual donations to the W. Roger Fry Scholarship carry a double benefit. The Chase College Foundation makes a matching contribution to the scholarship fund for each individual donation it receives, to total donations of $66,000 – a recognition of the year Mr. Fry was graduated.

THE CLASS OF 1978 HAS A BIG ANNIVERSARY
This year marks the 40th anniversary of the graduation of the Chase Class of 1978. But more than a class anniversary, it is also an anniversary of the beginning of a new era. The Class of 1978 was the first Chase graduation class of both full-time day and part-time evening students. The day division graduates had entered in 1975, as the first day students in what was then the 82-year history of the college that had been founded in 1893 as a night law school. The evening division graduates had entered in 1974, the last year for evening-only classes in the now 125-year history of the college.

TWO STUDENTS HAD BIG COURT APPEARANCES
Two third-year students had the type of courtroom experience through Chase clinic and experiential-learning programs that most lawyers do not have until they have been in practice a few years:

J.L. BRYDIE argued successfully in the Ohio Court of Appeals for Hamilton County (Cincinnati) that a trial court had erroneously applied a statutory standard in requiring a client of the Chase Constitutional Litigation Clinic to register as a sexual offender. Not only did he prevail on the statutory issue, he also successfully argued a procedural issue that the appeal was not barred by *res judicata.*

BRITTANY GRIGERY was second-chair in a murder trial in San Diego, working with the lead public defender lawyer. She examined witnesses, managed client communication, and assisted with trial preparation and strategy. The trial ended in a hung jury, with 10 jurors voting for acquittal. “Staying focused, organized, and diligent for such a long period of time was key to our success. Chase prepared me well for this experience,” she says. The public defender’s office selected her for the trial through a competitive process that involved externs from all law schools in the office.
As the opioid epidemic continues to wreak devastation on communities across Kentucky and the nation, many counties, cities and states have filed hundreds of lawsuits against pharmaceutical companies to try and hold them accountable.

In theory, the litigation could help recoup some of the massive costs associated with the crisis. A new study by nonprofit group Altarum estimates the crisis has cost the nation $1 trillion from 2001 to 2017. Federal, state and local governments are shouldering a good portion of that burden through “lost tax revenue and additional spending on health care, social services, education and criminal justice.”

But is litigation a powerful tool in the fight against the opioid epidemic? And does bad behavior equal liability?

UK College of Law Professor and product liability expert Richard Ausness—who has written about the issue and appeared in a segment on “CBS News Sunday Morning,” on Sunday, Feb. 25—isn’t quick to respond with a simple “yes.”

The situation rings familiar with the legal battle states brought against tobacco companies, resulting in a 1998 global settlement with a minimum of $206 billion paid over the first 25 years. Ausness thinks—like the tobacco battle—most of the opioid lawsuits will not be tried in court.

“Frankly, neither side (of the tobacco litigation) wanted to litigate,” he said. “Plaintiffs didn't want to spend millions and companies didn't want dirt coming out through the discovery process.”

But, he adds, the prospects for states winning—in court or through settlements—is a mixed bag.

“It isn’t a sure thing that they’re liable to the government. Many people assume if someone behaves badly, that means liability. But there are a lot of potential barriers to that.”

Public nuisances have been the most common charges filed against opioid manufacturers, distributors and marketers, Ausness said, but common law varies from state to state, so that strategy could succeed in some communities and fail in others.

What about other legal strategies that could be more effective? Ausness suggests criminal prosecution—prosecuting pill mills and doctors who over prescribe—and civil conspiracy. For example, communities could allege pharmaceutical companies “engaged in a civil conspiracy to increase market share by misrepresenting the drug’s risks and benefits.”

As for negligent marketing, Ausness thinks that could be argued against distributors, specifically, as those companies are responsible for promoting and selling. It would be more difficult to claim this against manufacturers.

The problem in using these theories lies in taking an established concept of law and trying to expand it—“some courts will accept that and some will not.”

If pharmaceutical companies do end up settling, the size of the settlement could be “considerably larger” than the tobacco settlement because of the number of plaintiffs, Ausness said.

But, will that be effective in fighting the opioid epidemic?

“Litigation can help shape perception, but it needs to be part of a broader, comprehensive plan with programs to directly help individuals harmed by the crisis.”
That’s because—unlike the other law courses students have taken thus far—Professional Responsibility focuses on the legal profession’s disciplinary process.

“For many of them, this is the first time they’ve thought about how they’ll fit in their professional life,” says Giesel, Bernard Flexner Professor and Distinguished Teaching Professor at the Brandeis School of Law. “I love teaching it because it’s the one class where my students are learning about their own conduct as opposed to what they can do for their clients.”

Giesel, an expert in legal ethics, uses her course as a “reality check” for students. She kicks off the course by providing the facts of recent disciplinary cases heard by the Kentucky Supreme Court. She then has her students vote on the discipline they believe should be administered.

“The whole point of this is to get them thinking about what should happen,” Giesel says. “I let that set the tone for the class.”

It was beneficial to see how rules of conduct were applied to real cases, says Brandeis Law student Elizabeth Penn, who took Giesel’s course in the fall of 2017.

“She’s such an expert in the field and has such experience,” says Penn, referring to Giesel’s past role as chair of the Kentucky Bar Association’s Ethics Committee. Giesel also wrote Mastering Professional Responsibility, a treatise on legal ethics. The second edition of that book came out in 2015.

Giesel says her commitment to legal ethics comes from a desire for the legal profession to remain a respected one.

“I’d really like the bar to be a respected and honored profession, and this is one way I can help that happen,” she says.

Professional responsibility is essential for all lawyers, but it can be even more important for lawyers in relatively small markets.

Although Louisville is the largest legal market in the state, it is often described as a big city with a small-town feel. That makes a lawyer’s reputation hugely important, Giesel says.

Judges and opposing counsel will know an attorney’s reputation, and “what you do has a long life,” Giesel says.

“If you stand in front of a judge and don’t have a history of being trustworthy, that judge isn’t going to give you an inch,” she says.

Giesel makes sure to drive home that message in her Professional Responsibility course.

“You really do need to be careful,” she tells her students, warning them that improper behavior can cost more than a client: it can cost a career.
The winner of the Attorney General’s Cup and winners of the following categories of the Second Annual Kentucky Legal Food Frenzy will be recognized at the Kentucky Legal Food Frenzy and Kentucky Bar Association Young Lawyers Division luncheon held in Lexington on June 14, 2018, at noon during the Kentucky Bar Association Annual Convention.

FROST BROWN TODD, LLC, RAISED MONEY AND FOOD TOTALING 82,365 POUNDS!

Thank you to the more than 115 legal organizations who participated in the Second Annual Kentucky Legal Food Frenzy campaign.

Your generosity and compassion will help feed the 700,000 adults, children, and elderly in Kentucky who struggle with hunger every year.

LARGE FIRM/ATTORNEY GENERAL’S CUP WINNER
Frost Brown Todd, LLC 82,365 POUNDS

CORPORATE LEGAL DEPARTMENT
GE Appliances 76,921 POUNDS

SOLO FIRM
Hicks & Funfsinn 61,015 POUNDS

GOVERNMENT AND PUBLIC SERVICE
Office of the Commonwealth’s Attorney 26,408 POUNDS
30th Judicial Circuit

MEDIUM FIRM
DBL Law 22,325 POUNDS

SMALL FIRM
O’Brien Batten & Kirtley, PLLC 11,775 POUNDS

LAW SCHOOL
University of Kentucky College of Law 1,170 POUNDS
Good Critical Reading Strategies Can Improve Legal Writing

BY: JANE B. GRISÉ

We know from previous articles in this column that good writing involves attention to organization, grammar, clarity, and word choice. Studies have shown that good writing also requires good critical reading.

Over the past thirty years, researchers have learned that lawyers and high performing law students read differently than nonlawyers and lower performing law students. In 1987, the first study was conducted to compare the critical reading techniques of lawyers and nonlawyers and there were several interesting discoveries. While novice legal readers highlight as they read a case from beginning to end, expert legal readers utilize many critical reading strategies before they start reading cases and during the reading process. Before beginning to read, experts understand the context or subject matter of a case by looking at headnotes or the case summary. They look at headings and skim the decision and then read the entire decision more carefully. Once they start reading, they look up unfamiliar words. Rather than trying to find great quotations, they look for the main ideas in the case. Experts often read the facts more slowly while novices read all sections of a case at the same rate. Experts reread sections of an opinion and evaluate the case as they read. Novices often look for the “correct” interpretation of a case and do not reread confusing sections.

Critical reading techniques can have an impact on good writing. In a study at the University of Kentucky College of Law, the writing of two groups of law students was compared. One group received critical reading instruction and one group did not. In the critical reading classes, students were taught the critical reading techniques used by expert legal readers. When the writing of the two groups was compared, the study found that the students who received the critical reading instruction were better writers. The instruction improved their ability to explain cases in their memos. This makes perfect sense. If a writer does not understand a case, it is difficult to explain the case in a legal document or use the case to make a persuasive argument.

What critical reading techniques will improve everyone’s ability to write well?

BEFORE READING
1. Think about the Reading Goal
   Before reading a case, think about the purpose for reading. Are you reading to explain the case to a client or the court? Do you need to read the case for background information about a general topic of law? Are you only interested in one particular aspect of the case? Your reading purpose has an impact on how you read different sections of the opinion.

2. Understand Context and Do an Overview
   Do not read a case blind without understanding the general subject of the case or its context. Studies have shown that if you read a title or heading, it is much easier to understand the entire book or paragraph. Likewise, if you understand the general topic of a case, it is much easier to understand the entire case. Furthermore, rather than reading from beginning to end, do an overview of a case. Look for headings, see how the case is organized, and flip to the end of the decision to see how it was resolved.

DURING READING
1. Read Facts Slowly, Look up Unfamiliar Words, and Reread
   While novices read all sections of an opinion at the same pace, experts usually read the facts more slowly. Experts also look up unfamiliar words and reread sections of opinions that are confusing. They pay particular attention to conjunctions such as “and” and “or.” They notice repeated words in a decision and may break complex sentences into shorter segments to better understand the meaning of the case. They may even read portions of a case aloud to help elucidate confusing sections of the opinion.

2. Look for Main Ideas
   Expert readers look for the main idea of a case rather than a great line to quote. The main idea is usually found in the court’s holding and reasoning. However, it is important to understand the entire opinion and not just rely on a single line in isolation.
3. Evaluate Cases
Expert legal readers evaluate cases as they read. They recognize that opinions do not have a fixed meaning. As one reading expert has stated, it is “never simply enough to know what a case ‘says.’ One must know what plausible interpretations and applications of law could be made from it.”10

It is easy to incorporate critical reading strategies into our daily practice. These techniques can make us better writers and advocates for our clients.

ENDNOTES
4. Id. at 75.
5. Id. at 83.
6. Id. at 93.
7. Id. at 115.
8. Id. at 130.
9. Id. at 139.
For almost every Kentucky lawyer, technology is becoming fully integrated in the practice of law. Not only is our legal work more dependent on the use of technology, it helps us to practice more efficiently, serve clients more effectively, and better manage our daily lives. Technology has also provided some of the newest and best ways to market our practices.

I just returned from ABA TECHSHOW, where lawyers from all over North America came together with those working in and advancing legal technology. For three days at its new location at the Chicago Hyatt, almost 1,000 attendees learned about the most useful and practical technologies available. In addition to a great variety of cutting-edge CLE programming, attendees also got access to the EXPO Hall where about 100 legal technology vendors were eager to demonstrate their helpful products and services.

Here is my Top Ten list of things that I learned at TECHSHOW:

1. Most law firms do not reward innovation and technology as part of their compensation system. For firms to be sustainable, they must invest in resources focused on innovation and technology and this includes rewarding those who are implementing these initiatives. Consider Bonus.ly which encourages innovation from everyone in your office.
Eighty-eight percent of consumers say they trust online reviews as much as they trust personal recommendations. Fifty-five percent of millennials will ignore a brand that does not show up in a Google search. Jeff Bezos, the creator of Amazon, says, “If you do build a great experience, customers tell each other about that. Word of mouth is very powerful.” As an attorney, have you looked at your online reviews? Do you have any? How are your clients able to use word of mouth to share your good work?

Avvo and Lawyers.com show up on the first page of almost every search for someone looking for a lawyer. Have you gone to those platforms to determine if they could find you there? Can your clients find you on Facebook, Twitter and other forms of social media? If so, do you post things there that are informative? Are you doing enough to improve your SEO (search engine optimization) so the clients can find you where they are looking, especially on the front page of their searches?

LinkedIn has become a key place for professionals to research the background and credentials of other professionals before they make a decision on who to hire. Your profile needs to be up-to-date, with current work history, and you should post updates there just as you do on Facebook. Keep your LinkedIn posts professional, with no family updates, as this is not the place for that.

“Your can’t guarantee the results, but you can guarantee the experience.” What have you developed in your practice to help improve the client experience? The largest numbers of vendors at TECHSHOW were case management software companies. Clients hate hiring lawyers because they feel like they are losing control of their legal matter. Consider case management software like Clio, MyCase, Needles and Practice Panther that allow the client to communicate with you through a client portal, decrease the response time to their phone calls and emails and remove the waste and friction that many times, slows down the progress of their case. Many consumers have many online options now. The key is to keep that artisan relationship with the client and improve the experience.

The second fastest growing number of vendors were those offering time and billing software. In addition to Timekeep, new companies like Time Miner and TimeSolv are now in the market. These products offer firms and attorneys the tools to more accurately capture their time, especially on their smartphones and tablets, resulting in increased revenue.

Clio released its 2017 Legal Trends Report. The most disturbing statistic from the report is that lawyers using their software are only billing 2.3 hours of the work they perform. They still spend way too much time on non-billable tasks. When looking for a lawyer, 62 percent of respondents indicated that they sought referrals from friends or family while 31 percent sought referrals from other lawyers. Online search (37 percent) and directory listings (28 percent) were also common. Meanwhile, TV ads (13 percent), online ads (13 percent), radio ads (7 percent), and billboard ads (6 percent) had a much lower influence.

Each email address can be worth as much as $75 in advertising. Are you doing everything you can to capture those emails? If so, what are you pushing out to your clients via email to help market your brand?

For consumers, the most important factors in hiring a lawyer include: the lawyer who returns the phone call first, a free initial consultation, fixed fees and the ability to pay by credit card. Firms that accept credit cards get paid 40 percent faster than those who don’t. Realization rates are 18 percent higher when money is put into a trust account as a retainer. There is much less opportunity to contest or dispute the bill.

One final comment: lawyers struggle with innovation ideas. Most lawyers are stuck in the analog era and have not even made it into the digital area. Most others are entering the computational era. Don’t be left behind!

ABOUT THE AUTHOR

BOB YOUNG is managing partner of English, Lucas Priest and Owsley, LLP, in Bowling Green, Ky. His 30-year career in law has primarily focused on personal injury litigation. He is also a focused and respected mediator. Young serves as chair of the Task Force on Law Office Management for the Kentucky Bar Association. He is also involved extensively in the American Bar Association. Follow him on Twitter at @BobYoungELPO.
July 2018 Kentucky Bar Applicant List

Following is a list of applicants who have applied to take the July 24 & 25, 2018, Kentucky Bar Examination. 

**NOTE:** This list is current as of April 17, 2018. Any applications filed after this date will not be included on this list.

Rebecca Marie Adams
William Richard Adams II
Crystal Kay Allen
Jonathan Maxwell Allen
Joshua Scott Allgeier
James Austin Anderson
Whitney Nicole Bailey
Christopher Matthew Barber
Kristen Maree Barrow
Joshua James Basham
Crystal Kay Allen
Jonathan Maxwell Allen
Joshua Scott Allgeier
James Austin Anderson
Whitney Nicole Bailey
Christopher Matthew Barber
Kristen Maree Barrow
Joshua James Basham
Kyla Nicole Dahliquist Beach
Ali Jon Besik
Gina Bettag
Alastair Betz
Daniel Allan Bihre
Shehla Ann Black
Alison Claire Blalock
Anesha Briquel Blakey
Victoria Kathleen Boland
Matthew Elmo Bosch
Shawna Ashlee Bramblett
Mary Katherine Brashear
Danae Faith Brown
Elizabeth Ann Brown
Katelyn Lou Ann Brown
Tiera Dell Brown
Rachel Briana Burnside
Hailey Nicole Burton
Ian Joseph Busche
Preston Cahill
James Garrett Cambron
Deborah Lynn Campbell
Karley Marie Capps
Lincoln Jordan Carr
Jared Harper Catron
Emily Therese Cecconi
Kasey Chafin
Jasmine Renee Chenault
Zachary M. Chesser
Keram James Christensen
Jennifer Kay Christian
Seth Thomas Church
Robert Michael Citak
Alexander Boyd Clay
Isaac Nathan Claywell
Anthony Wayne Cloise
Benjamin Chase Coffman
Gentry Carnelus Collins
Amanda Lee Combs
Donald Howard Combs III
Georgia Turner Connally
Kaitlin Theresa Coons
Clarke David Cotton
Aleisha Kimberly Cowles
Chase Alexander Cox
Zachary Craddock
Sally Rogers Culley
Chase Martin Cunningham
Lydia Lorraine Curtz
Emily Anne Daunhauer
Chelsea Nicole Dermody
Cory Lynn Dodds
Matthew Samuel Doyle
Soihila EL Moussaou
Corey Jeffrey Marshall Eldridge
Katie Elizabeth Embry
Javier Luis Esteve
Katherine Elizabeth Ann Faith
Gretchen Allison Feige
Hannah Ponders Feist
Elizabeth Brianne Feldpausch
Daniel Anthony Ficker
Austin John Flaugh
Alexander Charles Foley
Tess Michelle Fortune
Brodby Jack Freeman
Mark Charles Frey
Bradley Scott Fryfe
Donna Marie Gallagher
James Kennedy Gerlach
David Newkirk Giesel
Ryan Matthew Glass
Erin Patrice Goff
Morgan Albert Gonzalez
Matthew Seabrook Goodin
Matthew Arthur Gore
Dylan Alexander Gorski
Jesse Maxwell Gosman
Aleksey Graboviy
Joseph Dylan Grafe
Spencer Keith Gray
Bennett Peck Greene
Grace Elizabeth Lamping Greenwell
John Carl Grey II
Michael Grant Grissom
Samuel Quenton Groft
Laura Katharine Haagen
Olivia Caitlin Hagedorn
Pamela Sue Hall
Brittany Tianna Harden
Nathan Russell Hardyson
Emily Rose Hastings
Patrick Gill Haughey
Mashayla RaeVon Hays
Coleman Len Hellyer
Irvin Antonio Henriquez-Guerrero
Heather Marie Herald
Carlos Hernandez Ocampo
Matthew Cody Hill
Emily Meador Hogan
Linsey Kay Hogg
Hayden Alexander Holbrook
Kate Stratton Homan
Cody Thomas Hooks
BreAnn Michele Horne
Andrew Richard Hornung
Lincoln Grant Howe
Jennifer Elizabeth Hubbard
Noel Thomas Hudson
Trey Parker Hudson

John Greer Hunt
Kevin Alexander Imhof
Desiree Isaac
Tatum Carrigan Isaacs
Simon Alexander Isham
Jennifer Henry Jackson
Courtney Elizabeth Jaconette
Nabeel Rushdi Jawahir
Elizabeth Ann Jesse
Matthew Charles Johnson
Kathryn Cassandra Keck
Jerralyn McDeana Kelsey
Lesley D. L. King
Kyle Robert Knauf
Haley K. Koontz
Alexandra Taylor Kubala
Madeline Claire Kuluz
Ashley Marie Land
Briana Nicole Lathon
Abigail Victoria Lewis
Christopher Martin Lewis
Mark Anthony Little
Cynthia Eileen Magruder
Jeremiah Levi Mann
Madison Wallis Mantz
Christopher Joseph McCaughey
Sadie Rae McCorkle
Gena M. McCubbins
Katherine Elizabeth McDonald
Mary Alexis McKenzie
Bryan G. Meader
Candice Paige Messer
Mariana Joy Michael
Dominik Lawrence Mikulcik
Dax Jameson Miller
Jake Reynolds Miller
Jessica Ann Morgan
Kelsey Leanne Morgan
Thomas Neal Morris
Keyara Na’Shae Moye
The Board of Governors met on Friday, Jan. 19, 2018. Officers and Bar Governors in attendance were, President W. Garmer, President-Elect D. Ballantine; Vice President S. Smith; Immediate Past President M. Sullivan and Young Lawyers Division Chair E. Weihe. Bar Governors 1st District – F. Schrock, V. Sims; 2nd District – J. Meyer, T. Kerrick, 3rd District – M. Dalton, H. Mann; 4th District – A. Cubbage; 5th District – M. Barfield, E. O’Brien; 6th District – G. Sergent; and 7th District – R. Blackburn, J. Vincent. Bar Governors T. McMurtry and B. Simpson were absent.

In Executive Session, the Board considered one (1) oral argument and four (4) default disciplinary cases involving one attorney. Judy McBrayer Campbell of Frankfort, Mike Cherry of Princeton and Dottye Moore of Elizabethtown non-lawyer members serving on the Board pursuant to SCR 3.375, participated in the deliberations.

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

- Heard a status report from the Kentucky Commission on the Future of the Legal Profession, KYLAP Task Force, Rules Committee and Task Force on Judicial Evaluations.
- Heather Cochran and Tyler Fallin with RFH Consultants presented and reviewed the KBA Audit Report for FY ending June 30, 2017.
- Approved the FY 2018-2019 KBA and IOLTA Budgets.
- Young Lawyers Division (YLD) Chair Eric Weihe reported on the New Lawyer Program and the 2018 Legal Food Frenzy. Weihe also encouraged the Board to submit nominations for the YLD Awards including the Outstanding Young Lawyer, Service to Young Lawyers Award, Young Lawyer Service to the Community Award and the Nathaniel R. Harper Diversity Award. Nominations are due March 30, 2018.
- Approved the appointment of Rodney N. Brannon as the non-lawyer member of the KYLAP Commission for a four year term ending in January 2022.
- Bar Leadership Conference Committee members Rhonda Blackburn and J.D. Meyer reported that the conference will be held at the CastlePost in Versailles. James Woolery with King & Spalding will be the luncheon speaker and Susan Rogers with People Pinnacle will conduct a section on emotional intelligence. Blackburn reported there will be an application process and a limited number of attendees will be selected. There will not be a registration fee for this year. The conference will immediately be followed by an afternoon of horseracing at Keeneland sponsored by LMICK. The committee will meet to review the applications after the February 16 deadline and all applicants will be notified of the committee’s decision by March 1.
- Approved the following Distinguished Awards to be presented at the annual convention: Distinguished Judge – Chief Judge Brian C. Edwards of Louisville; Distinguished Lawyer Award – Richard W. Hay of Somerset; Bruce K. Davis Bar Service Award – H. Scott Davis of Louisville and Donated Legal Services Award Marilyn S. Daniel of Versailles.
- President William R. Garmer reported that the 2018 annual convention program has been completed. The Acoustikats have agreed to perform during the annual banquet event on Thursday evening of convention week. President Garmer advised that the memorial service will take place at Christ Church Cathedral and local attorney Josh Santana has agreed to be the soloist for the service.
- President Garmer reminded the Board that a meeting of the Legislative Outreach Committee has been scheduled for February 21st at the Administrative Office of the Courts to discuss the underfunded court system.
• Approved the appointment of David V. Kramer of Crestview Hills and the reappointment of Donald C. Combs of Pikeville to the Judicial Ethics Committee.

• Approved the lists of CLE non-compliant and unpaid dues attorneys to be suspended.

• Executive Director John Meyers reported that the Election Review Committee is scheduled to meet on January 25 and 26 to tally the ballots for the Office of Vice President and Bar Governors in the 6th and 7th Supreme Court Districts.

• Approved the revisions to the Probate & Trust Law Section Bylaws.

• Meyers provided an update on the withdrawal from the Kentucky Retirement System (KERS).

• Meyers reported on the status of the restroom renovations.

• Meyers reported on the status of the IT project.

• Meyers reported on the following appointments approved by the Supreme Court: the reappointment of Susan Phillips to the Bar Center Board of Trustees and appointments of the Inquiry Commission Lay Members.

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 3.175, all KBA members must maintain a current address at which he or she may be communicated, as well as a physical address if your mailing address is a Post Office address. If you move, you must notify the Executive Director of the KBA within 30 days. All roster changes must be in writing and must include your 5-digit KBA member identification number.

Members are also required by rule SCR 3.175 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.

VISIT our website at https://www.kybar.org to make ONLINE changes or to print an Address Change/Update Form –OR– EMAIL the Executive Director via the Membership Department at kcobb@kybar.org –OR– FAX the Address Change/Update Form obtained from our website or other written notification to: Executive Director/Membership Department (502) 564-3225 –OR- MAIL the Address Change/Update Form obtained from our website or other written notification to:

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

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

ANNOUNCEMENT:
The Kentucky Cabinet for Health and Family Services is accepting applications for persons willing to serve as a chairperson of a Medical Review Panel pursuant to KRS 216C. Eligible applicants must be licensed to practice law in the Commonwealth of Kentucky.

Chairpersons will be selected on a case by case basis. This is a great opportunity to hone your management and mediation skills. Reimbursement shall be in accordance with KRS 216C, Section 23(2).

To apply, please complete the application found at mrp.ky.gov and submit to mrp@ky.gov. The Cabinet for Health and Family Services will maintain a list of all applicants by Supreme Court district for use pursuant to KRS 216C, Section 8(2).

By Mail: CHFS, ATTN: MRP 275 East Main Street, 5W-A (MRP) Frankfort, Kentucky 40621

Electronically: mrp@ky.gov

MEMBERS REPORTING 50 OR MORE HOURS OF PRO BONO WORK
Visit www.kybar.org to view a complete listing of members who reported 50 or more pro bono hours on their 2017-18 KBA dues statement.
The following Proposed Rules Amendments will be considered in an open session beginning at 9:00 a.m. on Wednesday, June 13, 2018. The hearing will be conducted in Heritage East & Center, Lower Level 1, at the Lexington Convention Center in Lexington.

2018 PROPOSED AMENDMENTS TO THE RULES OF CIVIL PROCEDURE (CR)

I. CR 73.08 Certification of record on appeal

The proposed amendments to CR 73.08 shall read:

The record on appeal as constituted under Rule 75 or Rule 76 shall be prepared and certified by the clerk of the court from which the appeal is taken within 10 days after the filing of the transcript of evidence by the court reporter. If the proceedings were taken exclusively by video recording, if there are no proceedings to transcribe, or if the appeal is from a Circuit Court order determining paternity, dependency, abuse, neglect, domestic violence, [or] juvenile status offense, or involuntary termination of parental rights, then the record on appeal shall be certified by the clerk within 30 days after the date of filing the first notice of appeal. In Forma Pauperis cases, the time for certifying the record on appeal in cases taken exclusively by video recording or where there are no proceedings to transcribe shall run from the date the Motion to Proceed In Forma Pauperis is granted. If CR 76.03 applies to the appeal, the time for certifying the record shall begin to run as provided in CR 76.03. The appellate court, in its discretion, may extend the time for certification of the record upon motion and a showing of good cause.

II. CR 76.03(1) Prehearing conference

The proposed amendments to CR 76.03(1) shall read:

(1) This Rule, 76.03, applies to all civil actions appealed to the Court of Appeals, except prisoner applications seeking relief relating to confinement or conditions of confinement and appeals from Circuit Court orders determining paternity, dependency, abuse, neglect, domestic violence, [or] juvenile status offense, or involuntary termination of parental rights.
III. CR 76.12(2) Briefs

The proposed amendments to CR 76.12(2) shall read:

(2) Time for filing.

(a) Civil cases. In civil cases, including workers' compensation appeals and excluding appeals from Circuit Court orders determining paternity, dependency, abuse, neglect, domestic violence, juvenile status offense, or involuntary termination of parental rights, the appellant's brief shall be filed with the clerk of the appellate court within 60 days after the date of the notation on the docket of the notification required by Rule 75.07(6). The appellee's brief (or combined briefs, if the appellee is also a cross-appellant) shall be so filed within 60 days after the date on which the appellant's brief was filed. The appellant's reply brief shall be filed within 15 days after the date on which the last appellee's brief was filed or due to be filed. If the appellant is also a cross-appellee, a combined brief may be filed within 60 days after the date on which the last appellee's brief is filed or due to be filed. When a motion for discretionary review has been granted by the Supreme Court, the time in which the movant's brief must be filed shall be computed from the date of entry of the order granting review.

(b) Civil appeals from Circuit Court orders determining paternity, dependency, abuse, neglect, domestic violence, juvenile status offense, or involuntary termination of parental rights. Appeals in these cases shall be expedited. The appellant's brief shall be filed with the clerk of the appellate court within 30 days after the date of the notation on the docket of the notification required by Rule 75.07(6). The appellee's brief shall be filed within 30 days after the date of filing of the appellant's brief. The appellant's reply brief shall be filed within 10 days after the date of filing of the appellee's brief. Motions for extension of time will not be considered except under extraordinary circumstances.

(c) Criminal cases. The times in which briefs are required to be filed in criminal cases shall be the same as in civil cases, except as follows:

(i) If counsel for the appellant is the Public Advocate of the Commonwealth or the Attorney General of the Commonwealth, or designee, the appellant's brief shall be filed within 60 days after the date on which the record on appeal was received by the clerk of the appellate court (notice of which shall be sent); and

(ii) If counsel for the appellant is someone other than the Public Advocate of the Commonwealth or the Attorney General of the Commonwealth, or designee, the appellee's brief shall be filed within 60 days after the date on which the appellant's brief was filed or within 60 days after the date on which the record on appeal was received by the clerk of the appellate court, whichever is the later.
PROPOSED RULES

2018 PROPOSED AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE (RCr)

A. RCr 4.50 Exoneration of bond at the request of surety; Surrender the Defendant

The proposed new rule RCr 4.50 shall replace the current RCr 4.50 and shall read:

(1) At any time before forfeiture, any surety or any party acting at the request of the surety, may move the court before which the defendant has been held to answer, for exoneration from liability on the bond or recognizance and that any money or bonds that have been deposited as bail be returned to the surety. The motion must be in writing and served upon all parties.

(2) After a hearing upon the motion, for good cause shown, the court may exonerate the surety or sureties, subject to the interests of any valid lienholder, from liability on the bond or recognizance. Any money or bonds that have been deposited as bail shall be returned to the surety or sureties once the defendant is remanded to custody or released on such conditions required by the court.

B. RCr 9.28 Court Contact With Jurors After Trial

The proposed new rule RCr 9.28 shall read:

After the conclusion of a jury trial, the court may engage in discussions with the jurors provided that, if any juror’s entire term of jury service is not yet completed, such discussion may occur only on the record and in open court with counsel having the opportunity to be present. This rule does not prohibit incidental contact between the court and jurors after the conclusion of the trial.

C. RCr 13.10 Search Warrant: who may issue

The proposed amendments to RCr 13.10 shall read:

(1) Upon affidavit sufficient under Section 10 of the Kentucky Constitution and sworn, either in the presence of or through reliable electronic means, before an official authorized to issue search warrants.

(2) Where a reliable electronic means is being used in lieu of actual presence before an official authorized to administer oaths, the official administering the oath must be in oral communication with the person completing the affidavit, so that the official administering the oath may comply with the requirements for administering oaths. The official administering the oath shall certify on the affidavit or an accompanying document that the oath was taken while in oral communication, and shall state the name and title of the official administering the oath and the time the affidavit was sworn.

[(A copy of the search warrant and supporting affidavit shall be retained by the issuing officer and filed by such officer with the clerk of the court to which the warrant is returnable.)]
(3) A copy of the search warrant and supporting affidavit shall be retained by the judge or other official issuing the warrant and promptly filed with the clerk of the court to which the warrant is returnable.

[The officer executing a search warrant shall make return thereof to the appropriate court within a reasonable time of its execution. The return shall show the date and hour of service.]

(4) The officer authorized to execute a search warrant shall make return thereof to the appropriate court within a reasonable time of its execution. The return shall show the date and hour of service.

D. **RCr 13.15 Biological [and chemical] Evidence**

The proposed amendments to RCr 13.15 shall read:

(1) The custodial agency holding evidence involved in a criminal prosecution of a defendant where the penalty of death, life, life without parole or life without parole for 25 years is imposed shall preserve all biological [and chemical] evidence for as long as the defendant remains incarcerated under the sentence.

(2) Upon request, all biological [and chemical] evidence shall be made available to defendants enumerated in subsection (1) and said defendants may seek appropriate relief notwithstanding any other provision of the law.

(3) “Biological [and chemical] evidence” includes the content of sexual assault examination kits, and any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material that is collected as part of a criminal investigation which may reasonably be used to incriminate or exculpate any person for a criminal offense [which may carry a penalty of death].
A new Rule of Evidence, KRE 807, has been proposed to the Supreme Court of Kentucky for adoption following appropriate review by the Kentucky Evidence Rules Review Commission pursuant to KRE 1102 and public comment.

The proposed new rule KRE 807 of the Kentucky Rules of Evidence shall read:

(a) An out-of-court statement made by a child with a physical, mental, emotional, or developmental age of twelve (12) years or less at the time of trial or hearing describing any sexual act performed by, with, or on the child or describing any act of physical violence directed against the child is not excluded as hearsay under KRE 802 if all of the following apply:

(1) The court finds that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness. In making its determination of the reliability of the statement, the court shall consider all of the circumstances surrounding the making of the statement, including but not limited to spontaneity, the internal consistency of the statement, the mental state of the child, the child’s motive or lack of motive to fabricate, the child’s use of terminology unexpected of a child of similar age, the means by which the statement was elicited, and the lapse of time between the act and the statement;

(2) Either:

(A) The child testifies but his or her testimony does not include information contained in the out-of-court statement; or

(B) The child’s testimony is not reasonably obtainable by the proponent of the statement and there is corroborative evidence of the act that is the subject of the statement;

(3) The primary purpose of the child’s statement was not to create an out-of-court substitute for trial testimony; and

(4) At least ten (10) days before the trial or hearing, a proponent of the statement has notified all other parties in writing of the content of the statement, the time and place at which the statement was made, the
identity of the witness who is to testify about the statement, and the circumstances surrounding the statement that are claimed to indicate its trustworthiness.

(b) (1) The child’s testimony is "not reasonably obtainable by the proponent of the statement" under subsection (a)(2)(B) of this rule if one (1) or more of the following apply:

   (A) The child claims a lack of memory of the subject matter of the statement;

   (B) The court finds:

       (i) The child is absent from the trial or hearing;
       (ii) The proponent of the statement has been unable to procure the child’s attendance or testimony by process or other reasonable means despite a good-faith effort to do so; and
       (iii) It is probable that the proponent would be unable to procure the child’s testimony or attendance if the trial or hearing were delayed for a reasonable time; or

   (C) The court finds:

       (i) The child is unable to testify at the trial or hearing because of:
           a. Death;
           b. Physical or mental illness; or
           c. Infirmity, including the child’s inability to communicate about the offense because of fear or a similar reason; and
       (ii) The illness or infirmity would not improve sufficiently to permit the child to testify if the trial or hearing were delayed for a reasonable time.

(2) The proponent of the statement has not established that the child’s testimony or attendance is not reasonably obtainable if the child’s claim of lack of memory, absence, or inability is due to the procurement or wrongdoing of the proponent of the statement for the purpose of preventing the child from attending or testifying.

(c) The court shall make the findings required by this rule on the basis of a hearing conducted outside the presence of the jury and shall make findings of fact, on the record, as to the bases for its ruling.

(d) If any provision of this rule should conflict with Article VIII of these rules, this rule shall prevail.
Formal Ethics Opinion
KENTUCKY BAR ASSOCIATION

Ethics Opinion KBA E-445
Issued: March 16, 2018

The Rules of Professional Conduct are amended periodically. Lawyers should consult the current version of the rule and comments, SCR 3.130 (available at http://www.kybar.org/237), before relying on this opinion.

Question: with the permission of a government agency may an agency lawyer provide information to members of the public?

Answer: Qualified yes. SCR 3.130(4.3)

Discussion: Some government agencies employ lawyers whose job’s description includes a responsibility to answer questions from the general public about the agency’s rules and regulations. In Kentucky lawyers are not permitted to give legal advice to a non-client; however, an agency’s lawyer may provide general information about her agency’s procedures, rules and regulations when general advice is requested. See SCR 3.130(Rule 4.3). The distinction is between providing the non-client with general information about the availability of various options (which is permitted) and advising or recommending to the non-client which option to choose (which is not permitted).

In 2002, following the practice in a majority of states, the ABA Ethics 2000 Commission recommended that Rule 4.3 be amended to allow a lawyer representing a client to give advice to a non-client except when “the lawyer knows or reasonably should know the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.” ABA Rule 4.3Comment [2] distinguishes between situations involving unrepresented parties whose interests may be adverse to the client and those in which person’s interests are not in conflict with the client.” A lawyer may advise a non-client whose interests are not in conflict with the client but may not advise one whose interests are in conflict.

In 2009, however, the KBA Ethics 2000 Committee rejected the ABA proposal and recommended a rule, which was subsequently adopted by the Supreme Court of Kentucky, that prohibits giving advice to non-clients:

In dealing on behalf of a client with a person who is not represented by counsel, the lawyer shall not give legal advice to an unrepresented person. The lawyer may suggest the unrepresented person secure a lawyer.

However, Comment [2] to Kentucky Rule 4.3, copied from the ABA comment to 4.3, suggests that lawyers may provide information, but not advice, to non-clients. The last sentence of Comment [2] provides that so “long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer’s client will enter into an agreement or settle a matter, prepare documents that require the person’s signature and explain the client’s position as to the meaning of the document or explain the lawyer’s view of the underlying legal obligations.” Hence, if a lawyer may provide legal information to an adverse party it follows that a government lawyer may, with the consent of the agency, provide general legal information to members of the public.

Further, if consistent with the interests of the unrepresented person, Rule 3.4(g) permits a lawyer to ask family members and certain employees not to speak to the opposing party or its lawyer. Reading Rule 3.4(g) and Rule 4.3 together, a lawyer may request, but may not advise an unrepresented person to refrain from giving information to an adverse party.

Many times lawyers for government agencies are called upon to respond to inquiries from the public and, assuming that the government lawyer is acting with the knowledge and consent of her agency, the lawyer may respond to the inquiry if 1) the inquirer is not represented by a lawyer in the matter (or the person’ lawyer has authorized the contact); 2) the lawyer makes it clear to the inquirer that the lawyer is not representing the inquirer; and 3) the lawyer makes it clear to the inquirer that the lawyer is permitted to provide general information but is prohibited from giving advice to any specific course of action. If the inquirer’s questions raise a concern in the government lawyer’s mind that the inquirer’s interests appear to be adverse to the agency, then the lawyer must advise the inquirer to get their own lawyer and warn the inquirer that the agency holds the attorney client privilege.

In Kentucky, although it may be difficult to draw the line between permitted responses to the general public and providing legal advice, the government lawyer is obligated to make every reasonable effort to assure that such distinction is drawn. In those cases where it is not clear, then the government lawyer and the agency are better served by the government’s lawyer not giving advice other than suggesting to the inquirer that they seek the advice of their own lawyer.

Note To Reader
This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530. This Rule provides that formal opinions are advisory only.
On Nov. 17, 2017, the KBA Board of Governors approved and issued E-444 (part-time prosecutors). E-444 was printed in the January/February issue of the Bench & Bar. The Ethics Committee chair then discovered a mistake in the last sentence of the next to last item – rather than the last sentence reading “may not represent the client on related criminal charges,” as intended, the sentence read “may not represent the client on related civil charges.” On May 18, 2018, the KBA Board of Governors corrected the scrivener’s error and re-issued the opinion with E-444 reading as intended: “related criminal charges” in the last sentence of the next to last item in the opinion. The follows ethics opinion is the amended E-444.

Formal Ethics Opinion
KENTUCKY BAR ASSOCIATION

Ethics Opinion KBA E-444
Issued: November 17, 2017

The Rules of Professional Conduct are amended periodically. Lawyers should consult the current version of the rule and comments, SCR 3.130 (available at http://www.kybar.org/237), before relying on this opinion.

This proposed opinion relies on the Rules of Professional Conduct and Supreme Court cases. The opinion would overrule the following opinions: E-159, E-167, E-194, E-200, E-215, E-238, E-241, E-243, E-262, E-322, E-415, and E-421. To the extent inconsistent with this opinion, the following opinions are modified: E-37, E-44, E-76, E-210, E-275, and E-322.

Preliminary Statement
Over the years, the Ethics Committee has opined on many occasions about the ethics of part-time prosecutors’ civil practice. This opinion does not attempt to synthesize those opinions; it rather interprets the applicable Kentucky Rules of Professional Conduct in light of the statutes and the cases.

In this opinion Kentucky’s Rules of Professional Conduct found in SCR 3.130 are referred to by the number of the rule.

The Statutes
1) County attorneys and their assistants and some assistant Commonwealth attorneys may practice law other than as public officials. KRS 15.760(3), 15.765(4), 15.770.

2) Prosecutors may not represent defendants in criminal cases. KRS 15.740.

3) Commonwealth attorneys and county attorneys are part of Kentucky’s unified prosecutorial system (KRS 15.700), and the Attorney General may assign them duties outside their judicial circuits and counties (KRS 15.735, 69.013 and 69.060).

4) The legislature assigns duties to county attorneys (KRS 15.725 and other statutes). They represent their counties generally (KRS 69.010) and represent the Commonwealth in matters, civil and criminal, assigned to them by the legislature. Many county attorneys, by contract, represent the Cabinet for Health and Family Services in domestic cases for the purpose of establishing and enforcing child support orders. KRS 205.712 (0)(7).

5) The legislature assigns duties to Commonwealth attorneys (KRS 69.010 and other statutes). They represent the Commonwealth in matters, civil and criminal, assigned to them.

6) This opinion does not purport to analyze the statutes assigning responsibility to prosecutors; prosecutors with a part-time civil practice should be familiar with their statutory obligations.

Cases
In re Kentucky Bar Association Amended Advisory Opinion, E-291, 710 S.W.2d 852 (Ky. 1986); KBA v. Lovelace, 778 S.W.2d 651 (Ky. 1989).

Opinion
1) Partners and associates of part-time prosecutors may not represent defendants in criminal cases.

By statute, prosecutors are not permitted to defend criminal cases anywhere in Kentucky. This appears to be a personal interest conflict (Rule 1.7, notes 10 and 11) that should not be imputed to the prosecutor’s partners and associates (Rule 1.10(a)). However, in In re Kentucky Bar Association Amended Advisory Opinion E-291, 710 S.W.2d 852 (Ky.1986), decided under the old code, the Supreme Court held that the prosecutor’s prohibition is imputed to partners and associates. Until and unless the Supreme Court revisits this issue, the prosecutor’s partners and associates may not defend criminal cases anywhere in Kentucky.

2) Lawyers sharing offices with a prosecutor may not represent defendants in criminal cases if it would appear to the public that the office sharers are a firm or if the office sharers do not have internal procedures to safeguard confidential information.

Most opinions (KBA E-243 for example) treat office-sharers the same as associates. However, comment 2 to Rule 1.0 and other opinions – KBA E-61, KBA E-244, and KBA E-417 – are authority for a “facts and circumstances” test that would address two concerns: 1) public perception – would the public assume the office-sharers are a firm or have a professional relationship other than as office-sharers; and 2) do internal procedures protect client confidences. Signage on the door should simply list the lawyers, the receptionist should answer the phone by the number or as, “Lawyers offices,” and, most importantly, internal procedures should safeguard confidential information. It would be proper to share a receptionist, meeting room, library, and computer equipment, but it would not be proper to share a secretary or paralegal. The internal procedures should prevent each office-sharer from accessing paper and electronic files of the other office-sharers. KBA E-244 and KBA E-417, Rule 1.0(k) and comment 9 to Rule 1.0 (screening).
3) Prosecutors (and their partners and associates) may not represent a client in civil litigation against the Commonwealth if the prosecutor’s office is required to protect the Commonwealth’s interest.

The legislature assigns duties to county attorneys and Commonwealth attorneys that limit prosecutors’ permissible civil practice (condemnation for example – KRS 177.082). In considering the ethics of a proposed course of action, prosecutors should look first to the applicable statutes.

4) Prosecutors may represent clients in civil cases against the Commonwealth in matters unrelated to their duties to the Commonwealth.

Ethics opinions (KBA E-200, KBA E-241, and KBA E-262) say a prosecutor may not be adverse to the Commonwealth even though the civil matter is one in which the prosecutor does not represent the Commonwealth. Example: In her civil practice a prosecutor is asked to represent a client who was injured by a state truck. In the past, the Committee opined that a conflict exists even though the prosecutor has no state responsibility in the matter. This opinion reaches a contrary conclusion.

The rationale for the prior ethics opinions is two-fold: 1) that, because the Commonwealth pays them, the attorneys are Commonwealth employees and an attorney/employee may not represent a client against an employer; and 2) that, because of their statutory duties (condemnation for example) attorneys have a present client relationship with the Commonwealth and are conflicted by Rule 1.7(a) (representation of one client directly adverse to another client).

Neither rationale is persuasive. As to the employer/employee rationale, county attorneys and Commonwealth attorneys are elected and hire assistants; the employers are the elected officials and the employees are the assistants. The fact the state pays prosecutors cannot be determinative; the state pays public advocates’ salaries and there is no question but that public advocates take positions adverse to the Commonwealth. Furthermore, if prosecutors are permitted to have a private practice, it follows that they are not “employees” of the state while so engaged.

As for the current client rationale, in his definitive journal article, Rick Underwood questions the soundness of this rationale: “Does it make sense to say that at all times and for all purposes the state is the client of the prosecutor?” Underwood, Part-time prosecutors and conflicts of interest: A survey and recommendations, 81 KLJ 1, 52-53 (1993). The rule against suing a present client on a matter unrelated to the representation of the client is based on the obligation of loyalty. Comment 6 to Rule 1.7 provides;

Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client’s informed consent. . . . The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer’s ability to represent the client effectively.

To apply the current client rationale, based on loyalty, requires asking whether the “state” would “likely feel betrayed” by a prosecutor representing a client in a civil matter unrelated to the prosecutor’s responsibility to the state. If the answer is “no,” the prosecutor should be allowed to represent the client. The Committee believes that the Commonwealth would not “feel betrayed” by a part-time prosecutor representing a private party against the state in a matter unrelated to the prosecutor’s public duty.

Opinions finding conflicts often are based on the now-rejected “appearance of impropriety.” E-241 is an example: the Attorney General opined that a county attorney could represent a landowner in a condemnation matter in a neighboring county because the county attorney’s statutory obligation was to his county alone; the Ethics Committee, however, rejected the Attorney General’s opinion and opined that Commonwealth Attorneys and county attorneys may not represent a private party in a condemnation case anywhere in the state because “the appearance of a conflict must be avoided.”

The Committee opines that, in civil cases, prosecutors may ethically represent private clients against the state in matters unrelated to the prosecutor’s responsibility to the state.

5) No waiver of conflict in criminal cases.

Associates and partners of prosecutors may not defend criminal cases anywhere in the state. This is a conflict that may not be waived. A prosecutor is charged with a public duty, and such a duty cannot be waived. “Consent of a client in a criminal case cannot eliminate the problem because the prohibition against a county attorney and his associates and partners acting as defense counsel is for the protection of the public.” KBA E-291.

6) As an ethical matter, waiver may be possible in some civil cases.

The issue arises in cases in which a prosecutor represents a party in a civil matter in which the state or county is a party. If the prosecutor’s office has no public duty, there is no problem. If the prosecutor’s office represents the public entity in the matter Rule 1.7 (4) allows the prosecutor to represent both parties (unless the matter is in litigation and the clients have adverse claims) if the prosecutor reasonably believes he or she can provide competent representation to both and the clients give informed consent. This might allow, for example, a county attorney to negotiate a county’s claim against the attorney’s client or the client’s sale of land to the county – with informed consent by both parties. It is not unethical for a public body to waive a conflict in a civil case with informed consent. Rule 1.11 (d). It would be up to the governmental agency to decide whether and how to give informed consent confirmed in writing.

7) A prosecutor should decline to represent a client in a civil case “when there is any reasonable probability that a criminal prosecution might arise from the circumstances of the case.” Lovelace v. Commonwealth, 778 S.W.2d 651, 653 (Ky. 1989).
“Reasonable probability” (Lovelace’s term) equates to “significant risk” (Rule 1.7(a)(2)'s term). It doesn't matter who would be the subject of the criminal prosecution — In Lovelace, the person prosecuted was a driver who killed the prosecutor’s client; the result would be the same if the prosecutor represented the driver. The prosecutor may accept a civil case if the potential criminal charge is pending or anticipated in another county and the prosecutor is not involved in the criminal case.

8) “If, after accepting employment in a civil matter, a criminal prosecution arises from the circumstances of the case, the prosecuting attorney must withdraw from the civil proceeding and disqualify himself from handling the [criminal] case.”

KBA v. Lovelace, 778 S.W.2d 653-54. Other attorneys in the prosecutor’s office may handle the criminal case.

9) A prosecutor should not represent a client on a civil matter who is being prosecuted by the prosecutor’s office, even on an unrelated matter.

In In re Kentucky Bar Association Amended Advisory Opinion E-291, 710 S.W.2d 852 (Ky. 1986), the Court applied the rule that an attorney may not represent one client against another client in an unrelated matter without informed consent (Rule 1.7a(1)); the prosecutor may not ask for informed consent because waiver of conflict is not permitted in criminal cases.

10) A prosecutor may accept employment in a civil matter even though the client is being prosecuted (or prosecution is anticipated) in an unrelated matter in another county or district.

In this situation the “current client” rule allows representation. The Commonwealth is represented by the local prosecutor, not by the prosecutor with the civil client. The Unified Prosecutorial system does not mean imputation of conflicts to all prosecutors in the state; conflicts are imputed within the office of a county attorney or Commonwealth Attorney; they are not imputed to prosecutors in other districts or counties.

11) Family law cases.

Part-time prosecutors often represent clients in family law cases. These cases may involve: 1) child support issues; and 2) allegations of domestic abuse, criminal conduct, and 3) potential flagrant non-support prosecutions. Domestic violence and dependency, neglect, abuse cases are somewhat related.

A) When the case is the prosecutor’s county or district

Child support: An assistant county attorney should be able to seek or resist child support unless the county attorney’s office represents the state on behalf of the children and seeks a child support order. At that point a prosecutor representing a client against whom an order is sought (“respondent” for purposes of this opinion) would be on “opposite sides of the v.” from another prosecutor in the office. The prosecutor must withdraw from the civil case. If the prosecutor represents the other party (“petitioner” for purposes of this opinion), the question is whether there is a “significant risk” that seeking child support might affect other matters in controversy (custody and support for example). If so, the prosecutor may not represent the petitioner. E-215 opined that a prosecutor could not represent a client against whom an action was filed for back child support. The rationale for the opinion is in part the possibility of a criminal proceeding for flagrant non-support. That opinion, as well as others in which the conflict is speculative, is not followed.

Allegations of domestic abuse, child abuse made in a divorce case. An assistant county attorney is not required to withdraw from representation of a divorce client for the client’s alleged domestic abuse or abuse or neglect of a child until and unless the county attorney acts, or should act, in the case to enforce the criminal law, enforce a court order, or otherwise act to protect a party or the children of the marriage. At that point the prosecutor would be on “opposite sides of the v.” from someone in the prosecutor’s office and must withdraw from the civil representation. Mere allegations of criminal conduct or abuse should not be enough to require withdrawal. C.f KBA v. Twebus, 849 S.W.2d 549 (Ky. 1993) (withdrawal required when a juvenile court petition was filed).

DVOs and Abuse/Neglect cases. If the prosecutor’s office acts (or should act) adversely to the private client (for example by enforcing a domestic relations order) the prosecutor must withdraw from the matter. Otherwise the prosecutor may represent a party or serve as guardian ad litem.

B) When the case is not in the prosecutor’s county or district

Child support: The prosecutor should be able to represent either party if the case is brought in a neighboring county. The county attorney for that county holds the contract with the state and represents the state on behalf of the children. The prosecutor representing the private party has no responsibility to the state in the matter.

Allegations of domestic abuse, child abuse made in a divorce case. The prosecutor may represent either party; the prosecutor with the civil client is not a member of the office of the county attorney who might intervene in the matter to protect a party or children. Intervention by the county attorney would not result in the prosecutor being on “opposite sides of the v.” with a member of the prosecutor’s office. Of course, the prosecutor with the civil client may not represent the client on related criminal charges.

DVOs and Abuse/Neglect cases. The prosecutor may represent either party or act as guardian ad litem. The analysis is the same as in the divorce settling. The prosecutor with the civil client may represent the client or serve as guardian ad litem. The prosecutor may not represent the client on related criminal charges.

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

TO: THE PUBLIC AND MEMBERS OF THE PRACTICING BAR FOR THE EASTERN AND WESTERN DISTRICTS OF KENTUCKY

Pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure and Rule 57 of the Federal Rules of Criminal Procedure, the United States District Courts for the Eastern and Western Districts of Kentucky hereby give public notice of the following:

The Joint Local Rules Commission for the Eastern and Western Districts of Kentucky has recommended, and the District Court has authorized for release for a period of public comment through July 31, 2018, the revision of certain Joint Local Rules of Civil Practice and Joint Local Rules of Criminal Practice. The proposed amendments are as follows:

A. LR 5.1(b) and LCrR 49.1(b) – Form of Pleadings – will be amended as follows in order to provide restrictions on paper size, line spacing, margins, typeface, and type styles:

LR 5.1. FORM OF PLEADINGS

…

(b) Paper Size Format. All pleadings, motions, and other papers filed with the Court must be filed in size on paper that is 8½ x 11½ inch page format with margins of at least one inch on all sides, with text double spaced (except for appropriate block quotes, headings, and footnotes), in at least 12-point proportionately-spaced font.

LCrR 49.1. FORM OF PLEADINGS

…

(b) Paper Size Format. All pleadings, motions, and other papers filed with the Court must be filed in size on paper that is 8½ x 11½ inch page format with margins of at least one inch on all sides, with text double spaced (except for appropriate block quotes, headings, and footnotes), in at least 12-point proportionately-spaced font.

B. LR 7.1(d) – Motions – will be amended as follows in order to reduce the permissible length of motions and responses from 40 pages to 25 pages, absent leave of court.

LR 7.1 MOTIONS

…

(d) Page Limitations. Motions and responses may not exceed 25 pages without leave of Court. Replies may not exceed 15 pages without leave of Court.

C. LR 83.11 – Social Security Cases – will be amended as follows in order to correct references from “plaintiff” to “claimant” consistent with the statutory language and to recognize other grounds to seek recovery of attorney’s fees.

LR 83.11 SOCIAL SECURITY CASES

…”

(b) Commissioner’s Time to Respond. Within sixty (60) days of service of the complaint, the Commissioner of Social Security must file an answer and transcript of the administrative proceedings. An initial extension of up to sixty (60) days may be granted, for good cause, upon motion of the Commissioner. If the responsible Social Security Administration official files an affidavit detailing the circumstances that require additional time, a second extension of time to respond may be granted. No other extension will be granted.

(c) Judicial Review. At the discretion of the judge to whom the case is assigned, judicial review may occur on written motion or oral argument. Unless otherwise ordered motion practice will occur as follows:

(1) Plaintiff Claimant must move for summary judgment or judgment on the pleadings within sixty (60) days of the filing of the answer and administrative transcript.

(2) The Commissioner must file a countermotion or a response to the plaintiff’s claimant’s motion within thirty (30) days of service of the plaintiff’s claimant’s motion.

(3) The Clerk must submit the case to the judicial officer immediately following the filing of the Commissioner’s countermotion or response.

(4) Extensions of time may be granted only if good cause is shown or there is no objection from any party.

(d) Attorney’s Fees Petitions Under Social Security Act in Social Security Cases. Plaintiff’s Claimant’s counsel may petition for attorney’s fees, awardable under § 206(b) of the Social Security Act, 42 U.S.C. § 406(b), and any other applicable statute permitting an award of attorney’s fees in such cases, within thirty (30) days of a final favorable decision for plaintiff claimant.

(1) Petition. The attorney’s fee petition must include an itemization of the services provided in both the administrative and the judicial proceedings. Plaintiff’s Claimant’s counsel must serve a copy of the fee petition on the claimant and the United States Attorney.

(2) Responses by the Claimant. The United States Attorney must respond to the attorney’s fee petition within thirty (30)
days of the petition's filing. The government’s response must include a statement of accrued benefits and must advise the Court whether the government considers the fee to be reasonable. The government must serve a copy of the response on the claimant and the petitioning attorney. The claimant may respond to the attorney’s fee petition within thirty (30) days of the petition’s filing.

D. LR 65.1.1(h) and LCrR 46.1(h) – Lis Pendens Notice and Fees – will be amended as follows in order to reflect the actual practice and procedure of the clerk’s office.

LR 65.1.1 BOND AND SURETY REQUIREMENTS

…

(h) Lis Pendens Notice and Fees. The Clerk must file a lis pendens notice against the property in the County Clerk's Office in the county where the property is located. The required fee for filing the notice and release of lis pendens is required upon the execution of the bond.

LCrR 46.1 RELEASE FROM CUSTODY—WHEN SURETY IS REQUIRED

…

(h) Lis Pendens Notice and Fees. The Clerk must file a lis pendens notice against the property in the County Clerk's Office in the county where the property is located. The required fee for filing the notice and release of lis pendens is required upon the execution of the bond.

****
Comments concerning the proposed rule amendments are welcome. Comments must be submitted in writing or via email on or before July 31, 2018 and should be sent to:

Brian F. Haara
Chair, Joint Local Rules Commission
Tachau Meek PLC
101 South Fifth Street, Suite 3600
Louisville, Kentucky 40202
bhaara@tachaulaw.com

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.
CLE COURTESY REMINDERS EMAILED IN EARLY MAY

Courtesy Reminders were emailed in early May to all members who needed to complete and/or report additional CLE credits before the June 30th end of the educational year. A second reminder will be sent in mid-July regarding the August 10th deadline for reporting credits earned by June 30th.

Remember that you may check your CLE transcript and status at any time through the KBA website at www.kybar.org. After logging in, click on “CLE,” and then “My CLE Transcript.”

DON’T FORGET...

The deadline to complete your annual CLE requirement for the 2017-2018 educational year is JUNE 30, 2018.

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

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

Note: The deadline to report your CLE credits is AUGUST 10, 2018 for the 2017-2018 educational year.
The annual Kentucky Law Update (KLU) is just around the corner. The KLU program series is an exceptional benefit of KBA membership and Kentucky is the only mandatory CLE state that provides its members a way of meeting the annual CLE requirement at no additional cost. Registration will become available on our website this summer. We look forward to seeing you in the fall!

2018 KENTUCKY LAW UPDATE DATES & LOCATIONS

BOWLING GREEN
HOLIDAY INN UNIVERSITY PLAZA & SLOAN CONVENTION CENTER
August 23-24 (TH/F)

PIKEVILLE
EASTERN KY EXPO CENTER
October 4-5 (TH/F)

LOUISVILLE
KY INTERNATIONAL CONVENTION CENTER
October 17-18 (W/TH)

ASHLAND
BELLEFONTE PAVILION
September 27-28 (TH/F)

PADUCAH
JULIAN CARROLL CONVENTION CENTER
October 31 - November 1 (W/TH)

OWENSBORO
OWENSBORO CONVENTION CENTER
November 15-16 (TH/F)

LEXINGTON
LEXINGTON CONVENTION CENTER
November 29-30 (TH/F)

COVINGTON
NORTHERN KENTUCKY CONVENTION CENTER
December 13-14 (TH/F)

LOOKING FOR UPCOMING KBA ACCREDITED CLE EVENTS?

LOOK NO FURTHER...CHECK OUT HTTP://WEB.KYBAR.ORG/CLESEARCH/LISTPROGRAMS.ASPX

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

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

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

CHECK OUT THE KBA’S FACEBOOK PAGE BY SEARCHING KENTUCKY BAR ASSOCIATION.

MAKE SURE TO LIKE THE PAGE WHILE YOU ARE THERE!

KBA ONLINE PROGRAMS

The KBA Online Catalog offers a great way to take CLE whenever and wherever you have access to the internet! Seminars featuring our highest rated speakers are delivered right to your desktop in streaming audio and video formats.

Visit kybar.inreachce.com/ for the latest program additions and ordering information. The catalog also includes audio programs you can download directly to your iPod/mp3 player, for playback at your convenience.

Note: Online video and downloaded audio seminars are technological programs, of which you are allowed up to 6.0 CLE credits per educational year.

Looking for upcoming KBA accredited CLE events? Check out http://web.kybar.org/clesearch/listPrograms.aspx

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

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

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

KBA TELESEMINARS

Don’t want to travel for “LIVE” CLE credits? The KBA provides you a weekly series of live teleseminars that are as nearby and as convenient as your office or home phone. For the full catalog of offerings in 2018, visit http://ky.webcredenza.com/.

For questions or to register over the phone, please contact Kim at kim@webcredenza.com or (720) 879-4142.
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.

2017-2018 CLE COMMISSION MEMBERS


Frank Hampton Moore III  
Second District Representative  
mooeiii@coleandmoore.com

J. Tanner Watkins  
Fourth District Representative  
tanner.watkins@dinsmore.com

David B. Sloan  
Sixth District Representative  
dsloan@ortlaw.com

Justice Laurance B. VanMeter  
Supreme Court Liaison

Graham C. Trimble  
Third District Representative  
trimblelaw@gmail.com

LaToi D. Mayo  
Fifth District Representative  
lmayo@littler.com

Leigh Gross Latherow  
Seventh District Representative  
latherow@vanattys.com

Additional Members: J. Tanner Watkins, Fourth District Representative; David B. Sloan, Sixth District Representative; and Justice Laurance B. VanMeter, Supreme Court Liaison.

2017-18 KBA DVD Program Catalog

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

For more details and ordering information, please visit www.kybar.org/?accreditedprograms.

*Pre-recorded seminars, available on DVDs and through the online catalog, are classified as technological programs. A maximum of six (6.0) technological CLE credits may be applied to your record for any given educational year.

Kentucky Bar Association

June 13-14, 2018  
in conjunction with:

June 13-15, 2018  
Lexington Convention Center

For more information, visit https://www.kybar.org/page/nlpdatesandlocations

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.

- Alternative Dispute Resolution
- Animal Law
- Appellate Advocacy
- Bankruptcy Law
- Business Law
- Civil Litigation
- Construction & Public Contract Law
- Corporate House Counsel
- Criminal Law
- Education Law
- Elder Law
- Environment, Energy & Resources Law
- Equine Law
- Family Law
- Health Care Law
- Immigration & Nationality Law
- Labor and Employment Law
- LGBT Law
- Local Government Law
- Probate and Trust Law
- Public Interest Law
- Real Property Law
- Senior Lawyers
- Small Firm Practice
- Taxation Law
- Workers’ Compensation Law
The Kentucky Bar Association, through the Kentucky Lawyer Assistance Program, is excited to partner with a Kentucky employee assistance program to offer an opportunity for mental health support to Kentucky’s lawyers and judges. All of the assistance remains COMPLETELY CONFIDENTIAL, pursuant to S.C.R. 3.990. Services became available in October 2017.

This new partnership will provide additional mental health support for Kentucky’s lawyers and judges. The employee assistance program will offer CONFIDENTIAL phone assistance after hours and on weekends. Simply call the KYLAP office anytime, night or day, on our NEW DIRECT PHONE NUMBER—no operators required—and after hours you will be directly connected to our employee assistance program.

OUR NEW DIRECT NUMBER IS (502) 226-9373.

You may also continue to call through the main switchboard at the Kentucky Bar Association at (502) 564-3795, ext. 266. Someone will be available to answer your call 24 hours a day, 7 days a week.

If you need immediate care, our employee assistance program will connect you to one of hundreds of mental health providers all across the state (and even across the country), and you will have an appointment in your area (or in the area you choose) in as little as 24 hours, but no more than 48 hours from the time of your call. The provider you are referred to will be a licensed and/or certified professional, depending on the credentialing. If you have insurance or would like to pay privately, that will be accepted (according to the provider’s guidelines). If you are unable to pay and you meet the income criteria, you will receive up to four (4) clinical sessions at no charge to you. The Kentucky Bar Association and KYLAP are providing this service to KBA members free of charge, when income criteria are met. If you need additional services and are unable to pay for those, additional assistance may be available through the KYLAP Foundation, www.kylap.org/foundation.

At the Kentucky Bar Association and the Kentucky Lawyer Assistance Program, we recognize that lawyers and judges are suffering from undiagnosed mental health issues, including depression and severe and chronic stress and anxiety, at a rate far higher than the general population. We understand that good mental health and wellness is essential for the sustainability of our profession. We are committed to offering this service to you to help you, or those you care about, address mental health issues before anyone reaches a crisis in either their life or their career.

The Kentucky Lawyer Assistance Program extends its sincerest thanks to the Kentucky Bar Association Executive Director John Meyers, Board of Governors President Bill Garmer, KYLAP Task Force Chair Tom Kerrick, and the entire Board of Governors for their assistance and support in making this opportunity a reality.

Contact KYLAP DIRECTOR YVETTE HOURIGAN for more information about the KYLAP FOUNDATION, INC., FORGIVABLE LOAN PROGRAM.

(502) 226-9373 · yhourigan@kylap.org
The Nest - Center for Women, Children, & Families, is a social service agency based in Lexington that serves 17 area counties. It was formed in 1977 when the Lexington Child Abuse Council and Women’s Center of Central Kentucky joined forces. The Nest’s goal is to help a family unit in crisis regain stability. The programs offered include parenting education and support, domestic violence counseling and advocacy, crisis care for basic human needs, and child care services. The agency is committed to a holistic approach to helping families, while working to prevent child abuse and neglect. All services are provided free of charge.

In 2017, the Nest received a grant from the Kentucky Bar Foundation in the amount of $5,000 to provide legal services to its clients. The funds are used towards the salary of a full-time staff attorney, Hunter Hickman, who handles domestic violence cases in court on behalf of individuals who seek services from the Nest and who are referred by other social service agencies.

In 2017, Mr. Hickman represented approximately 500 clients in 17 counties free of charge. He primarily seeks protective orders for clients, and he also conducts preliminary work on divorce and child custody cases before bringing in another attorney to help the client with those matters. Mr. Hickman is very dedicated to his clients and the mission of the Nest. The Nest has received many letters of appreciation from clients for Mr. Hickman’s legal services. One such client wrote, “You are doing a very noble job and you should be proud of what you do! The service you provide to women is indispensable and unrepayable by us!” Another wrote, “What I experienced was very emotional and overwhelming but Mr. Hickman was nothing but compassionate. He approached the situation like he had an obligation to me and the frustration I was feeling all went away. You all saved my life….Thank you from the bottom of my soul.”

During the site visit, Executive Director Jeffrey White and Director of Clinical Services Katie Mooney provided an overview of the Nest’s programs. Mr. White explained that about 50 percent of their budget comes from grants. The atmosphere at the Nest was very positive and hopeful. The children in the child care area were happy and engaged. The need for the Nest’s services is great, and the work Mr. Hickman and his colleagues are doing is making a measurable difference for many, many families in Central Kentucky.
One of my duties as a KBF Board member is making site visits to organizations that have received grants to see how the Foundation’s money is used. Please permit me to share just one experience. On Thursday evening, January 4, 2018, I visited Mentoring Plus, a multi-service social center whose purpose is to improve the life-outcomes of at-risk children in the urban areas of Northern Kentucky. Mentoring Plus provides academic tutoring, life-coaching, counseling, sports, and healthy meals for children from poor, disadvantaged, and abused backgrounds.

Occupying an old church and parochial school, including kitchen, cafeteria, gymnasium, lounges, and offices, Mentoring Plus matches positive adult role models, as mentors, with at-risk children. Since founded in 2009, over 100 men and women have served as mentors. More than twice that number have volunteered in other roles. Mentoring Plus also connects teens with third-party resources, such as physicians, therapists, tutors, counselors, and lawyers, providing transportation if needed.

Adult mentors are volunteers. The paid, full-time professional staff includes Executive Director, Kevin Kennedy, MHP A; and Program Director, Robin Anderson, BA Ed. The M-P Board of Directors includes CPAs, bankers, judges, attorneys, and business leaders. My “host,” a man long devoted to Mentoring Plus was Campbell District Judge Mickey Foellger, one of NKY’s finest judges.

I talked with staff, volunteers, and children. From the kids, I heard testimonials about how grades had improved; delinquency and truancy had become a thing of the past; and future aspirations had risen. Mentoring Plus really does make a difference in transforming children from deprived, often abused, victims of poverty into young people who understand that with hard work, and a little help from good people, their lives and futures can be much better.

The two main sources of referrals to Mentoring Plus are the courts and schools. The aims of Mentoring Plus include: increasing family stability; keeping kids in school; facilitating success in school; improving grade performance; lowering drug and alcohol abuse among children and parents; promoting positive behavior; lowering juvenile crime; and preparing youth for successful and productive adulthood. Statistics maintained by the organization evidence that Mentoring Plus is accomplishing those things.

This is an extraordinary organization that deserves and needs continued support from the Kentucky Bar Foundation and every other community resource possible. In my report to the Board of Directors of the KBF, I have strongly recommended that the Kentucky Bar Foundation continue to contribute to the on-going work of Mentoring Plus.

If you are not already a contributor to the Kentucky Bar Foundation, I encourage you to get involved. For a one-time contribution of $1,250 or more, you can be a Life Fellow. Contribute $300 per year for 5 years and you will be a Fellow. Your generosity will help a lot of people and do a lot of good.
I. KENTUCKY BAR ASSOCIATION v. PHILIP MARTIN KLEINSMITH, 2018-SC-000026-KB

On December 23, 2016, the Colorado Supreme Court disbarred Philip M. Kliensmith after finding Kliensmith guilty of two of Colorado’s Rules of Professional Conduct. Specifically, the Court found that Kliensmith engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, and improper accounting of funds or property of a third party. The Supreme Court of Kentucky imposed identical discipline pursuant to SCR 3.435(4) on March 22, 2018.

II. MELANIE A.F. HORTON v. KENTUCKY BAR ASSOCIATION 2018-SC-000042-KB

March 22, 2018, the Supreme Court of Kentucky ordered the permanent disbarment from the practice of law in the Commonwealth of Kentucky for Melanie A.F. Horton. Horton was charged with violating professional misconduct contained in eight KBA case files and additionally in March 2016, Horton pled guilty to three amended charged of theft by deception of more than $500 but less than $10,000, a Class D felony.

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Get noticed! Upload your resume on the KBA Career Center today!

Job Seekers - KBA Career Center will allow you to:

- **POST** multiple resumes and cover letters or choose an anonymous career profile that leads employers to you
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- **SET UP** efficient job alerts to deliver the latest jobs right to your inbox
- **ASK** the experts advice, get resume writing tips, utilize career assessment test services, and more

Recruiters - place your open jobs in front of our highly qualified members!

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

JUDGE ROBERT GREGORY "BOB" BREETZ SR. from Louisville unexpectedly filed his final brief Thursday March 22, 2018, at 4 p.m. He was born May 25, 1935, in Covington, Ky., to Herbert George Breetz of New Albany, Ind., and Evelyn Bechtold Breetz of Covington, Ky. Breetz was a loving husband, a dedicated father and grandfather, an extraordinarily compassionate lawyer and judge, and a friend to all. He has long been known for his keen intelligence, wonderful sense of humor, and kind, generous, and loving nature.

After attending seminary for a time, he moved to Louisville and entered law school, graduating from the University of Louisville School of Law in 1960. He was a member of the Kentucky National Guard for a number of years, where he was told he couldn’t even peel a potato well. He was a founding member of the Louisville recreational softball team, the Heffalumps, where he routinely turned triples into singles by virtue of his exceptional speed. His talents were put to their best use in his long and varied legal career, beginning as a law clerk to U.S. District Court Judge Roy Shelbourne, working as an associate and then for decades as a partner in the law firm Stites & Harbison, as a judge on the Kentucky Court of Appeals, and as the initial claims counsel and subsequent COO of Lawyers Mutual Insurance Company of Kentucky. He retired in 2010 but still loved the law and used his knowledge to help others even after he retired. The proceeding memoriam for Judge Robert Gregory "Bob" Breetz Sr. is based upon information obtained from the Courier-Journal, which published the obituary from March 24 to March 26, 2018. To access the obituary in its entirety, visit: https://www.legacy.com/obituaries/louisville/obituary.aspx?n=robert-gregory-breetz-bob&pid=188538495&fhid=4753.

LISA E. UNDERWOOD, 57, passed away on Dec. 9, 2017. Underwood earned her law degree from the University of Kentucky College of Law and began her career at Waller in Nashville. She joined Wyatt in 1987 and became a partner in 1992. Several years later, she became in-house counsel and then on to her own firm. She then entered state government, serving five years as executive director of the Kentucky Horse Racing Commission. She helped hire its first medical director, launch historical race wagering and Kentucky Breeders Incentive Fund and she helped facilitate the process of drug-testing racehorses. Underwood returned to Wyatt in 2011 where she continued work as an equine and gaming lawyer while adding data security to her repertoire. She was the leader of the firm’s data privacy & security team.
RESOLUTION IN MEMORIAM
LARRY BRUCE FRANKLIN

Whereas the members of the Louis D. Brandeis American Inn of Court are deeply saddened by the loss of our distinguished colleague, Larry Bruce Franklin, on January 14, 2018.

Whereas, Larry lived a life of extraordinary achievement, generosity and friendship and continually demonstrated throughout his lifetime the ethical, civil, professional and legal skills for which the Louis D. Brandeis American Inns of Court is established to promote.

Whereas, Larry had served his country with a distinguished Naval career. Larry was selected to the United States Naval Academy where he graduated with the honor of having the highest aptitude in his class. Thereafter, Larry’s naval career lasted more than 36 years culminating with his retirement from the United States Naval Reserves with the rank of 2-Star Rear Admiral (RADM). Thereafter, Larry devoted substantial time and resources to assist service men and women throughout his lifetime including chairing of Commissioning Committees for the USS Louisville (SSN724), USS Kentucky (SSBN737), USS Higgins (DDG76) and USS Ashland (LSD48). Leading and promoting the Louisville Council of the Navy League and other groups and agencies devoted to assisting service men and women and their families.

Whereas, Larry had served our community and profession as a practicing attorney demonstrating the highest qualities of excellence, ethics and service. Larry attended night law school at the University of Louisville while working full time graduating in 1967. Larry would go on to be widely known as one of the best lawyers in Kentucky and throughout the country, earning him a coveted spot as a member of the Inner Circle of Advocates, winning some of the largest verdicts in Kentucky history for his clients and being a tireless advocate for his clients. His driving work ethic combined with his sharp intellect made for a storied legal career that has been an inspiration for all trial lawyers throughout the Commonwealth of Kentucky.

Whereas, Larry’s generosity and compassion knew no bounds and that he unselfishly devoted much of his time and financial resources to assist our community and profession for which he never sought and rarely received personal recognition. Larry devoted numerous hours and financial resources to promoting the legal profession through the Kentucky Bar Association, the Louisville Bar Association and the Kentucky Justice Association holding high office in each of those professional organizations.

Whereas, Larry had a heart of gold that was as soft as a teddy bear and a charm that would light up a room.

WE ALL RESOLVE THEREFORE that we record in the official minutes of the Louis D. Brandeis American Inn of Court our sense of loss and tremendous void by the passing of Larry Bruce Franklin RADM and we acknowledge with great affection the contribution made by him as a military hero, an exceptional attorney, a generous contributor to our profession and society, a gentleman, an inspiration for all of us and a cherished friend.

WHEREUPON, a motion duly made, seconded and unanimously carried, said resolution was unanimously adopted this 7th day of March, 2018.
IN MEMORIAM

ELI GEORGE JR. left us peacefully on March 1 surrounded by his wife, Laura, and children Elizabeth George (Peyman), John George (Paula), Mary George Meiners (Terry), and Elliot George. He was the oldest of nine children and was revered by them and those close to him for his wisdom, sage advice, quick wit and the ability to make anyone he encountered feel like the most special person in the world. Being with him was inspirational in so many ways. Particularly inspiring (and sometimes maddening) was his courage and ability to live his life on his own terms, and his love of deep, practical and abstract thinking which ultimately resulted in the acceptance of his long illness and death. It is not an exaggeration to say that he always lifted us up. What lifted him up most was helping people through difficulties, intimate visits with family and friends, his beloved dog, Ella, and tending to his garden and home. For Eli, truly there was no place like home. When he mentioned he would like an obituary to be written about him, and that it must be sincere, we scratched our heads about his intentions because he was not one who would like for us to talk about his accomplishments or brag about the kind of person he was. We concluded that perhaps he wanted us to share some final wisdom that he learned later in his life - that the secret of a happy life was love and that we should all just be kind to each other and do more good in this world than harm.

The proceeding memoriam for Eli George Jr. is based upon information obtained from the Courier-Journal, which published the obituary on March 4, 2018. To access the obituary in its entirety, visit: https://www.legacy.com/obituaries/louisville/obituary.aspx?n=eli-george&pid=188343255&fhid=25098.

EDWARD S. “NED” BONNIE a nationally renowned equine attorney and horseman, passed away March 17, 2018, in Louisville. A Kentuckian by birth, he was a passionate horseman, sportsman, conservationist, and devoted husband, father and grandfather. He was graduated from Hotchkiss School, Yale University and Yale Law School. While at Yale, he was a member of the esteemed Whiffenpoofs singing group and music would remain an important part of his life until his death. His professional career was driven by a lifelong commitment to justice and fairness and a love of horses. He was retired of counsel to the firm of Frost Brown Todd, a regional law firm he helped establish. Bonnie concentrated his practice in the area of equine law, and was responsible for the prosecution and/or defense of over 1,000 medication rule violation cases in the horse business. He tried hundreds of cases before AHSA and USEF Hearing Committees, Racing Stewards, Commissions and Courts in many racing states. A trailblazer in the horse industry, he gained national recognition as the young attorney representing Dancer’s Image owner Peter Fuller in the 1968 Kentucky Derby drug scandal that cost Dancer’s Image the coveted Derby Trophy. He continued to be an outspoken advocate for modern equine drug testing and drug research in Kentucky and nationally. He along with his wife, Nina, were given the Lifetime Achievement Award from USEF in 2002. As recently as 2016, he was inducted into the American College of Equine Attorneys Hall of Fame (an organization he helped found and of which he was a Fellow). In 2012, he was awarded the first Edward S. Bonnie Award (named for him), for Outstanding Kentucky Equine Lawyer for 2012, established by the Kentucky Bar Association, Equine Law Section. The proceeding memoriam for Edward S. “Ned” Bonnie is based upon information obtained from the Courier-Journal, which published the obituary from March 21 to March 28, 2018. To access the obituary in its entirety, visit: https://www.legacy.com/obituaries/louisville/obituary.aspx?n=edward-s-bonnie-ned&pid=188506448&fbid=4753.

JOSEPH LEON “JOE” HARDESTY, beloved father and husband, passed away suddenly on Feb. 26, 2018. He was born on Aug. 2, 1954, in Lafayette, Ind., to Elizabeth Craven Hardesty and Leon Howard Hardesty. He grew up and attended high school in Frankfort, Ind., after which he attended the United States Military Academy at West Point, where he obtained a Bachelor’s of Science in Engineering in 1976. He retired from the military in 1999, having served five active duty years as a Field Artillery officer in the U.S. Army and 15 years in the U.S. Army Reserve. He spent three years with the Eighth Infantry Division at the U.S. Army Garrison in Baumholder, Germany, during the Cold War. He attended law school at the Louis D. Brandeis School of Law at the University of Louisville, where he served as the executive editor of the Law Review and met the love of his life and future wife, Julie Kathryn Lott. He graduated from law school in 1984. Upon graduation, he began his career as an attorney at the law firm of Middleton-Reutlinger, after which he served as in-house counsel at BellSouth Corporation. He went on to become a partner at the law firm of Stites & Harbison in Louisville. He worked until his passing. During his time at Stites, he focused his practice on construction and business disputes, represented the construction manager on legal disputes arising from the construction of the KFC Yum! Center, and was recognized as one of the top construction lawyers in the U.S. In addition to his successful career as an attorney, he worked hard to improve and develop the Jefferson County Public School system. He served on the Jefferson County Board of Education from 1990-2012 and was chairman of the Board in 1997, 1998, and 2004-2008. The Kentucky School Boards Association named him Outstanding School Board Member of the Year in 2008. Hardesty was devoted to and had great love for his family. He was an avid runner who ran marathons, including the Marine Corps Marathon. At the time of his passing, he was helping his daughter train to run the Kentucky Derby Mini Marathon. The proceeding memoriam for Joseph Leon “Joe” Hardesty is based upon information obtained from the Courier-Journal, which published the obituary from March 1 to March 3, 2018. To access the obituary in its entirety, visit: https://www.legacy.com/obituaries/louisville/obituary.aspx?n=joseph-leon-hardesty-joe&pid=188319323&fbid=4751.
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.

Walters, Meadows, Richardson opened their fourth location on Jan. 1, 2018. The new office is located just outside of Nashville, in Gallatin, Tenn. Senior Associate Elizabeth M. Bass is managing the new location. Bass is a 2008 graduate of the University Of Kentucky College Of Law.

Wyatt, Tarrant & Combs, LLP, is pleased to announce that the Honorary Order of Kentucky Colonels has appointed Tad Myre, Jr., to its Board of Trustees. The Kentucky Colonels is an organization of talented and capable men and women appointed by the Governor of the Commonwealth of Kentucky because of their service to the state. The organization acts as the Governor’s ambassadors of Kentucky’s heritage and rich history of arts and entertainment. The commission of Kentucky Colonel is the highest title of honor bestowed by the Governor of Kentucky. Myre concentrates his practice in the areas of health care, taxation, nonprofit organizations, and general business law.

Fultz Maddox Dickens PLC is pleased to announce that Matthew C. Williams has been elected a member of the firm. Williams earned a B.S. in Finance, magna cum laude, at Arizona State University in 2003 and a J.D., cum laude, at New York University School of Law in 2008. He was admitted to the New York Bar in 2009 and the Kentucky Bar in 2014. Immediately prior to joining the firm in 2013, he served as a law clerk for United States District Judge Charles R. Simpson III of the Western District of Kentucky. Prior to his clerkship, Williams served for three and a half years as an assistant district attorney in the Appeals Bureau of the New York County District Attorney’s Office. Williams focuses his practice on commercial litigation and healthcare matters.

Littler, the world’s largest employment and labor law practice representing management, has added Michael D. Hornback as special counsel in the firm’s Lexington office. He was previously an attorney with Wyatt, Tarrant & Combs LLP. Hornback’s practice focuses on representing clients in all aspects of litigation before federal and state courts. He defends companies in a wide-range of employment matters, including discrimination, harassment and retaliation claims, and issues involving breaches of non-compete agreements and other contracts. Hornback also regularly represents clients before the Equal Employment Opportunity Commission. Hornback received his J.D. from the University of Arkansas School of Law and his B.A. from Eastern Kentucky University. He is a member of the Fayette County Bar Association’s Board of Directors and a member of the Rotary Club of Lexington.

Jeffrey D. Thompson has joined the in-house legal department of Laser Spine Institute, LLC, at their corporate headquarters and medical facility in Tampa, Fla. Thompson has joined the company to defend civil litigation, primarily medical malpractice lawsuits in Florida. He will also be assisting outside counsel with litigation throughout the country at Laser Spine Institute’s other medical facilities in Arizona, Oklahoma, Missouri, Ohio and Pennsylvania. Immediately prior to joining Laser Spine Institute, LLC, Thompson was director of litigation at Hurley, Rogner, Miller, Cox & Waranch in Orlando, and was formerly part of the medical malpractice staff at Whonsetler & Johnson in Louisville. Thompson’s new contact information is (813) 392-7444 and jthompson@laserspineinstitute.com.

After 27 years Judge Benny Dickinson is retiring from the Ethics Committee Hotline. Judge Dickinson is a 1964 graduate and an honored alumnus of Centre College. After graduation from the University of Kentucky College of Law, he embarked on a long career as a district and circuit judge; he received the KBA Distinguished Judge award in 2016. During his long service as
a hotline lawyer, Judge Dickinson wrote hundreds of opinions for lawyers concerned about ethical issues.

Wyatt, Tarrant & Combs, LLP, is pleased to announce that Christopher W. Brooker has been appointed by Kentucky Governor Matt Bevin to the Executive Branch Ethics Commission. The Executive Branch Ethics Commission promotes the ethical conduct of elected officials, officers and other employees in the executive branch of state government. Brooker is a member of the firm’s litigation & dispute resolution service team. He is lead counsel in a wide array of cases at the trial level, including contract, health care, fiduciary, constitutional and product liability cases. He also has extensive experience as lead counsel in both state and federal appellate courts. He is a Junior Achievement of Kentuckiana Board Member and 2013 graduate of Leadership Kentucky. Brooker earned his law degree, with honors, from the University of North Carolina School of Law and his undergraduate degree from the University of North Carolina at Asheville.

Reminger Co., LPA, is pleased to announce that Anthony Pernice has joined their Lexington office. Pernice represents corporations and individuals in litigation matters including premises liability, construction negligence, and commercial Trucking. Pernice worked previously for more than four years at another regional insurance litigation defense firm, where he was successful at both the trial and appellate level. Pernice has been recognized by Kentucky Trial Court Review as one of the “Most Prolific Trial Attorneys” for 2015. While at the University of Kentucky College of Law, he received multiple honors for his advocacy and was an active member of the National Mock Trial Team.

Leadership Kentucky recently selected Stites & Harbison, PLLC, attorney Zachary VanVactor as one of 24 participants for the Elevate Kentucky Class of 2018. Elevate Kentucky is a leadership development program designed for millennials and young professionals. Three training sessions are scheduled, one per month. Training sessions provide participants professional development skills and a better understanding of the Commonwealth’s challenges and opportunities in order to advance their careers, their companies and their communities. He is a member of the business litigation service group. His practice focuses on a wide variety of litigation, including antitrust, consumer protection, class actions, financial services, professional liability and intellectual property. VanVactor is a member of the Kentucky Bar Association’s Communications & Publications Committee.

Taft Stettinius & Hollister LLP is pleased to announce that Robert K. McBride has joined the firm as a partner in the corporate compliance and white collar criminal defense practice. McBride will work out of Taft’s Northern Kentucky office. McBride is a senior trial attorney with experience in prosecuting cases related to national security and critical infrastructure, complex financial frauds, income tax violations, money launderings, and violent crimes arising from narcotics trafficking, firearms violations and the exploitation of children. McBride was an attorney for the United States Attorney’s Office for the Eastern District of Kentucky for 16 years, serving as criminal chief. He served as a national security prosecutor, anti-terrorism counsel coordinator and crisis management coordinator. McBride is a mentor coordinator for the Northern Kentucky Veterans Treatment Center, is a member of the Disabled Veterans of America and the Navy League and has been nominated by the FBI for the Attorney General’s Award. McBride earned his J.D. from University of Dayton School of Law and received his B.A. in political science from Miami University.

Due to their continued growth, a multi-office national law firm is seeking ATTORNEYS for its Louisville and Lexington office. The litigation department seeks individuals with experience in civil trial and/or insurance defense litigation. Portable book of business is a plus.

E-mail resume to resume@qpwbblaw.com
Duncan Galloway Egan Greenwald, PLLC, is pleased to announce the addition of attorney Gavin Weinrich, whose practice is focused on estate planning, probate, business law and transactions. Weinrich earned his J.D. from the University of Louisville’s Louis D. Brandeis School of Law and a B.A. from the University of Wales, College at Swansea. Weinrich’s areas of concentration will add value for the commercial firm’s diverse client base.

Wyatt, Tarrant & Combs, LLP, is pleased to welcome Neal B. Curtis to its corporate & securities team. Curtis provides counsel to clients regarding mergers, acquisitions and dispositions. He also provides operational, regulatory and transactional support to an array of clients, including those in the healthcare industry. Prior to joining Wyatt, Curtis practiced law in the Nashville office of Bass, Berry & Sims, PLLC, and was a judicial law clerk to U.S. Magistrate Judge Hanly Ingram. Curtis earned his J.D. from Vanderbilt University Law School and his B.S. from Vanderbilt University. He is licensed to practice law in Kentucky and Tennessee.

Sturgill, Turner, Barker & Moloney, PLLC, welcomes Janet S. Luo as an associate in the firm’s government & municipal law and torts & insurance practice groups. At Sturgill Turner, her focus will be on defending municipalities, police departments, public entities and insurance companies in litigation. Prior to joining the firm, Luo’s legal experience included employment as an assistant county attorney in the Fayette County Attorney’s Office, and as a public defender in the 11th judicial circuit. Luo earned a J.D. from the University of Minnesota in 2014, and a B.A. in economics and psychology from the University of Virginia in 2010. She grew up in Lexington, where she is involved with the Lexington Junior League and the Inns of Court.

O’Bryan, Brown & Toner, PLLC, is pleased to announce that Justin T. Brezosky has joined the firm as an associate attorney. Brezosky was born and raised in Louisville. He attended the University of Louisville where he obtained a B.A. in history. He earned his law degree from the University of Louisville, Brandeis School of Law, where he was a member of the Law Review, National Mock Trial Team, and was vice president of the Moot Court Board. Brezosky’s primary area of practice is insurance defense litigation with a focus on medical malpractice and defense of general civil liability claims.

Frost Brown Todd (FBT) is announcing that former managing associates Justin Fowles and Carl Lammers in the firm’s Louisville office have been promoted to members. Fowles is a member of FBT’s Product, Tort and Insurance Litigation Practice Group, where his work is dedicated to defending insurers, contractors and corporate defendants. He currently represents several national insurers, construction companies and local, regional and national companies. Fowles currently serves as vice chair of the Kentucky Bar Association’s Civil Litigation Section and has served as chair of the Louisville Bar Association’s Litigation Section in the past. He is a graduate of the University of Kentucky and the University of Louisville Louis D. Brandeis School of Law. Lammers practices in FBT’s Tax, Benefits and Estates Practice Group, where he focuses on employee benefits law. He counsels employers on employee benefit plan design, implementation, administration and compliance issues affecting all types of employee benefits plans. He also designs and drafts nonqualified deferred compensation and equity-based compensation plans and advises employers on compliance issues related to the Affordable Care Act and the
HIPAA Privacy and Security rules. Lammers is an active member of the Kentucky Bar Association, where he currently serves as vice chair of their tax section, the American Bar Association, the Louisville Employee Benefits Council, having served multiple times on the program committee, and the Louisville Deferred Compensation Practitioners group. Lammers is a graduate of the University of Florida (UF) and the UF Levin College of Law. He also earned an L.L.M. in Taxation with a concentration in Employee Benefits at Georgetown University Law Center.

Reminger Co., LPA, recently elevated three attorneys to shareholder status: Kenneth L. Finley, Jennifer M. Jabroski and Danielle J. Lewis. Finley practices primarily in Reminger’s Lexington office. He has represented small to large corporations, as well as individuals, throughout Kentucky and Ohio in areas including complex business and commercial litigation, construction, and products liability. He has also represented clients in various transactional matters including mergers and acquisitions, commercial real estate, fraud investigations, and compliance matters. In 2015, he was proud to accept an adjunct professor position at Eastern Kentucky University, where he teaches a night section of legal and ethical environment of business in the Department of Management, Marketing, and International Business. Jabroski practices in Reminger’s Fort Mitchell and Lexington offices. She focuses primarily in the areas of medical negligence, professional liability, premises liability, products liability, trucking and transportation litigation, and insurance matters. Jabroski brings with her considerable litigation experience, having worked for some of the most prominent civil defense firms in Central Kentucky. She has represented both professional and non-professional clients and has successfully defended a wide variety of cases to resolution. Lewis defends business owners and employers facing claims of general liability, professional negligence, and employment negligence. She focuses her legal practice primarily in the areas of employment, medical malpractice, nursing home litigation, and professional liability defense. She is also experienced in handling the defense of trucking liability, products liability, premises liability, workers’ compensation, and retail and hospitality matters. Lewis started her legal career as a law clerk with Reminger. After joining another Louisville firm and focusing on long-term care defense, she returned to Reminger in 2016.

Stoll Keenon Ogden PLLC (SKO) attorney Palmer Gene Vance II is among 44 new members elected to the American Law Institute (ALI). Vance is the only attorney from Kentucky elected in the 2017 class of new ALI members. He joins SKO’s Thomas E. Rutledge, tapped to join the Institute in 2004, among its 2,919 members. Founded in 1923, the ALI is the leading independent organization in the United States producing scholarly work to clarify, modernize and otherwise improve the law. Vance joined SKO in 1995 and is a member of the business litigation, intellectual property and tort, trial and insurance services practices. He also chairs the firm’s pro bono committee. Vance currently is chair-elect of the Section of Litigation of the American Bar Association for 2017-18. He is on track to be installed as the 46th chair of the American Bar Association Section of Litigation at the ABAs annual meeting in 2018.

U’Sellis Mayer & Associates is pleased to announce that Elizabeth Schott Ross and John S. Harrison have joined the firm. Ross is a graduate of the University of Louisville and the Brandeis School of Law. She was admitted to practice in Kentucky in 1996 and Indiana in 1999. She will concentrate her practice in defending Kentucky and Indiana Workers’ Compensation claims and U.S. Longshore & Harbor Workers’ Compensation Act claims, as well as civil litigation and subrogation. Harrison is a graduate of the University of Kentucky and Southern Illinois University School of Law. He was admitted to the Kentucky Bar in 1998. His practice focuses in the areas of workers’ compensation defense, subrogation and civil litigation.

Fisher Phillips, a national labor and employment law firm, announces that Ashby Angell has joined the firm’s Louisville office as an associate. Angell represents clients in all aspects of labor and employment law including charges of discrimination, sexual harassment, retaliation, wrongful termination, and other employment related claims. Prior to joining Fisher Phillips, Angell worked for a civil litigation firm in Louisville, where she represented clients in a variety of tort claims. Angell graduated from the University of Louisville, Louis D. Brandies School of Law in 2015. She earned her undergraduate degree at the University of Alabama at Birmingham.

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710 E. Main Street, Lexington, KY 40502. www.nonprofitattorney.net This is an advertisement.
David E. Williamson has joined Marshall Dennehey’s Cincinnati office as special counsel in the firm’s casualty department. An experienced civil litigator and trial lawyer, Williamson focuses a portion of his practice on insurance coverage and bad faith litigation. Over the course of his 18-year career, he has represented numerous insurance carriers in disputes with insureds, other insurers and claimants. He also defends clients in personal injury cases, transportation litigation and a variety of other general liability matters. Williamson is a member of the Ohio State, Cincinnati, Kentucky and Northern Kentucky Bar associations. He is a graduate of Salmon P. Chase College of Law and Hanover College.

Paducah Mayor Brandi Harless has reappointed Jackie M. Matheny to the Barkley Airport Authority Board for the term commencing Jan. 1, 2018, and ending Dec. 31, 2021. Matheny is a partner with Denton Law Firm in Paducah, Ky.

Wyatt, Tarrant & Combs, LLP, is pleased to announce that G. Brian Wells has been named by corporate counsel to the 17th Annual BTI Client Service All-Stars list of 2018. Wells is one of only two Kentucky attorneys to be so recognized. The criteria for recognition include: superior client focus, client experience, legal skills, unmatched business understanding, outsized value and innovative thought leader. Wells concentrates his practice in the area of general business law, mergers and acquisitions, real estate lending transactions, commercial leasing and contract drafting and negotiation. He is a member of the corporate and securities service team and is the co-leader of the firm’s natural resources & environmental service team. He received his B.A. from the University of Kentucky, his J.D. from the University of Louisville, and his LL.M. from Georgetown University.

Debra L. Broz, Attorneys at Law, PLC, announces that Partner Darren K. Mexic was recently elected vice president of the Bowling Green Warren County Bar Association. Mexic heads the bankruptcy and litigation sections in the firm.

David M. Dirr has been named a partner at DBL Law. He is a member of the healthcare and civil litigation practice groups and represents clients in a wide array of healthcare-related issues including Medicare and Medicaid reimbursement, anti-kickback law, the Stark Law, certificate of need, and HIPAA. He also assists clients in a diverse range of litigation issues outside of the healthcare field. Dirr obtained his B.A. in history from Miami University and graduated summa cum laude from The Ohio State University Moritz College of Law. He serves as chair of the managed care contracting affinity group of the American Health Lawyers Association. Dirr volunteers as a faculty member at the Life Learning Center in Covington and is active with the Cincinnati Inn of Court.

Stacy Hullett Ivey is pleased to announce the opening of her own firm in Bowling Green, Ky. She is a 2007 graduate of the University of Kentucky College of Law, where she was a member of the Moot Court Board. After practicing personal injury law in Lexington for nine years following law school, she relocated with her family back to her hometown of Bowling Green in 2016. While her practice will focus on personal injury, she will also handle family law, criminal law, and general practice matters. She is a proud member of the KJA Board of Governors and is licensed to practice law in both Kentucky and Tennessee. Please visit her website at www.stacyivey.com for additional information concerning her practice.

Claria Horn Boom, partner in the Lexington office of Frost Brown Todd (FBT), has been confirmed as a district judge on the U.S. District Courts for the Eastern and Western Districts of Kentucky. Nominated by President Trump last year, Boom’s appointment was confirmed by the U.S. Senate in a 96-1 vote. Boom is currently a member of FBT’s Finance and Real Estate Practice Group and represents clients in

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a wide variety of banking, finance and commercial transactions, as well as internal investigations. She began her legal career as a law clerk to the Hon. Pierce Lively, United States Sixth Circuit Court of Appeals, and later practiced for a private law firm in Atlanta, Ga. She returned to Kentucky as an Assistant United States Attorney for the Eastern and Western Districts, prosecuting a wide variety of financial crimes. Boom graduated from Vanderbilt University Law School in 1994 with Order of the Coif honors, and from Transylvania University in 1991, *summa cum laude*.

**Will Moynahan**, a Commander in the U.S. Navy Reserve, became Commanding Officer of the Training Squadron Nine Reserve Component on Jan. 25, 2018. He leads 20 reserve instructor pilots who train Navy and Marine Corps student aviators in the advanced jet strike syllabus at Naval Air Station Meridian in Mississippi. In 2017, CDR Moynahan was mobilized for a year of active-duty as the Executive Officer of Camp Lemonnier in Djibouti. Camp Lemonnier is home to approximately 5,000 U.S. military personnel from all service branches and is the only permanent U.S. military installation on the African Continent. In civilian life Moynahan works for the U.S. Department of Justice. He left the Antitrust Division in Washington, D.C., in April 2018 and joined the U.S. Attorney’s Office in Lexington as an Assistant U.S. Attorney. He is handling criminal cases in the office’s fraud unit.

**Bingham Greenebaum Doll LLP (BGD)** is pleased to announce the selection of Melissa Norman Bork as a co-chair of the firm’s recruiting committee. She will spearhead recruitment efforts for new associates and lateral hires in all BGD offices. Bork is the co-chair of the business litigation practice group and leader of the product liability team. Her practice focuses on commercial and tort litigation, including contract, commercial and employment disputes, product liability, asbestos and toxic tort litigation. Her practice also includes appellate practice and litigation of matters involving the First and Fourteenth Amendment, civil rights and college and university law.

**Kaplan Johnson Abate & Bird LLP** (formerly Kaplan & Partners) is pleased to announce the addition of six new attorneys to the firm. Four new attorneys have joined the firm as partners: **Clark Johnson**, who represents business entities, directors, officers and shareholders in a wide range of complex business disputes and class action litigation, was formerly a clerk for a federal judge in the Southern District of Indiana, and previously was an equity partner at both Jenner & Block LLP and a large regional law firm; **Michael Leigh**, whose practice focuses on complex civil litigation, wealth and investment management litigation, and white collar criminal defense, and who practiced at Debevoise & Plimpton LLP before becoming a partner at a large regional law firm; **Brian Meldrum**, whose practice is focused on complex insolvency-related matters, including workouts, restructuring, bankruptcy, receiverships and bankruptcy litigation, and who practiced at Jenner & Block LLP before becoming a partner in a large regional law firm; and **Michael Merrick**, a litigator and advisor in the areas of business, fiduciary, and healthcare litigation, who clerked for a federal judge in the Western District of Kentucky before becoming a partner at a large regional law firm. The firm is also pleased to announce the addition of **Heather Harrell**, who previously clerked for a federal judge in the Western District of Kentucky and concentrates her practice in the areas of healthcare, media, and commercial litigation, and **Andrea Aikin**, who was previously an associate at a large regional law firm and focuses her practice on commercial and healthcare litigation, including the representation of companies in connection with internal and government investigations.

**29th Annual Pike Co. Bar Association CLE at the Beach**

**Location:** Hilton Myrtle Beach Resort
10000 Beach Club Dr.,
Myrtle Beach, South Carolina.

**Tuition:** Free of charge to KBA members.

**Dates:** July 18, 2018 to July 20, 2018 from 8:30 a.m. to 12:00 noon each day.

Topics ranging from workers’ compensation to civil litigation.

An application will be submitted requesting accreditation with the Kentucky Bar Association for up to 12 CLE hours including 2 hours of Ethics.

**Reservations** Hilton Myrtle Beach Resort at 1-843-449-5000 (843) 449-5000 or Hilton.com
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