

KENTUCKY BAR ASSOCIATION

# B&B

BENCH & BAR MAGAZINE

NOVEMBER/DECEMBER 2018



*2018-2019 Kentucky Bar Association Board of Governors*



# INDIVIDUAL OWN OCCUPATION DISABILITY COVERAGE FOR KENTUCKY ATTORNEYS

*Affordable KBA Rates from Metlife*

## KBA MEMBER SEMIANNUAL RATES

Monthly Coverage Amount:	\$3,000	\$5,000	\$10,000
Under 30 yrs	\$152	\$252	\$502
30-39 yrs	\$213	\$354	\$705
40-49 yrs	\$352	\$585	\$1,167

- ✓ No Medical Exam (Under Age 50)
- ✓ No Tax Returns
- ✓ Apply for up to \$10,000/month Coverage
- ✓ Residual Disability Coverage
- ✓ Industry Standard Disability Definition
- ✓ Easy Online Application

Visit [www.NIAI.com/Attorneys](http://www.NIAI.com/Attorneys) for KBA quotes and application

**NATIONAL INSURANCE AGENCY**



CALL OR EMAIL TODAY | 800.928.6421 | [WRL@NIAI.COM](mailto:WRL@NIAI.COM) | [WWW.NIAI.COM](http://WWW.NIAI.COM)

## COMMUNICATIONS & PUBLICATIONS COMMITTEE

James P. Dady, Chair, Bellevue  
Paul Alley, Florence  
Elizabeth M. Bass, Gallatin, Tenn.  
Rhonda J. Blackburn, Pikeville  
Jenn L. Brinkley, Bowling Green  
Frances E. Catron Cadle, Lexington  
Anne A. Chesnut, Lexington  
Elizabeth A. Deener, Lexington  
Tamara A. Fagley, Lexington  
Cathy W. Franck, Crestwood  
Lonita Baker Gaines, Louisville  
William R. Garmer, Lexington  
P. Franklin Heaberlin, Prestonsburg  
Judith B. Hoge, Louisville  
Jessica R. C. Malloy, Louisville  
Eileen M. O'Brien, Lexington  
Sandra J. Reeves, Corbin  
Gerald R. Toner, Louisville  
Sadhna True, Lexington  
Zachary M. Van Vactor, Louisville  
Michele M. Whittington, Frankfort

## PUBLISHER

John D. Meyers

## EDITOR

James P. Dady

## MANAGING EDITOR

Shannon H. Roberts

## DESIGN & LAYOUT

Jesi L. Ebelhar

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

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

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

## POSTMASTER

Send address changes to:  
B&B - Bench & Bar  
514 West Main Street  
Frankfort, KY 40601-1812

# Contents

## 2 President's Page

By: Douglas C. Ballantine

## Features: Animal Law

### 6 A Brief Overview of Animal Law in the Civil Realm

By: Nolia Batey and Katie Brophy

### 10 Legislative Update

By: Megan Engle Rosen

### 14 A Prosecutor's Work – Criminal Issues in Animal Law

By: Susan Morris Jones

## Columns

### 18 University of Louisville Louis D. Brandeis School of Law

### 20 Northern Kentucky University Salmon P. Chase College of Law

### 21 University of Kentucky College of Law

### 22 Young Lawyers Division

By: Jennifer "Jenna" S. Overmann

### 24 Effective Legal Writing

By: Michael D. Murray

### 26 Law Practice Management

By: Stephen E. Embry

## Bar News

### 34 Order Amending Rules of Supreme Court (SCR) 4.300

### 36 Supreme Court Order Regarding Ky. Rules of Evidence (KRE)

### 40 2018 Fall Swearing-In Ceremony

## Departments

### 42 Kentucky Lawyer Assistance Program

### 45 KYLAP Thanks Asa P. "Pete" Gullett III

### 46 Continuing Legal Education

### 48 Kentucky Bar Foundation

### 51 Who, What, When and Where

*Front row seated from the left: Judy McBrayer Campbell, Jennifer "Jenna" S. Overmann, J. Stephen Smith, KBA President Douglas C. Ballantine, William R. Garmer, Eileen M. O'Brien, and Mike Cherry. Standing from the left: Van F. Sims, Gary J. Sergeant, Amy D. Cabbage, Mindy G. Barfield, J. D. Meyer, Rhonda J. Blackburn, John D. Meyers, Matthew P. Cook, Judge John F. Vincent, Dottie Moore, Dr. Leon Mooneyhan, Melinda G. Dalton, Bobby C. Simpson Todd V. McMurtry. Not pictured: Thomas N. Kerrick, W. Fletcher Schrock, and Howard O. Mann.*

Cover Photo provided by: Mark Cornelison  
Several inside graphics by ©istockphoto.com/JesiWithers

# Kentucky Lawyer Assistance Program Dedicated to Supporting Well-Being and Mental Health Initiatives



BY: DOUGLAS C. BALLANTINE

**L**awyer well-being. Lawyer wellness. Mindfulness. What do these terms mean? Is this going to be a discussion about some “touchy-feely” topic? Or is this going to be a discussion of one of the most pressing issues that lawyers, judges,

law schools, and bar associations across the country—including the Kentucky Bar Association—are facing today and trying to address? Let’s go with the latter.

Bar associations across the country, including the Kentucky Bar Association (KBA), are working very hard to address the issue of lawyer well-being. The Kentucky Lawyer Assistance Program (or KYLAP, as it is commonly known) has been dedicated to supporting well-being and mental health initiatives in the legal profession here in Kentucky since the mid-80s, and its volunteers and staff have become the established experts in the field of supporting and assisting lawyers. Over the past few years, in response to several studies and reports (see below), there is a positive trend in the practice, and that is that the profession in general is beginning to recognize the need to support lawyer well-being in general. There is a new understanding that well-being is not just for those in the throes of addiction or other mental health crisis, but for all practitioners. While this includes the specialized work of KYLAP in supporting those with more serious mental health problems from which so many of our lawyers suffer, this also expands into more general well-being areas like nutrition, exercise, and mindfulness—tools that can be used as preventive measures for all attorneys.

This trend is at least in part prompted by the study undertaken by the American Bar Association (ABA) which culminated in the 2016 peer-reviewed report “The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys.” This report confirmed what KYLAP and other state lawyer assistance programs already knew—that the legal profession suffers remarkably inflated rates of depression, alcoholism, and addiction when compared to the general population. After the 2016 study results were released, the National Task Force on Lawyer Well-being was formed. The Task Force was conceptualized and initiated by the ABA Commission on Lawyer Assistance Programs (CoLAP), the National Organization of Bar Counsel (NOBC), and the Association of Professional Responsibility Lawyers (APRL). It is a collection of entities within and outside the ABA. Its participating entities

currently include the following: ABA CoLAP; ABA Standing Committee on Professionalism; ABA Center for Professional Responsibility; ABA Young Lawyers Division; ABA Law Practice Division Attorney Well-being Committee; The National Organization of Bar Counsel; Association of Professional Responsibility Lawyers; National Conference of Chief Justices; and National Conference of Bar Examiners. The KYLAP director, as a member of the ABA CoLAP Commission and chair of the CoLAP Diversity & Inclusion Committee is also a member of the National Well-being Task Force.

In 2017, the Task Force published the “Path to Lawyer Well-Being” with specific recommendations to all stakeholders in the profession. The mission of the ABA’s “Path to Lawyer Well-Being” report is to help right the ship within the profession. This will be done through promoting well-being and self-care as a priority. It’s identical to KYLAP’s message—that we in the legal profession can be proactive, taking some actions now to possibly avoid or avert a mental health crisis in the future. We can make better choices now that may prevent us from going down this path of destruction that we have seen many of our colleagues take.

Well-being is difficult for some lawyers to grasp, in general. We don’t particularly want “life balance.” We want to win. We’re driven, we’re competitive, and we’re perfectionists. The things that make us exceptional make us susceptible. We’re used to self-sacrifice, and that includes our physical and mental health. We put on a tough face and keep going, no matter what. In 2018 the ABA co-signed a third-party’s “Well-Being Toolkit for Lawyers and Legal Professionals.” The toolkit covers the following topics:

- The Definition of Lawyer Well-being
- The Definition of a Healthy Workplace
- 8-Step Action Plan for Legal Employers
- Policies and Practice Audit
- Activities and Events
- Education and Development
- Assessments
- Online Resources and Technology



# Horses aren't the only thing in Kentucky that move fast.



---

**RESOLVING** a legal crisis quickly can mean the difference between winning and losing a malpractice claim. That's why more Kentucky legal professionals choose Lawyers Mutual. With 30 years of Kentucky experience, we specialize in providing smaller firms with the kind of fast personal service that prevents a bump in the road from taking you out of the race.

Don't gamble on other companies. Go with a proven winner right here in Kentucky. Contact Lawyers Mutual for your free quote today at 502.568.6100 or [LMICK.com](http://LMICK.com).

By Kentucky Lawyers. For Kentucky Lawyers.



**Lawyers Mutual**  
[www.lmick.com](http://www.lmick.com)

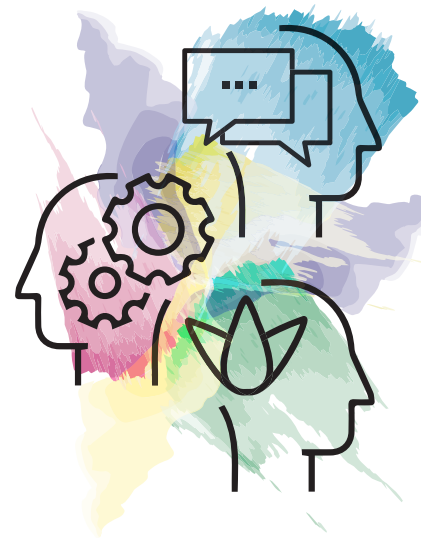
All of the ABA reports and the Well-Being Toolkit are available on KYLAP's website at [www.KYLAP.org](http://www.KYLAP.org).

In support of all of these efforts, KYLAP's staff offers extensive and CONFIDENTIAL services to Kentucky's legal profession, including all of these trending well-being initiatives. KYLAP's volunteers, who provide invaluable peer support, our clinical referrals, CLE's, and resource materials, will bring you or your law firm or organization quickly up to speed on well-being practices. For years now, KYLAP's most popular presentations focus on topics such as well-being and how lawyers have rebounded from mental health problems that could have derailed their careers. KYLAP's staff also conducts well-being conversations and seminars at law schools and other events such as at KLEO and Inns of Court meetings. All three of Kentucky's law schools have active programs and training and counseling in addressing lawyer (and law student) well-being, and work with KYLAP on improving those programs. And of course, as always, if someone develops a mental health or substance abuse problem and it's an issue that needs more than just well-being tools, KYLAP provides CONFIDENTIAL support and professional referrals that are highly specialized to meet the needs of Kentucky lawyers.

The KBA and KYLAP also support a CONFIDENTIAL employee assistance and phone service so that any time you call KYLAP on their dedicated number 1-502-226-9373, day or night, evenings and weekends, your call will be answered and you will be referred

to an appropriate resource for assistance. If you need immediate assistance, that will be provided to you. If you need mental health assistance with a healthcare professional and you can't pay for the services, the KBA and KYLAP will pay for up to four (4) professional visits on your behalf. Thereafter, if more help is needed, you can contact the KYLAP Foundation, Inc., for financial assistance, including forgivable loans for mental health care (including inpatient and outpatient treatment, mental health visits and/or medications).

The KBA knows that as lawyers, we must protect and nurture our own well-being and good mental health in order to provide our best work for the clients and the public who trust us to manage their own life crises. We're told on an airplane, we must put on our own oxygen mask first. The KBA and KYLAP are here to help you do that. Finally, a note of thanks to Yvette Hourigan, director of KYLAP, for all her hard work for KYLAP and for significant input in writing this column.



## 2019 Distinguished Service Awards CALL FOR NOMINATIONS



The Kentucky Bar Association is accepting nominations for the 2019 Distinguished Judge and Lawyer, Donated Legal Services and Bruce K. Davis Bar Service Awards. Nominations must be received by December 31, 2018. If you are aware of a Kentucky judge or lawyer who has provided exceptional service in these areas, please call (502) 564-3795 to request a nominating form or download it from our website at [www.kybar.org/distinguishedawards](http://www.kybar.org/distinguishedawards).

### **DISTINGUISHED JUDGE AWARD and DISTINGUISHED LAWYER AWARD**

Awards may be given to any judge or lawyer who has distinguished himself or herself through a contribution of outstanding service to the legal profession. The selection process places special emphasis upon community, civic and/or charitable service, which brings honor to the profession.

### **DONATED LEGAL SERVICES AWARD**

Nominees for the Donated Legal Services Award must be members in good standing with the KBA and currently involved in pro bono work. The selection process places special emphasis on the nature of the legal services contributed and the amount of time involved in the provision of free legal services.

### **BRUCE K. DAVIS BAR SERVICE AWARD**

Many lawyers take time from their practices to provide personal, professional and financial support to the KBA. This award expresses the appreciation and respect for such dedicated professional service. All members of the KBA are eligible in any given year except for current officers and members of the Board of Governors.



# Passion with Respect

2019 KBA Annual Convention



6.12-14.2019  
Galt House Hotel  
Louisville



Details  
coming  
soon.



# A BRIEF OVERVIEW OF **Animal Law** IN THE CIVIL REALM

BY: NOLIA BATEY AND KATIE BROPHY

## WHAT IS ANIMAL LAW?

Animal law involves statutory, regulatory, and common law. As defined by Kentucky statute, “animal” includes every warm-blooded living creature except a human being.<sup>1</sup> Animal law cuts across a broad spectrum of traditional areas of law. Animal law practitioners can expect cases involving general civil matters, criminal, property, estate planning, domestic relations, landlord-tenant law, nonprofit formation, federal 501(c)(3) applications, compliance with the Americans with Disabilities Act, and even federal civil rights actions.<sup>2</sup>

## LEGAL STATUS

Dogs are personal property.<sup>3</sup> A dog is “any canine three (3) months of age or older for which there exists a U.S. Department of Agriculture approved rabies vaccine.”<sup>4</sup> “Dog” is defined elsewhere as “any domestic canine, six (6) months of age or older.”<sup>5</sup> Many of us would argue that our furry companions are of a different kind of personal property than, say, a laptop. In some cases Kentucky has recognized the distinction.<sup>6</sup> Early Kentucky cases seem to acknowledge a difference between “pets” as opposed to other animals. As early as 1890, exemplary damages were sustained on appeal in a case involving the shooting of a pet dog.<sup>7</sup>

## WRITS OF POSSESSION

Remedies using dogs’ legal classification as property can sometimes be fashioned to recover pets caught in the middle of legal disputes. An applicant may apply for a writ in the court where the action is pending.<sup>8</sup> K.R.S. § 425.046 sets the required elements of an application for a writ, as well as the required contents of notice to a defendant. If a plaintiff can demonstrate that a delay in the issuance of the writ is likely to result in damage to an animal or the inability to locate an animal, an *ex parte* writ may be issued.<sup>9</sup> If an *ex parte* writ is issued, the defendant may still move to quash the writ pursuant to K.R.S. § 425.081. Despite the availability of the writ procedure, some owners may find obtaining a writ to be too expensive.

## DIVORCE AND UNMARRIED PERSONS COHABITATING

Not surprisingly, pets are often used as bargaining tools in divorce litigation. This is true, as well, when unmarried, cohabitating couples part company. Unlike cases with minor children, there is no statutory authority such as a “best interests of the pet” standard. Often, a pet’s legal status as property controls unless the parties have an agreement to the contrary, but the authors argue for a more nuanced analysis akin to a “best interest” standard. While valuation of animals can be based on fair market



value, many of us immediately recognize that the fair market value of our mutt “Fido” is relatively small. This distinction is of more use when Fido is a best-in-show AKC registered pet. However, we know the inherent value of our pets is priceless. Your client’s soon-to-be ex-spouse likely realizes the intrinsic value as well and may use this knowledge as leverage.

In a Jefferson County Family Court case, Judge Jerry Bowles divided custody of a divorcing couple’s pets by awarding the cats to the husband and the dogs and a rabbit to the wife.<sup>10</sup> The husband was a UPS pilot. The wife worked full time. The judge may have taken the best interest of the pets into serious consideration. Despite the judge’s order, the wife refused to return the cats and perjured herself on the subject. Ultimately, Judge Bowles upheld the commissioner’s recommendation of contempt and sentenced the wife to 30-days in jail for refusing to release the cats to the husband. This case made national news at a time when many states were looking to enact pet custody legislation.

## PROTECTIVE ORDERS

Kentucky has no statutory authority addressing a court’s ability to issue a protective order that includes animals. Six of Kentucky’s neighboring states have enacted statutory remedies for animals in homes with domestic violence.<sup>11</sup> Tennessee, for example, has gone so far as to define “domestic abuse” to include abuse to the victim’s animals, specifically: “malicious damage to the personal property of the abused party, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by an adult or minor, or placing an adult or minor in fear of physical harm to any animal owned, possessed, leased, kept, or held by an adult or minor.”<sup>12</sup> The Tennessee statute states, further, “that in no instance shall the animal be placed in the care, custody, or control of the respondent, but shall instead be placed in the care, custody, or control of the petitioner or in an appropriate animal foster situation.”<sup>13</sup>

Kentucky courts have the discretion to include animals in a protective order. However, absent any relevant statutory authority the onus is on the petitioner to request this relief and prove the claim. If you represent a petitioner in a domestic violence action, you should consider including a broad request in the application for a protective order regarding all animals belonging to the household in general, to the minors, and even to the respondent.

## INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

In *Burgess v. Taylor*<sup>14</sup>, the Kentucky Court of Appeals held that the tort of intentional infliction of emotional distress may apply to the conversion for slaughter of pet horses. Taylor was disabled with muscular dystrophy and unable to care for her two pet horses. She placed them with a couple in exchange for the opportunity to ride them, a common practice in the horse trade. The couple immediately sold Taylor’s horses for slaughter and lied to Taylor about it. The couple even enlisted others to perpetuate the lie. The court awarded \$50,000 in compensatory damages and \$75,000 in punitive damages. The court found that the tort of outrage, or

intentional infliction of emotional distress, requiring extreme and outrageous conduct, depends on the conduct of the wrongdoer, not the subject of the conduct. This was a landmark decision because it allowed recovery for non-economic damages in an animal case when few other states allowed it.

The *Burgess* case followed an earlier plaintiff’s verdict in a similar action in Jefferson Circuit Court where a jury awarded an \$87,200 verdict against three men who stole a family’s pet horse and sold her for slaughter.<sup>15</sup>

## VETERINARY MALPRACTICE

Tort attorneys likely won’t be surprised to learn that one area of animal law is veterinary malpractice. The authors have filed veterinary malpractice claims by alleging general negligence: (1) duty; (2) breach; (3) causation; and (4) damages. While damages are often limited to fair market value unless one has had to pay out of pocket for remedial care, at least one case in Franklin Circuit Court resulted in a \$15,000 jury verdict for the recovery of the intrinsic value of the dog treated by the veterinarian.<sup>16</sup> The jury was instructed that the intrinsic value of the pet could supplement the market value, analogizing it to the “heirloom” worth of wedding photos or a grandmother’s brooch. Practitioners should also be mindful of insurance bad faith claims in this context. Such a claim can often increase the recovery if an insurance carrier refuses to make a settlement offer based on a theory that the claim is insignificant.

## PET TRUSTS

Kentucky law provides that a trust may be created to provide for the care of an animal alive during a settlor’s lifetime.<sup>17</sup> However, the trust terminates upon the death of the animal, or if intended to provide for multiple pets, upon the death of the last surviving animal.<sup>18</sup> Such a trust can be enforced by the trustee or by someone appointed by the court. The statute states that a person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or even to remove a person so appointed.<sup>19</sup> Property in the trust can be used only as intended, unless the court finds that the value of the trust exceeds its intended use.<sup>20</sup> The excess will be distributed to a living settlor, or if the settlor has died, to the settlor’s successors in interest.<sup>21</sup>

## BUSINESSES AND SERVICE ANIMALS

How much is that doggie in the window allowed to be in my store? The ADA requires state and local agencies, businesses, and non-profits that provide goods or services to make “reasonable modifications” in their operation to accommodate people with disabilities. Service-animal rules fall under this general principle. Thus, even businesses with “no pets” policies generally must allow service animals on their premises. Under certain circumstances, miniature horses may be considered service animals.

Kentucky law states that individuals with service dogs shall not “be denied admittance to any hotel, motel, restaurant, or eating establishment, nor shall the person be denied full and equal accommodations, facilities, and privileges of all public places of amusement, theater, or resort.”<sup>22</sup>



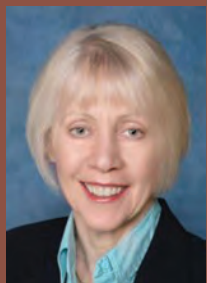
## KENTUCKY'S ANIMAL SHELTERS

Kentucky enacted legislation in 2004 to address the abysmal condition of animal shelters. Counties were given until 2007 to comply with the minimum standards set forth in the statute.<sup>23</sup> Unfortunately, recent studies have found that only 12 percent of Kentucky shelters are in compliance with the law's requirements.<sup>24</sup> Currently, the authors have animal law litigation originally filed in Franklin Circuit Court. This case, 18-CI-00006, captioned *Kasey, et al. v. Bevin, et al.* sought, *inter alia*, a writ of mandamus to require the Governor to take all necessary and appropriate action to assure the laws set forth in the statute are faithfully executed. Judge Phillip J. Shepherd dismissed the case on Oct. 25, 2018, in response to the Governor's motion. The authors have filed their notice of appeal.

In conclusion, animal law may be considered a broad practice area. Although dogs are property in Kentucky, the authors urge you to consider and argue how might a judge perceive Lassie's best interest. **B&B**

## ABOUT THE AUTHORS

**NOLIA BATEY** is a member of Batey Brophy, PLLC, in Louisville, where she represents the firm's clients in general civil litigation and personal injury matters in state and federal courts throughout Kentucky. She received her B.A. from Western Kentucky University and her J.D. from the University of Louisville Brandeis School of Law. During law school, she worked as a legal and compliance intern for Churchill Downs, Inc. She also worked as a legal extern for the U.S. Internal Revenue Service Small Business/SelfEmployed Division. She is a member of the Kentucky Justice Association and the American, Kentucky, and Louisville Bar associations. Batey currently serves as chair-elect of the Kentucky Bar Association Animal Law Section.



**KATIE BROPHY** is a member of Batey Brophy, PLLC, in Louisville, where she focuses her practice on child custody, child support, divorce, and other family law matters. She received her B.A. from the University of Kentucky and her J.D. from the University of Kentucky College of Law. Brophy is a member of the Kentucky and Louisville Bar associations. She is admitted to practice before the U.S. District Court, Western District of Kentucky.



## ENDNOTES

1. K.R.S. § 446.010(2).
2. *Fuller v. Vines*, 117 F.3d 1425 (9th Cir. 1994). (jury entered verdict after officer violated plaintiffs' constitutional rights by shooting and killing their dog, causing damages totaling \$143,000 plus punitive damages). See, *Spillman v. Beauchamp*, 362 S.W.2d 33, 36 (Ky. 1962) (public officer can be held personally liable for damages in killing an animal if he acted negligently and failed to meet the standard of the ordinarily prudent man). But see also *Brown v. Battle Creek Police Department*, 844 F.3d 556 (6th Cir. 2016) ("a police officer's use of deadly force against a dog while executing a warrant to search a home for illegal drug activity is reasonable under the Fourth Amendment when... the dog poses an imminent threat to the officer's safety").
3. K.R.S. § 258.245 states: "All dogs that have a valid rabies vaccination and bear identification are hereby declared to be personal property and subjects of larceny."
4. K.R.S. § 258.005(1).
5. K.R.S. § 258.095(4).
6. *Gay v. Commonwealth*, 21 S.W.2d 480 (Ky. 1929) (a dog is considered property).
7. *Loeser v. Axlin*, Appeal from Daviess Circuit Court to Kentucky Court of Appeals, Abstracts, 636, December 3, 1890; *Henderson v. Louisville Ry. Co.* 68 SW 645 (Ky. 1902) (jury's award of one cent for killing of dog after finding for Plaintiff set aside as flagrantly against the evidence).
8. K.R.S. § 425.011.
9. K.R.S. § 425.076.
10. *Goldstein v. Nichols*, Number 99-FC-00053.
11. 725 ILCS 5/112A-14 (Illinois); I.C. 34-26-5-9 (Indiana); R.C. § 3113.31 (Ohio); T.C.A. § 36-3-601-606 (Tennessee); Va. Code Ann. §§16.1-253 (Virginia); W. Va. Code, §§ 48-27-503 (West Virginia).
12. T.C.A. § 36-3-601-606.
13. *Id.*
14. *Burgess v. Taylor*, 44 S.W.3d 806 (Ky. Ct. App. 2001).
15. *Cobble v. Miller*, et al, Jefferson Circuit Court, Division 8, Number 92-CI-00414.
16. *Stephanski v. Wimpy* [Franklin Circuit Court 1997, C.A. No. 96-CI-00118].
17. K.R.S. § 386B.4-080(1).
18. *Id.*
19. K.R.S. § 386B.4-080(2).
20. K.R.S. § 286B.4-080(3).
21. *Id.*
22. K.R.S. § 258.500(2).
23. K.R.S. § 258.195.
24. Gaskill, Cynthia. 2016 Study of current conditions of Kentucky county animal shelters and degree of compliance with Kentucky animal shelter laws. [http://www2.ca.uky.edu/agcomm/pubs/misc/2016\\_KY\\_shelter\\_study\\_report.pdf](http://www2.ca.uky.edu/agcomm/pubs/misc/2016_KY_shelter_study_report.pdf).



# LEGISLATIVE UPDATE

BY: MEGAN ENGLE ROSEN

**A**nimal law is one of the most rapidly developing practice areas both across the United States and here in the Commonwealth of Kentucky. Because many consider it to be extraneous compared to more “traditional” areas of law, local practitioners are often unaware of Kentucky’s civil and criminal animal laws. You may be asking, “Why should I care about animal law? What does animal law have to do with my practice?” You should care about animal law because it touches almost every other area of legal practice. You may also choose to learn about and value animal law because many of the biggest legislative changes in Kentucky animal law were driven by public outcry. It would likely take an entire issue of Bench & Bar to provide you a history of animal related legislation in Kentucky. In the name of brevity and interest, this article will provide a glimpse into notable animal law developments from the past two decades. This article primarily focuses on companion animals (otherwise known as pets) in Kentucky, with legislative developments running the gamut from dogfighting to torture of a dog or cat, to minimum shelter standards, to veterinary-client-patient privilege. The final topic of the article will discuss recent failed animal related legislation in Kentucky.

## **ANIMAL CRUELTY LAWS (2008; 2016)**

- **KRS 525.125** Cruelty to animals in the first degree.

Until 2016, Kentucky was the only state that did not criminalize owning, possessing, training, etc., for the purpose of fighting animals. The first degree cruelty statute stated that whenever a four-legged animal was caused to fight for pleasure or profit, persons guilty of cruelty to animals in the first degree included the owner of the animal, the owner of the property on which the fight was conducted if the owner knew of the fight, and anyone who participated in organizing the fight. This statute included all four-legged animals, such as dogs, pigs, and bears, but did not criminalize activities associated with dogfighting and was difficult to enforce because it appeared to require a witnessed animal fight. In 2016, this statute was amended to limit the type of animal to dogs only while expanding the

scope of prohibited activities to include any person who knowingly owns, possesses, keeps, trains, sells, or otherwise transfers a dog for the purpose of dogfighting. Thus, while dogfighting and associated activities are now considered cruelty to animals in the first degree, protections for other four-legged animals involved in fighting have decreased from felony level penalties in place since the 1980s to misdemeanor level penalties today.<sup>1</sup>

- **KRS 525.130** Cruelty to animals in the second degree—exemptions—offense involving equines.

A recent 2017 amendment to this statute expands penalties that a court may order against a person who is convicted of or pleads guilty to cruelty to an equine in the second degree.<sup>2</sup> Unlike crimes against all other animals under this statute, an offense against an equine carries with it, in addition to fines and imprisonment, the possibility of restitution for damage to the property of others and for costs incurred by others, or an order terminating or imposing conditions on the person’s right to possession, title, custody, or care of any equine that was the subject of the offense resulting in conviction.<sup>3</sup>

- **KRS 525.135** Torture of dog or cat.

In April 2008, Governor Beshear signed Senate Bill 58 into law, also known as Romeo’s Law. Senate Bill 58 was originally intended to elevate torture of a dog or cat from a class A misdemeanor to a class D felony. In its final form, Senate Bill 58 amended KRS 525.135 so “torture,” the intentional infliction of or subjection to extreme physical pain or injury motivated by an intent to increase or prolong the pain of the dog or cat, is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense if a dog or a cat suffers physical injury as a result of the torture. It is a Class D felony if a dog or cat suffers serious physical injury or death as a result of the offense.<sup>4</sup>

In 2017, House Bill 135 was introduced, which would have redefined “torture” to include deliberate neglect or physical abuse that resulted in the death or serious physical injury of a dog or cat; provided for the

forfeiture of ownership of the dog or cat upon conviction or plea; prohibited future ownership of a dog or cat for five years for a first offense and life for a second or subsequent offense; and required forfeited dogs and cats be offered to an animal rescue organizations or given to county animal shelters. House Bill 135 did not pass.<sup>5</sup>

- **KRS 525.200** Assault on a service animal in the first degree.

This statute primarily relates to animals utilized for the principal purpose of law enforcement and expressly excludes assistance dogs as in KRS 525.010(6) (h).<sup>6</sup> This 2017 amendment to KRS 525.200 removed the requirement that a service animal must be unable to return to work from the elements of the first-degree assault on a service animal. It also added levels of injury and criminal intent to the elements.

## **HUMANE SHELTER LAW (2004)**

In 2004, the Kentucky General Assembly substantially amended and enacted statutes, commonly known as the “Humane Shelter Law,” that intended to provide increased protections to stray and abandoned companion animals. The catalyst for these amendments was an undercover videotape of a county pound worker killing animals in such a way that a concerned citizen videotaped some of the worker’s actions. The tape led to public concern and legislative changes. The Humane Shelter Law requires each county (Kentucky has 120 counties) to operate an animal shelter (or enter into agreements with other counties or other non-profit entities for sheltering services) that meets minimum standards for basic care and make appropriate provisions for food, water, shelter, public access, and euthanasia. The General Assembly provided counties three years (until July 13, 2007) to comply with the standards and earmarked \$3,000,000 dollars in shelter construction grants.<sup>7</sup> There was no formal follow up to assess progress towards full compliance. Today, each county is responsible for the care and control of animals within its boundaries and, with the authorization of a county’s Fiscal Court; it employs or contracts with an entity that supplies an animal control officer.<sup>8</sup> KRS Chapter 258 sets forth most of the statutory requirements for companion animal sheltering in Kentucky.

Specifically, KRS 258.119(3) (b) sets forth minimum standards for county operated or contracted animal shelters to provide services that: segregate male and female animals by species in runs and holding areas; provide separate runs or holding areas for ill or injured animals and either euthanizing or treating an ill or injured animal with proper veterinary care; provide holding areas with protection from the weather, including heated quarters during cold weather. Holding areas shall be free of debris or standing water; shall provide adequate lighting, ventilation, and sanitary conditions to promote a safe, healthy environment; and shall provide adequate space to allow for normal movement, including standing to full height, sitting, turning, and lying down in a natural position without coming in contact with the top or sides of the enclosure or another animal; provide runs and cages built of materials which can be readily cleaned and disinfected, including floors made of an impervious material; employ euthanasia methods specified as acceptable for that species by the most recent report of the American Veterinary Medical Association Panel on Euthanasia; and provide potable, uncontaminated water to every animal at all times, and palatable, uncontaminated food daily. Other standards concern public access, record keeping, and quarantine.<sup>9</sup> In regard to the euthanasia standard, in addition to requiring adherence to AVMA guidelines, KRS 258.505, effective July 2004, also expressly prohibits gunshot as a means of euthanasia for animals in county operated or contracted shelters. While the minimum standards for county operated or contracted animal shelters provide more protections for both animals and humans, the General Assembly did not provide a mechanism for enforcement. Instead, counties are left to self-police or taxpayers may bring legal actions against the counties in an effort to bring them into compliance.

In 2016, University of Kentucky researchers, along with veterinary students from Tennessee, conducted a study looking at conditions in county animal shelters.<sup>10</sup> There was some difficulty locating some of the shelters because there is no master list of shelters and locations. Ninety-two county shelters were identified and study

results showed that only 12 percent of the counties were in compliance with all parts of Kentucky's humane shelter laws, while over 50 percent of counties were in violation of three or more parts of the laws. According to the study, the majority of shelter workers identified lack of sufficient funding as a major problem, along with pet overpopulation leading to overcrowding at shelters, insufficient work force, and lack of education. The study also noted other problems including "inadequate, aging and poorly maintained facilities built with inappropriate materials that could not be properly cleaned or disinfected; poor ventilation, especially in cat holding areas; lack of appropriate veterinary care; and lack of appropriate quarantine areas."


In 2017, Senate Committee Resolution 58<sup>11</sup> and House Committee Resolution 43<sup>12</sup> were introduced in the regular session. These resolutions, though variant in purpose, members, meeting frequency, and report standards, each proposed establishing

a shelter oversight and pet population task force. Neither was brought up for a vote.

## VETERINARY CLIENT-PATIENT-PRIVILEGE

Though Kentucky has mandatory child abuse reporting laws, no such law exists for animal abuse. Kentucky is the only state that expressly precludes veterinarians from reporting suspected acts of cruelty. This is codified in KRS 321.185 and states "A veterinarian shall not violate the confidential relationship between the veterinarian and the veterinarian's client."<sup>13</sup> Further, "A veterinarian shall not release information concerning a client or care of a client's animal, except on the veterinarian's receipt of: (1) A written authorization or other form of waiver executed by the client; or (2) An appropriate court order or subpoena."<sup>14</sup>

In 2016, House Bill 269<sup>15</sup> was introduced with many purposes, including clarifying the veterinarian-client-patient relationship to allow veterinarians to release animal



**CRAFT, NOBLE & COMPANY** —The CPA firm that offers so much more.

PLLC

Certified Public Accountants  
Post Office Box 827  
Richmond, KY 40476  
[www.craftnoble.com](http://www.craftnoble.com)

### Business Valuation

- Business Sale
- Marital Dissolution
- Estate and Gift Tax
- ESOPS
- Professional Practice Sale
- Insurance Claims
- Family Limited Partnerships
- Damage Suits

### Expert Witness Testimony

- Business Sale
- Marital Dissolution
- Estate Planning
- Lost Profit and Earning Insurance Claims
- Merger or Acquisition
- Bankruptcy
- Commercial Damage Suits

### Arbitration and Mediation

- Insurance Claims
- Estate and Gift Tax
- Damage Suits
- Marital Dissolution
- ESOPS
- Family Limited Partnerships

### Forensic Accounting

- Identify theft, fraud or illegal accounting practices

Call or visit our website to subscribe to our free Quarterly Newsletter with tax and business planning tips.

Contact John Craft • (859)623-4027 • [www.craftnoble.com](http://www.craftnoble.com)  
Certified Public Accountants • Accredited Business Valuator

welfare information to government authorities. House Bill 269 did not make it out of committee.

## FAILED ANIMAL RELATED LEGISLATION 2016 – 2018

In addition to the above listed legislation (HB 135 (2017), SCR 58 (2017), HCR 43 (2017), and HB 269 (2016)), several animal-related bills have been introduced recently and failed to make it to a vote. Senate Bill 53 (2016)<sup>16</sup> and Senate Bill 8 (2018) were introduced to address the death of animals in hot cars and offer civil immunity to rescuers. Each bill would have created a new section of KRS Chapter 411 to provide civil immunity for damaging a vehicle if a person enters the vehicle with the reasonable, good-faith belief that a dog or cat is in immediate danger of death if not removed. Neither bill passed. In 2017, House Bills 143 and 480 were introduced, and in 2018, Senate Bill 239<sup>17</sup> was introduced to criminalize animal sexual assault. Kentucky House Bill 143 would have criminalized sexual assault of a pet dog or cat, but it would not have addressed sex with other animals. It would have provided for forfeiture of ownership of the dog or cat upon conviction or plea; prohibit future ownership of a dog or cat for five years for a first offense and life for a second or subsequent offense; require forfeited dogs and cats be offered to animal rescue organizations or given to county animal shelters. Kentucky House Bill 480, on the other hand, would have criminalized sexual assault of any animal. It would have exempted accepted veterinary medical practices, insemination of animals, and accepted animal husbandry practices. It would have also allowed for a peace officer to seize an animal if probable cause for sexual assault existed. Senate Bill 239 would have established the crime of sexual activity with animals; defined the terms; and specified the conduct that a person knowingly engages in that constitutes sexual activity with animals. Sexual activity with animals would have been classified as a Class A misdemeanor. None of these bills passed. Kentucky is one of a handful of states where bestiality is not outlawed.

## CONCLUSION

Kentucky is known as one of a handful of states with less restrictive animal welfare laws, particularly considering recent failed legislation on a number of animal law issues in the national spotlight. While this has remained true for more than a decade, there have been significant improvements that illustrate the power of ordinary citizens to change Kentucky's companion animal laws. Although these changes have just begun to dot the legislative landscape, as we move forward, animal law is poised to become more commonplace and an essential part of the overarching practice of law. **BB**

### ABOUT THE AUTHOR

#### MEGAN ENGLE

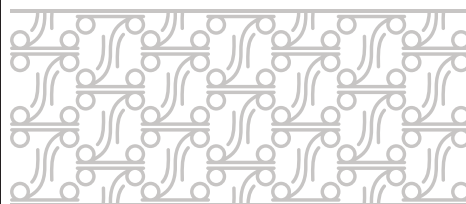
**ROSEN** is an attorney practicing in Louisville, Ky. After graduating from the Moritz College of Law at The Ohio State University, Rosen worked as a legal aid attorney in Detroit, Mich. Since returning to her hometown of Louisville in 2010, she has practiced in the area of administrative law. In 2014, Rosen, a lifelong animal lover, recognized the need for a greater animal legal presence in Kentucky and cofounded the Kentucky Bar Association Animal Law Section. She served as chair-elect of the Kentucky Bar Association Animal Law Section from 2014–2016 and recently ended her term as chair from 2016–2018. She is admitted to the Kentucky and Michigan bars and is also a member of the State Bar of Michigan Animal Law Section.



*The views expressed in these materials do not represent the views of the Social Security Administration or the United States Government. They are solely the views of Megan Engle Rosen in my personal capacity. I am not acting as an agent or representative of the Social Security Administration or the United States Government in this activity. There is no expressed or implied endorsement of my personal views or activities by the Social Security Administration or the United States.*

## ENDNOTES

1. KRS 525.125.
2. KRS 525.130.
3. KRS 525.130(5).
4. KRS 525.135(2).
5. HB 135/CI/LM (BR 892) – C. Morgan, R. Benvenuti III, J. DuPlessis, M. Hart, J. Jenkins, D. Mayfield, P. Palumbo.
6. KRS 525.200.
7. KRS 258.195(1).
8. KRS 258.195(2).
9. KRS 258.119(3)(b).
10. Gaskill, Cynthia. 2016 Study of current conditions of Kentucky county animal shelter and degree of compliance with Kentucky animal shelter laws.
11. SCR 58 <http://www.lrc.ky.gov/record/17RS/SCR58.htm>.
12. HCR 43 <http://www.lrc.ky.gov/record/17RS/HCR43.htm>.
13. KRS 321.185(3)(a).
14. KRS 321.185(3)(b).
15. HB 269 <http://www.lrc.ky.gov/record/16RS/HB269.htm>.
16. SB 53 <http://www.lrc.ky.gov/record/16RS/SB53.htm>.
17. SB 239 <http://www.lrc.ky.gov/record/18RS/SB239.htm>.

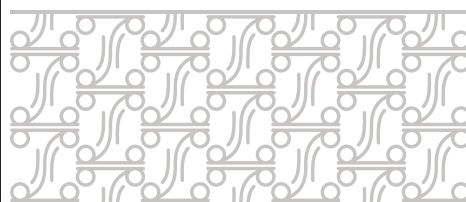


# Passion with Respect

2019 KBA Annual Convention



6.12-14.2019  
Galt House Hotel  
Louisville



# A Prosecutor's Work

## CRIMINAL ISSUES IN ANIMAL LAW

BY: SUSAN MORRIS JONES



**Animal law is an active area of legal practice.**

*This article presents one prosecutor's overview of experience in the field.*

### PERSPECTIVE, SETTING, AND SPECTRUMS

The area of law involving animal cruelty can be a difficult area to deal with, both personally, and as a prosecutor. As an initial and critical point, this area is often fraught with vehement differences of opinion. There are many different types of animal caregivers. Some folks believe animals belong outside and will provide medical care themselves. For others, animals are members of the family, sharing beds, and should be provided every available kind of vet care. The reasons for this disparity are many—cultural differences, socio-economic

levels, environmental influences. Yet each is convinced that their method is the only right way. As often is the case, it's just not that simple.

I think of animal care on a spectrum—most treatment falls in the middle, but there are extremes at either end. The general public often thinks, when hearing the phrase “animal cruelty,” of intentional vicious physical abuse. While in practice I have encountered some of these, the majority of the animal abuse cases I see are a result of gross neglect, lack of education, or plain apathy. Sometimes the defendants began

with good intentions, but then things went horribly wrong.

For prosecutors at the Jefferson County Attorney's Office—while there are some rural areas within county lines—our jurisdiction is primarily urban. As such, public safety is of particular importance in my practice. We deal primarily with domesticated animals—neighborhood dogs and cats—but occasionally see cases involving cattle, poultry, sheep, and pigs.



## STATE AND COUNTY LAW

In the state of Kentucky, three statutes deal directly with animal cruelty: Cruelty I and II, and Torture of a Dog or Cat.<sup>1</sup> Although I have had experiences with all, most of my cases are charged under Cruelty II. Additionally, jurisdictions within the state have legislated in this area. For example, Jefferson County has its own set of local ordinances involving animals. For the purpose of this article, I'll be focusing on KRS 525.130, Cruelty II, formally titled: Cruelty to animals in the second degree – Exemptions – Offense involving equines.<sup>2</sup> From the title of the statute itself, one can

see the difficulties I mentioned above—there is as much emphasis on setting forth what does *not* qualify as cruelty as to what does.

## CASES IN OUR DIVISION—TYPICAL AND NOT

Most of the cases I prosecute are a result of gross neglect, lack of education, or just plain apathy. I've prosecuted animal fighting cases, some in coordination with the Commonwealth Attorney's office for felony prosecution. Even with the recent amendment,<sup>3</sup> Cruelty I (dogfighting) remains difficult to prove.

I've prosecuted intentional acts of cruelty (not described in this article), but also see an unfortunate amount of emaciation and abandonment; serious, and sometimes terminal, physical injuries as a result of uninhabitable living conditions; and failure to seek vet care. I had never heard of an "embedded collar" until I began prosecuting crimes against animals, or ever considered that the presence of maggots could actually save animal lives. Nor was I aware of the commonness of "animal hoarding" and its surreal results. People, who initially consider themselves animal "rescuers," continue to take in animals for which they simply cannot provide care. I've had defendants stand in front of the court, still insisting that they are "helping," even in the face of graphic photographic evidence to the contrary. In its most basic terms, animal care requires providing weather-appropriate shelter, access to clean water and good wholesome food, and basic vet care.

Sheltering and restraint issues are common. In the summer months, we still see people leaving their animals in the car while they are busy elsewhere. Some truly believe leaving windows cracked prevents the car from becoming an oven. Others think providing a bowl with water does the trick. Recent years of education have helped awareness; nevertheless, some people remain surprised by the amount of heat generated and the physical injuries that result. Some learn from being prosecuted, others continue to believe that they know best.

Many cruelty cases result from a failure to provide vet care or sufficient grooming. Some of these are clear abuse and easily

proven: the presence of large, untreated tumors, broken bones, hair matted so badly that an animal is unable to see. Some are more difficult, being rooted more in poverty or ignorance. We all have different ideas of when that line has been crossed. It's my job as a prosecutor to protect the animals and the public, while at the same time using discretion to treat defendants with fairness and consistency.

In Jefferson County we have an ongoing problem with unattended "fixed-point" chaining. Metal screw-in posts are freely available at pet stores and even the groceries, so many presume this manner of restraint is perfectly acceptable. The risk to an animal can be significant; they can become entangled and unable to reach food, water, or shade; become entangled and choke; or jump fences (as dogs do) while on a fixed-point lead with tragic results. Poor choices of the type of "tie-out" can also lead to physical injury; the use of large truck chains is often indicative of animal fighting.

Cruelty cases are often plea bargained. As in other Class A misdemeanors, Cruelty II carries a maximum sentence of 365 days in jail and a \$500 fine.<sup>4</sup> In addition, one of the most useful tools, and one I use with all cruelty cases, is a sentencing condition which prohibits the defendant from owning, possessing, caring for, or residing with any animals.

I receive some cases from law enforcement and some brought by citizens. The majority are brought by Louisville Metro Animal Services (MAS) officers.

Through the years, evidence collection for crimes against animals has vastly improved. Deceased animals are sent to a veterinary forensics laboratory - with state-of-the-art facilities. Staff members are very patient with my medical vocabulary questions.

MAS provides numerous witness statements, physical evidence, and is also accustomed to my unrelenting requests for photos and more photos (and even more photos). Documentation of physical injury can include recording the temperature of a car, as well as the body temperature of the animal. Also helpful is the TACC (Tufts

Animal Care and Condition Scale) in body condition assessment that MAS can provide, with five or greater being emaciated<sup>5</sup> and one being ideal.<sup>6</sup>

Animal fighting cases require very specific and detailed evidence, scars and large numbers of animals present on a property are simply not enough. Animal fighters are usually part of a larger network, and are always ready with defenses that can quickly create reasonable doubt.

Vet records can also be helpful, (although KRS 321.185 establishes a confidential “veterinarian-client-patient” relationship with a pet owner, allowing release of information only with written consent or court order).

### IMPORTANCE OF WORKING RELATIONSHIP WITH LOCAL ANIMAL CONTROL AGENCY

I’ve worked with many administrations of MAS, and learned that by working together we do a better job of protecting both the animals and people of the community. For example, shelters typically have limited space; I am cognizant of that when I request that animals be held for court. Thus, I work with MAS to prioritize those cases for quick resolution, or obtain agreed orders allowing the animals to be fostered during the pendency of a case. I have also been taught about the deleterious effect in general on animals while in shelters, and together we have come up with creative solutions. In several cases involving large numbers of animals, we have “sheltered-in-place.” This allows the animals to remain on the owner’s property (if possible) but MAS takes over their care and welfare. Bottom line, we have the common goal of attaining the best outcome for both the animals and the public.

### WILDLIFE AND EXOTIC ANIMAL CASES

Our division also handles cases brought by officers from the Kentucky Department of Fish and Wildlife. Depending on the season, we receive numerous cases regarding enforcement of hunting and fishing regulations and requirements. Interestingly, I’ve prosecuted many cases involving the possession of wild and/or exotic animals, which, in Kentucky, are not to be kept as

pets. Some of these animals include: alligators, monkeys, skunk, baby deer, raptors, and even rattlesnakes and copperheads. Some time ago, a colleague began creating a special collection for me and a shelf in my office now houses toy replicas of the many species I’ve encountered as a prosecutor.

### DIFFICULT CASES FOR A PROSECUTOR

Abuse and neglect cases take their toll. But the cases that can be the most complicated, believe it or not, are animal attacks.

Our ordinances address unprovoked attacks on both animals and humans. These cases can be highly emotionally charged. Often the attacks involve neighbors, a fact that adds another dimension to the case. These are incredibly personal cases, whether the attack is on a human or another animal.

Witnessing any kind of animal attack can be traumatic. It is particularly so for animal owners who have watched helplessly as their beloved pet is attacked and shaken by a larger or stronger dog. And some owners simply cannot, or will not, believe that their own beloved pet could be capable of such an attack. Some argue prey instinct as a defense, particularly when the attacked animal is small. For example, backyard chickens have become common, and for some, they too are beloved pets.

Provocation can be an issue. I opened a case in the past year and the injuries to the human victim were horrid. I was preparing to have the animal removed. But then I learned that the victim had been trying to take a “selfie” with his friend’s dog, whom he’d just met. The dog was also eating during this encounter. But how strong is the provocation defense if the victim is a child, naturally drawn to animals, who interacted with an animal innocently and suffered serious injury? Of course there are many other factors to consider: location, history, etc. Then there are cases in which the animal has been aggressive and bitten before—the owner knows this and fails yet again to take precautions. There have been times when added charges were appropriate.

In addition to the emotional element, facts can be muddy and evidence is often in the form of contradicting testimony. Again and thankfully, MAS officers get thorough statements and take photos (and more photos). Some cases come down to improper restraint or failure to control an animal. Stricter constraints are often then placed on the owner and restitution ordered for the victim.

Public safety is the absolute priority, but a big part of our job in these cases is simply



## INDIVIDUAL OWN OCCUPATION DISABILITY COVERAGE FOR KENTUCKY ATTORNEYS

### KBA MEMBER SEMIANNUAL RATES

Monthly Coverage Amount:	\$3,000	\$5,000	\$10,000
Under 30 yrs	\$152	\$252	\$502
30-39 yrs	\$213	\$354	\$705
40-49 yrs	\$352	\$585	\$1,167

No medical exam for KBA members under 50. Quote and apply online at [www.NIAI.com/Attorneys](http://www.NIAI.com/Attorneys)

**NATIONAL INSURANCE AGENCY** 

CALL OR EMAIL TODAY | 800.928.6421 | [WRL@NIAI.COM](mailto:WRL@NIAI.COM) | [WWW.NIAI.COM](http://WWW.NIAI.COM)

listening. The manner in which we handle the case can greatly affect how the parties walk away from the situation.

## A FEW RECOMMENDATIONS/ SUGGESTIONS

In dealing with animal aggression, proactive prevention is the key. Increased socialization, training, spaying/neutering, and the use of muzzles are all options and can be invaluable in protecting both animals and the community. I recommend owners stay aware when walking small animals—many of the serious human injuries result from trying to protect one's own pet. Teach children about behavior around animals from an early age. There is never any reason to leave your animal in a car. If an animal is ill or has a physical injury, seek veterinary care. In our jurisdiction, there are many community resources available if assistance is needed. Just ask. Remember, when faced with disparate opinions, that there is not necessarily one *right* way to do things; if it comes to it, the legal system is designed to take care of the wrong ways.

This is a growing field, and criminal prosecution in this area can be immensely complicated, and heartbreaking. But I keep a few photos of particularly special animals I've encountered: once abused—now saved, healthy and happy. I act on their behalf. And then I move on to the next case. **BB**

### ABOUT THE AUTHOR



#### SUSAN MORRIS JONES

has worked as an Assistant Jefferson County Attorney since 2003. She is currently the supervising attorney of several specialized dockets, one of which involves the prosecution of crimes against animals. She has

been a member of the Animal Law Section of the Kentucky Bar Association since its creation and has presented multiple times on animal law in the criminal arena both prior to and since its inception. She has also proffered testimony to the Kentucky General Assembly on the topic. Finally, Jones is the proud caretaker of two dogs, two cats, two fish, five hens, and a beautiful leghorn rooster named Juan, who thinks he is human.

## ENDNOTES

1. KRS 525.125, 525.130 and 525.135, respectively.
2. KRS 525.130 (bold added for emphasis)
  - (1) A person is guilty of cruelty to animals in the second degree when except as authorized by law he intentionally or wantonly:
    - (a) Subjects any animal to or causes cruel or injurious mistreatment through abandonment, participates other than as provided in KRS 525.125 in causing it to fight for pleasure or profit (including, but not limited to being a spectator or vendor at an event where a four (4) legged animal is caused to fight for pleasure or profit); mutilation, beating, torturing any animal other than a dog or cat, tormenting, failing to provide adequate food, drink, space, or health care, or by any other means;
    - (b) Subjects any animal in his custody to **cruel neglect**; or
    - (c) Kills any animal other than a domestic animal killed by poisoning. This paragraph shall not apply to intentional poisoning of a dog or cat. Intentional poisoning of a dog or cat shall constitute a violation of this section.
  - (2) Nothing in this section shall apply to the killing of animals:
    - (a) Pursuant to a license to hunt, fish, or trap;
    - (b) Incident to the processing as food or for other commercial purposes;
    - (c) For humane purposes;
    - (d) For veterinary, agricultural, spaying or neutering, or cosmetic purposes;
    - (e) For purposes relating to sporting activities, including but not limited to horse racing at organized races and training for organized races, organized horse shows, or other animal shows;
    - (f) For bona fide animal research activities of institutions of higher education; or a business entity registered with the United States Department of Agriculture under the Animal Welfare Act or subject to other federal laws governing animal research;
    - (g) In defense of self or another person against an aggressive or diseased animal;
    - (h) In defense of a domestic animal against an aggressive or diseased animal;
    - (i) For animal or pest control; or
    - (j) For any other purpose authorized by law.
  - (3) Activities of animals engaged in hunting, field trials, dog training other than training a dog to fight for pleasure or profit, and other activities authorized either by a hunting license or by the Department of Fish and Wildlife shall not constitute a violation of this section.
  - (4) Cruelty to animals in the second degree is a Class A misdemeanor.
  - (5) If a person is convicted of or pleads guilty to an offense under subsection (1) of this section rising from the person's treatment of an equine, the court may impose one (1) or both of the following penalties against the person, in addition to fines and imprisonment:
    - (a) An order that the person pay restitution for damage to the property of others and for costs incurred by others, including reasonable costs, as determined by agreement or by the court after a hearing, incurred in feeding, sheltering, veterinary treatment, and incidental care of any equine that was the subject of the offense resulting in conviction; or
    - (b) An order terminating or imposing conditions on the person's right to possession, title, custody, or care of any equine that was the subject of the offense resulting in conviction.
    - (c) If a person's ownership interest in an equine is terminated by a judicial order under paragraph (b) of this subsection, the court may order the sale, conveyance, or other disposition of the equine that was the subject of the offense resulting in conviction.
3. KRS 525.125 was amended in 2016 (italics added for emphasis):
  - (2) The following persons are guilty of cruelty to animals in the first degree:
    - (b) *Any person who knowingly owns, possesses, keeps, trains, sells, or otherwise transfers a dog for the purpose of dog fighting.*
4. KRS 532.090, 534.040.
5. Indicating severe neglect and inhumane treatment.
6. No evidence of neglect.

UNIVERSITY OF  
**LOUISVILLE**

BRANDEIS SCHOOL OF LAW

## Exploring the Rules of Animal Accommodations in Public Spaces

One of the many delights of my role as dean of the University of Louisville Brandeis School of Law is getting to know my colleagues and learning about their areas of expertise.

This month, I am pleased to share this space with Professor Laura Rothstein. Laura is a Distinguished University Scholar and former Dean of the School of Law. She has certainly been an invaluable resource to me as I adjust to this role. She is a rich source of knowledge about a wide variety of topics, from property law to the favorite foods of Justice Brandeis.

Here, Laura will offer the highlights from her 2018 article published in the *Animal Law Review*: *Puppies, Ponies, Pigs, and Parrots: Policies, Practices and Procedures in Pubs, Pads, Planes and Professions: Where We Live, Work, and Play, and How We Get There: Animal Accommodations in Public Places, Housing, Employment and Transportation.*

—DEAN COLIN CRAWFORD



Although the United States is a pet-loving country, American culture has historically not supported having these guests in most public places, with the exception of traditional guide dogs. The desire to bring our four legged and two legged friends (and even no-legged snakes) to public places, however, has increased dramatically in recent years. Recent news stories report about turkeys on planes, parrots in backpacks, and kangaroos at McDonald's. Which of these animals is legally permitted as an accommodation for an individual with a disability? And what are the animal accommodation issues that members of the bar and members of the judiciary likely to see?

The complexity of and difference in rules for accommodations for those with disabilities in various settings is confusing. The increasing presence of the Noah's Ark of creatures in public places and other settings, however, requires that airports, hotels, restaurants, college campuses, employers, hospitals, landlords, and courthouses prepare those

on the front lines about what to do when someone shows up with an animal.

Several federal laws apply – the Americans with Disabilities Act, the Fair Housing Act, the Rehabilitation Act, the Air Carrier Access Act, and the Individuals with Disabilities Education Act. And to add to the confusion, many states and local governments have additional layers of coverage of these issues. The application of these laws varies depending on whether the animal accommodation is requested for an employment, housing, transportation, public service, or public accommodation setting. It can be particularly complicated when a setting such as a college campus is involved with students, staff and faculty, and visitors who go to class, attend football games, live in fraternity and sorority houses, and eat in food courts on campus.

The confusion on college campuses can be illustrated by considering whether and where Elle Woods (from the movie *Legally Blond*) could bring Bruiser, her famed

Chihuahua. In the movie, she starts out at a public university in California where she lives in a sorority house (might be private club exception under ADA). She then moves to attend Harvard Law School (a private university) and lives in campus housing. She works as a research assistant for a professor, at a law firm, and goes to court. She goes to a beauty salon and spends time on campus and at the local park.

So in which settings would Bruiser be allowed? The question was never an issue in the movie, but the movie highlights the many settings where it could be an issue. Answering that question would require a determination of whether Elle had a disability, what documentation she would be required to present about her disability and about Bruiser's training or certification, whether Bruiser was a service dog or an emotional support animal, and whether the particular setting was covered by one of the relevant federal statutes or even a local or state law. Even if Bruiser were eligible for the setting, he could be removed if he was not under control or harmed or disturbed others. What if others were allergic or had phobias?

Practicing attorneys are most likely to see these issues in the context of clients such as homeowners' associations, zoning boards, hotels, restaurants, shopping malls, and landlords seeking to know what animals must be permitted. Employers may also seek counsel on these issues.

What makes this issue particularly complex is that different animals and different documentation of the animal's connection to the disability varies from setting to setting. Public accommodation settings (restaurants and shopping malls) only require that service dogs (and miniature horses) be permitted as an ADA accommodation. The animal **MUST** be a service animal and must be trained to perform a service. The public accommodation program can ask only limited questions, and these do not include what the disability is.

Most housing (other than hotels) is subject to different requirements, and accommodations may include allowing emotional support animals (not just dogs), and the

provider is permitted to seek more detailed and specific information about the disability and how the presence of the animal (service or emotional support) is an accommodation that should be provided. Employment settings also have the broader expectations—the animal can be something other than a dog and it can be for emotional support. Transportation programs, especially airline travel, are subject to yet another set of requirements. Recent attention to the array of animals being brought onto planes has resulted in several airlines changing their policies to be more restrictive. In addition, proposed federal regulations to clarify are also under consideration.

Regardless of the setting, the entity is entitled to expect that the animal be under control, not be disruptive, or dangerous, and have appropriate vaccinations. The person with a disability is required to clean up any waste that the animal leaves behind.

My recent article explores the specific requirements under federal statutes and in

the various settings. It also sets out some areas that would benefit from attention. What makes animal accommodations particularly unique is that they are one of the few accommodations that might require another individual (not just an entity) to accommodate the disability. This is increasingly being highlighted in situations where others have phobias or allergies, with little federal guidance about how to resolve the tensions between the individual needs. The article also makes clear how important it is for those on the front line in various settings to be trained about what questions are permissible to ask the person with an animal.

- LAURA ROTHSTEIN



Do you have clients eligible to receive benefits under an **ERISA** plan?

**WE CAN HELP.**

Put our **ERISA** experience to work for your clients!

**ERISA**

- LONG-TERM DISABILITY
- SHORT-TERM DISABILITY
- LIFE/ACCIDENTAL DEATH INSURANCE

Early representation is key, so call us today.



**MEHR FAIRBANKS**  
TRIAL LAWYERS

**800-249-3731**

201 West Short Street, Suite 800 • Lexington, KY 40507

*This is an advertisement*

*Services may be performed by other lawyers*



# Chase Alumni Receive Awards for Pursuits of Ideals

NKU CHASE  
COLLEGE OF LAW

One of them developed a defense theory adopted by the Supreme Court of the United States. One utilizes a corporate background in working with business clients. Another has been a vice-president of a national lawyers' association. And a fourth has followed a career path from high school teacher to law firm partner. All of them are recipients of achievement awards presented by the Northern Kentucky University Chase College of Law Alumni Association.

The association this past October presented its yearly recognition awards for alumni who represent the ideals of Chase to:

- **JOE THOMAS**, for Lifetime Achievement.
- **TRACEY PUTHOFF**, for Professional Achievement.
- **BERNICE WALKER**, for Distinguished Service.
- **JB LIND**, as Outstanding Alumnus of the Past Decade.

**MR. THOMAS** is a partner in the firm of Ulmer & Berne and has a national reputation for defense work in class action and mass tort litigation involving drugs and medical devices. His practice focus is a natural melding of experiences for a lawyer who is also a pharmacist (he was chief of the inpatient pharmacy at the Cincinnati VA Medical Center while he was a student in the Chase evening division).

Following graduation, he began developing a defense theory based on federal preemption to protect generic drug makers from failure-to-warn lawsuits in state courts. In 2011, the Supreme Court adopted the defense Mr. Thomas had presented on behalf of his client, PLIVA Inc., in *PLIVA Inc. v. Mensing*.

**MS. PUTHOFF** was an engineer with GE Aviation and McDonnell Douglas before she became a lawyer. Her experience in multi-billion-dollar corporations carries over to her transactional practice in the Cincinnati firm of Taft, Stettinius & Hollister. There, she concentrates on matters involving mergers and acquisitions and financing for publicly traded and privately held companies, largely in the manufacturing, service, healthcare, telecommunications and technology sectors.

**MS. WALKER** practiced following graduation with the Cincinnati firm that became Manley Burke, and in 2000 became director of the Hamilton County (Ohio) Office of Small Business Development. She has managed supplier diversity efforts for Duke Energy in the Midwest since 2013. Within the legal profession, she has been vice-president of the National Bar Association and president of the Black Lawyers Association of Cincinnati.

**MR. LIND** taught high school for six years after he was graduated from college, worked as a judicial clerk and a law firm clerk while he was a student in the Chase evening division, and is now a partner in the Cincinnati firm of Vorys, Sater, Seymour and Pease, where he had clerked. He practices in the litigation group, and is involved in a variety of matters, including commercial and business litigation and trust and estate litigation. At Chase, he is an adjunct professor and a member of the Alumni Council, the governing body of the Alumni Association.



*At the Chase Alumni Association awards luncheon at the Marriott at RiverCenter, in Covington, Ky., from left are Judge Karen Thomas, Alumni Association vice-president, Northern Kentucky University President Ashish Vaidya, award recipients Joe Thomas, Tracey Puthoff, Bernice Walker, and JB Lind, and Chase Interim Dean Michael Whiteman.*



## University of Kentucky Professor Robert G. Schwemm Presents at Conference Celebrating the Fair Housing Act's 50th Anniversary

BY: LINDSEY PIERCY



Professor Robert G. Schwemm

As part of this year's celebration of the Fair Housing Act's 50th anniversary, a Chicago law school honored the work of Robert G. Schwemm, Everett H. Metcalf Jr. Professor in the College of Law at the University of Kentucky. The conference on "Melding Scholarship and Advocacy Under the Fair Housing Act," was held at the John Marshall Law School on Sept. 6-7 and honored Schwemm by exploring current issues that demonstrate the close connection between advocacy and scholarship.

The Fair Housing Act was enacted in 1968, just one week after the assassination of Martin Luther King Jr. The law, which banned discrimination based on race, color, religion and national origin—and since has been amended to add sex, disability and families with children—sought to eliminate private and public practices that had, for decades, confined African Americans to segregated neighborhoods.

"The years leading up to this law were every bit as traumatic as the divisive times we're living in now," Schwemm said. "The law has a tragic history, but it is a fitting tribute to Dr. King. Fair housing is now at the forefront of all civil rights issues."

Prior to becoming a professor, Schwemm practiced with Sidley and Austin in Washington, D.C., and then was chief trial counsel for the Leadership Council for Metropolitan Open Communities in Chicago, where he helped develop many of the investigative techniques and legal precedents that are widely used today.

Schwemm joined the UK College of Law in 1975, but he continued to work on appellate cases, including two in the U.S. Supreme Court, *Village of Arlington Heights v. MHDC* (1977) and *Gladstone Realtors v. Village of Bellwood* (1979).

The now-famous Arlington Heights case was a suit against a predominately white Chicago suburb that used its zoning powers to block a racially-mixed housing development. The Supreme Court ruled against the plaintiffs' constitutional claim, but they ultimately won in the lower courts based on the Fair Housing Act. "Recently, the Supreme Court referred to exclusionary zoning suits, like Arlington Heights, as being at the 'heartland' of Fair Housing Act litigation," Schwemm said.

*Gladstone Realtors v. Village of Bellwood* was another landmark case in which two realtors were accused of directing black homebuyers to Bellwood, Ill., while encouraging white prospects to go elsewhere. The court ruled the Village of Bellwood and homeowners residing in a racially integrated area of the Village had standing to challenge the defendants' racial steering practices under the Fair Housing Act.

"This was a crucial precedent in a Supreme Court case last year holding that the City of Miami, Florida, could sue mortgage lenders for providing inferior loans in that city's minority neighborhoods." At UK, Schwemm's research has focused primarily on housing discrimination. He's published 20 articles and three books on this topic, including the major treatise in the field, "Housing Discrimination: Law and Litigation." In 2013, the Department of Housing and Urban Development (HUD) relied on his work in adopting new regulations endorsing the use of the "discriminatory effect" standard under the Fair Housing Act. Two years later, the Supreme Court again cited Schwemm in upholding this standard.

Though it was passed five decades ago, the Fair Housing Act is ever-evolving. In March, Schwemm was quoted in a New York Times article for his expertise on discriminatory housing advertisements. The Fair Housing Act has always outlawed discriminatory ads, but in the early days, suits were aimed at newspapers. Today, housing discrimination is playing out on the internet.

"Facebook, for example, knows so much about the race and other demographic information of its customers that its advertisers can target people based on this information, and thus an apartment complex or real estate development can cut out minorities from its Facebook ads," Schwemm continued. "Not only are such advertisers violating the law, but Facebook, itself, has recently been sued for this practice by both private groups and the U.S. government."

While some important work has been done with respect to non-racial issues in gender and disability cases, Schwemm believes the mission of the Fair Housing Act was always about race and still is today. "This law's success or failure should be measured by how much it has reduced restrictions on racial minorities and undone our nation's long-entrenched patterns of residential segregation."

At the Chicago conference, Schwemm gave the keynote address with an important message in mind.

**"A key goal of the fair housing movement must be to convince people of all races and classes that they benefit from integrated housing and a non-discriminatory housing market. Our message must be, as Kentucky's motto puts it, 'United We Stand, Divided We Fall.'"**

# TIPS for Kentucky New Lawyers



BY: JENNIFER "JENNA" S. OVERMANN YOUNG LAWYER DIVISION CHAIR

On Oct. 22, 2018, the Kentucky Bar Association (KBA) welcomed a fresh crop of lawyers at the swearing in ceremony in Frankfort. The Young Lawyer Division (YLD) is excited to engage our newest colleagues. The YLD is the place for new lawyers to network, learn, and give back to the community.

This Bench & Bar edition will be the first received by the recently admitted attorneys. I thought it fitting to use this month's YLD column to present tips and suggestions for new lawyers. The following is a compilation of tips from myself and other members of the YLD Executive Committee along with colleagues from across the state who responded to a social media request for words of wisdom to new lawyers.

I received input from attorneys in different areas of practice and in various stages of their careers. In reviewing the recommendations, I noted a few overall themes and grouped the tips accordingly.

## CIVILITY

There is a fine line between zealously advocating for your client and respecting the court and opposing counsel. This is not just a new lawyer issue; however as a new attorney you are under a microscope and need to make an effort to remain respectful and courteous.

### TIPS

- Be respectful of the judge.
- Address the judge as "Your Honor."
- Be civil. You don't have to be nasty to successfully represent your client.
- Don't make it personal and don't take it personally.

## TAKE CARE OF YOURSELF

Attorney wellness is essential. The profession is demanding and can be all consuming, especially for new lawyers. As lawyers we are constantly taking care of others, but we need to prioritize measures to stay healthy mentally and physically.

### TIPS

- Plan a vacation. We all get busy so we need to carve out time for ourselves. It is critically important to balance wellness and work.
- Find your "person" to talk to about your good days and bad. It can be a professional, spouse, friend, other attorney, etc. It helps having someone to complain to and talk out possible resolutions. It is also great to have someone to share the good times. Just be sure to protect confidentiality.
- Have an outlet that is not self-destructive to deal with the stress of the job. Make time to exercise, do your hobby, sleep or just relax.
- Seek help if you get overwhelmed. The practice of law can be wonderful, but can also be stressful and difficult. If you need help, seek it. KYLAP is a wonderful service offered by the Bar.

## NETWORK

Networking is about more than just increasing business. While this is a significant benefit, it is also about forming relationships with others to whom you can turn if you need assistance, or who may turn to you if they need assistance. You will have someone to help you better serve your clients and you will gain a reputation in the community in your chosen field. Networking also may lead to an opportunity to give back to the community. The KBA YLD is a great place to begin your networking journey.

### TIPS

- Keep in touch with everyone you meet along the path of your career. You never know who you will get business from or who you will need to call for advice in five, 10, or 15 years.
- Engage in your local community. Join the local bar association or other community organizations.
- Take a leadership role within your local, state or specialty bar association. Through your role, you will have opportunities to work with others and create relationships.
- Make frequent deposits into the favor bank. Try not to make any withdrawals.

## KEEP LEARNING

I received the most suggestions in this category. In our profession, we must always continue learning and growing. This consists of more than just attending our annual continuing legal education (CLE) required hours. We must stay current in our areas of practice, keep up with technological advancements that affect our profession, and gain experience through the practice of law in order to better ourselves in our field.

### TIPS

- Never stop learning.
- Know what you don't know. If you don't know it, ask for help from someone who does or refer the case out.
- You will make a mistake (we all have). When you do, take responsibility, propose how to fix it and explain what you will do to prevent it from happening in the future.
- Partners are busy and want associates to get to the point. Draft emails and memos that answer their questions up front. If you need more information, clearly ask. Always propose next steps.
- Obtain the Kentucky Practice Series, either through buying it or the law library or firm library.
- Learn how to listen to others. Don't just hear what people are saying – actively listen and engage.
- It is very easy to say too much. Make your point succinctly and stop talking.
- Listen more than you speak.
- Don't be afraid to ask a more senior attorney for guidance.
- Spend at least two hours a week on non-billable time reading up on your area of law.
- Ask for advice. Most attorneys are flattered that you think enough of them to ask for their input.
- Admit when you are wrong or have made a mistake. It builds credibility and maintains your integrity.
- You are never too young to mentor another attorney, and you are never too old to need a mentor.

## PRACTICE TIPS

In law school we spend years learning about the law and how to think like a lawyer, but there is so much more to the practice of law. Knowing the law and practicing the law are two distinct skills. Oftentimes the latter is learned through experience and observation over time.

### TIPS

- Return phone calls, emails and letters in a reasonable time.
- Use the ethics hotline. Better to err on the side of caution and get an answer.
- Take your time to review your work. Details matter. For example, make sure opposing counsel's name and the judge's name are spelled correctly. Make sure the case caption is correct.
- Develop a niche.
- Use letters and emails to memorialize discussions.
- Be respectful of all clients.
- Meet the court clerks and judicial staff and treat them with respect. You will need them to help you out one day.
- Treat firm staff members with respect.
- The buck stops with you, so be sure to supervise and review staff's work.
- Make staff look good. Praise them to your clients and colleagues.
- Take responsibility. Do not throw your partners, associates, or staff under the bus.

## CONCLUSION

This article is by no means an exhaustive list. There is so much you will learn over the years as you continue your legal career. I have been practicing for over a decade and I have so much more to learn and experience. I hope to continue this conversation on the YLD Facebook page [www.facebook.com/KBAYLD/](http://www.facebook.com/KBAYLD/) and on Twitter @KBAYLD. Please like and follow the YLD for more tips and information on the YLD.

*SPECIAL THANKS to all those who contributed: Roula Allouch, Alicia Awkard, Matthew Barszcz, Jenny Bobbitt, Denise Durbin, Ashley Gerughty, Jonathan Hall, Sarah McKenna, E. Lee Metzger, Jack Porter, Brandon Sword, Stacy Tapke, John Wathen, and Stephanie Wurdock.*

# Getting VISUAL

BY: MICHAEL D. MURRAY UNIVERSITY OF KENTUCKY COLLEGE OF LAW

**N**ow or in the very near future, legal briefs and office memoranda will use color, graphics, photographs, embedded videos, active links, depictions, and diagrammatical elements. In other words, the instruments of legal practice will be highly visual.<sup>1</sup>

An attorney or counselor at law can supplement or even replace several pages of narrative or legal reasoning with a graphical visualization of the communication—a photograph, a cartoon, a painting, a model, or another form of visual or graphical rendering—and in so doing, improve the document's communicative and persuasive potential.<sup>3</sup>

How does a visual improve the communication or the argument? Because visual imagery is not only faster than words, it is better than words. Visual images possess nearly instantaneous cognitive and communicative power.<sup>7</sup> Visual devices work at microsecond-level speed to communicate ideas and attain the audience's adherence to the meaning and truth of the ideas communicated, and thus are able to persuade the audience of the truth and propriety of the speaker's communication faster than verbal media. Brain science demonstrates that images allow greater perception, comprehension, and retention of information.<sup>8</sup>

The power of visual media works both offensively and defensively when attorneys are designing effective visuals for advancing their cases and raising objections to or attempting to counter the rhetorical effects of an opponent's submission.<sup>9</sup> As a result, the use of visual images as tools of rhetoric and narrativity in litigation carries with it an enormous responsibility not to abuse the



Exhibits used as legal argument regarding allegedly infringing cell phone designs in *Apple v. Samsung*.<sup>2</sup>

Images and video can be used substantively and argumentatively, to prove facts or strengthen a legal argument.





power of images. The power of visual rhetorical devices in legal discourse requires a careful attention to the author's ethical and professional responsibilities not to use the power to confuse, mislead, or overwhelm the reasoning power of the audience.<sup>10</sup>

In conclusion, visual devices are a powerful and even recommended form of legal communication if they are used to construct knowledge and understanding of the meaning and message of the communication and do not mislead or prejudice the audience's reception or understanding of the communication.

## ABOUT THE AUTHOR

**MICHAEL D. MURRAY** was appointed in 2018 as an Assistant Professor of Legal Research and Writing at the University of Kentucky College of Law. Professor Murray graduated from Loyola College in Maryland and from Columbia Law School. He clerked for United States District Judge John F. Nangle of the Eastern District of Missouri, and practiced commercial, intellectual property, and products liability litigation for seven years at Bryan Cave law firm in St. Louis. His 20 years of law teaching experience have taken him to the law schools of Saint Louis University, University of Illinois, Valparaiso University, University of Michigan, and University of Massachusetts. Professor Murray currently has published 27 books and numerous law review articles on advocacy, legal research and writing, rhetoric, copyright, art law, right of publicity, and other topics.



## ENDOTES

1. Michael D. Murray, *Visual Rhetoric: Topics of Invention and Arrangement and Tropes of Style*, 21 *LEGAL WRITING* 185, 185-86 (2016) ("The recognition that visual rhetoric is rapid, efficient, constructive, and persuasive reveals the potential of visual rhetorical devices to serve as topics and tropes in legal discourse to construct meaning and to inform and persuade legal audiences."); Elizabeth G. Porter, *Taking Images Seriously*, 114 *COLUM. L. REV.* 1687, 1722 (2014). For further reading, see Michael D. Murray, *The Sharpest Tool in the Toolbox: Visual Legal Rhetoric*, \_\_\_ *J. Legal Educ.* \_\_\_ (forthcoming, 2018), available at <https://ssrn.com/abstract=3040952>; Michael D. Murray, *The Ethics of Visual Legal Rhetoric*, 13 *LEGAL COMM. & RHETORIC: JALWD* 107 (2016); Michael D. Murray, *Leaping Language and Cultural Barriers with Visual Legal Rhetoric*, 49 *U.S.F.L. REV.* 61 (2015).
2. Apple (left) and Samsung (right) Trial Exhibits used in *Apple, Inc. v. Samsung Electronics Co., Ltd.*, No. 12-CV-00630-LHK (N.D. Cal. Apr. 15, 2011), available at <http://arstechnica.com/tech-policy/2012/08/apples-case-that-samsung-copied-the-iphone-and-ipad-in-pictures/>. The rhetorical use of these images is critiqued in Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 1, at 133-36. Apple attempted to show that Samsung's phone designs looked nothing like the iPhone before the iPhone came out, but Samsung's phones started to look like the iPhone when it came out. Samsung countered by showing that several of its designs before the iPhone resembled the iPhone, while many of its phone designs before and after the iPhone looked nothing like the iPhone. *Id.*
3. See generally Porter, *supra* note 1 at 1695-99; Richard K. Sherwin et al., *Law in the Digital Age: How Visual Communication Technologies Are Transforming the Practice, Theory, and Teaching of Law*, 12 *B.U. J. SCI. & TECH. L.* 227, 243 (2006) (citing STEPHEN M. KOSSLYN, *ELEMENTS OF GRAPH DESIGN* 10 (1994)).
4. Images of exhibits relating to (clockwise from top): *Satava v. Lowry*, 323 F.3d 805 (9th Cir. 2003); *Mattel, Inc. v. Goldberger Doll Mfg. Co.*, 365 F.3d 133 (2d Cir. 2004); *Indianapolis Colts, Inc. v. Metro. Baltimore Football Club Ltd. P'ship*, 34 F.3d 410 (7th Cir. 1994); *Mannion v. Coors Brewing Co.*, 377 F. Supp. 2d 444 (S.D.N.Y. 2005).
5. Single Frame of Police Dashcam Video of Fatal Shooting of Laquan McDonald (Oct. 20, 2014).
6. Single Frame of Jason Van Dyke Defense Team Animation of Fatal Shooting of Laquan McDonald from Officer's Perspective (Sep. 25, 2018). Van Dyke's counsel created an alternative video, albeit an animation, in order to attempt to show the scene from the perspective of Van Dyke, the police officer who shot McDonald.
7. See generally David J. Arkush, *Situating Emotion: A Critical Realist View of Emotion and Nonconscious Cognitive Processes for Law and Legal Theory*, 2008 *B.Y.U. L. REV.* 1275; Lucille A. Jewel, *Through a Glass Darkly: Using Brain Science and Visual Rhetoric to Gain a Professional Perspective on Visual Advocacy*, 19 *S. CAL. INTERDISC. L.J.* 237, 237, 252 (2010) (instantaneous communicative power of visuals); Steve Johansen & Ruth Anne Robbins, *Art-iculating the Analysis: Systemizing the Decision to Use Visuals as Legal Reasoning*, 20 *LEGAL WRITING* 57, 86-93 (2015); Ellie Margolis, *Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-First Century*, 12 *LEGAL COMM. & RHETORIC* 1, 25-27 (2015); Rosalind Pollack Petchesky, *Fetal Images: The Power of Visual Culture in the Politics of Reproduction*, 13 *FEMINIST STUD.* 263 (1987); Nadia N. Sawicki, *Compelling Images: The Constitutionality of Emotionally Persuasive Health Campaigns*, 73 *MD. L. REV.* 458 (2014).
8. See generally Stephen M. Kosslyn et al., *Visual Images Preserve Metric Spatial Information: Evidence from Studies of Image Scanning*, 4 *J. EXPERIMENTAL PSYCHOL.: HUM. PERCEPTION & PERFORMANCE* 47, 57-59 (1978) (perception of images mentally is as fast as perception of actual visual objects in the world); Carrie Leonetti & Jeremy Bailenson, *High-Tech View: The Use of Immersive Virtual Environments in Jury Trials*, 93 *MARQ. L. REV.* 1073, 1074-75 & n.18 (2010); ELIZABETH F. LOFTUS, JAMES M. DOYLE & JENNIFER E. DYSART, *EYEWITNESS TESTIMONY: CIVIL AND CRIMINAL* (5th ed. 2015) (visual evidence, eyewitness testimony, and perception); ELIZABETH LOFTUS & KATHERINE KETCHAM, *WITNESS FOR THE DEFENSE* 14-30 (1991) (visuals and the "Magic of the Mind"); *EYEWITNESS TESTIMONY: PSYCHOLOGICAL PERSPECTIVES* 272 (Gary L. Wells & Elizabeth Loftus eds., 1984) (word choice and the use of images affect juror perception).
9. Observers have noted that uses of adversarial visual rhetoric often are one-sided, with one party in litigation exploiting the power and effectiveness of visual media, and the other side responding with nothing. See, e.g., Jewel, *Through a Glass Darkly*, *supra* note 7, at 281, 295 ("The ability to recognize and attack logical fallacies in text-based arguments has always been a part of effective advocacy; now, attorneys must learn how to apply that skill to visual arguments. . . . Most of the cases involving improprieties in visual advocacy have also contained grievous imbalances in the deployment of visual arguments.").
10. Murray, *Ethics of Visual Legal Rhetoric*, *supra* note 1, at 126.

## LIFE AS A BLOGGER: WHAT I LEARNED (AND WOULD LIKE TO FORGET)

BY: STEPHEN E. EMBRY

A little over a year ago, I decided to become a blogger and create my own blog, *TechLaw Crossroads*. It's focused on technology, innovation and law and the relationship between all three. The experience has been fun, interesting, a lot of work and, if you measure success by opportunities produced, generally successful. Along the way, I managed to learn a few lessons.

### WHETHER AND WHY

The main reason for lawyer marketing efforts is to get business, right? How do you get business? By being known and more importantly, being known for something that will get you business. I discovered that blogging is a way to (a) connect with an audience, (b) that you are purposefully trying to reach.

As to the first point, most of us don't have the funds or time to go everywhere and meet everyone that could potentially give us business. But by using tools such as social media and blogging, we have a chance to have a "virtual handshake" with people we would not otherwise reach. To demonstrate our expertise and knowledge to a wider swath of people.

Second, I learned a good blog can set you apart with the audience you want to reach. While social media is a way to reach the masses, blogging is a way to reach a select audience you want to impress and establish you as an authority on a certain subject matter to that audience.

**NOT CONVINCED?** Read Bob Scoble's and Shel Israel article entitled, *Naked Conversations: How Blogs are Changing the Way Businesses Talk to Customers*:

<https://www.amazon.com/Naked-Conversations-Changing-Businesses-Customers/dp/047174719X>.

Scoble and Israel talk about how blogs are changing how businesses communicate with their consumers. They present more than 50 case studies of companies and business leaders interacting through blogs with an audience they want to reach.

### GENERATING TRUST AND RELIANCE

I also learned that by providing regular, consistent content through a blog, potential clients got to know and rely on me. Before they ever actually meet me, they got to know my voice and style. They learned not only something about the law but also about me and discovered something that made them want to do business.

Blogging is one of the few means that you can present yourself, your skills, your personality and your expertise to potential clients on a widespread basis establishing your knowledge **and** creating trust. As Kevin O'Keefe, the owner of one of the most

well-known blogging platforms, *LexBlog*, put it, “I always come back to blogging being a conversation, a way to engage one’s audience in a real and authentic way.” See Kevin’s excellent article *Can Content Alone Create the Intimate Relationships Blogs Do?*

<https://kevin.lexblog.com/2018/09/30/can-content-alone-create-intimate-relationship-trust-blogs/>

## 10 THINGS I LEARNED. SOME THE HARD WAY

So, what have I discovered over the year that works (or doesn’t)? Heres my 10 take always (aka, things I wished I had known when I started).

**1 Pick a timely and limited topic.** Again, let’s face it, the most compelling reason to blog is to get business: to get business from a blog, it needs to be targeted to a specific audience. Blogging about the state of the world is probably not going to draw readers to your site. It took me awhile to figure out who I wanted to reach so my blog wandered around a bit before it became consistent. Lesson learned: think through at the beginning the scope of your blog. Too broad and no one will read. Too narrow and no one will read.

**Offer good content.** Duh: it goes without saying good content always trumps everything else. That doesn’t mean perfect content but it does mean treating blog post preparation like a craft and working hard on it. You can’t assume that your dear reader will pour over your post like it’s the most important thing ever written even if you think it is. Think about how you would read something to get the quick and dirty and then make sure the reader can do that with your post.

### SOME TIPS:

- Be concise: no one will read long, scholarly law journal tomes. 1000-1500 words is about right.
- Where you can, write in the first person and in a conversational way. My most read articles were ones where I weaved in a personal experience or two.
- Think about how your post looks. Use photos that are illustrative. Break up paragraphs with headings. Use block quote style to highlight and emphasize for the reader the most important points.

**3 Be timely.** The biggest mistake many lawyers make is to polish and polish until whatever you want to write about becomes stale and beaten to death by others. You want to be right about what you say but don’t let perfect be the enemy of the good. While what you say may never disappear, the shelf life—that is how long you have for people to actually look at what you write—is pretty short.

**4 Be relevant.** Lots of bloggers will, for example, tell you the holding of a case and stop. Good bloggers will tell you the holding and what it means and its impact. Think about what questions and concerns clients in this area would have about an event or case and try to address those. And yes, I know, this sometimes requires you to take a position and we always fear taking a position will come back to bite us someday. But how likely is it that that will really happen particularly if you have limited your target audience? And you can always minimize that risk by using qualifying words and phrases like the holding “may” result in this. Or “another possible impact is...” Or acknowledge the other sides argument about a case: “plaintiffs (or defendants depending on what your practice is like) will view this case as holding....”

**5 Be consistent.** The biggest blogging downfall is not providing consistent content. I shoot for once a week but don’t always make it. Some bloggers post more, some less. But aim for consistency so your readers have some expectation of when and how often you will post.

**6 Post as an individual or via my firm?** Certainly, there are arguments on both sides. Before I left my previous firm, I posted individually for three reasons. One, I didn’t have to go through an approval process that could take a while and risk my proposed content becoming stale. Second, I’m kind of possessive about my blog and I liked having sole control. And third, I wanted to be sure my content was still around if and when I left the firm. But I was with a big firm. If you’re solo or in a small firm, your decision might be different.

**7 Market your blog and your posts.** I quickly learned that if I posted a link to my blog articles on social media, it would get a lot more readers. For one thing, people are sometime reluctant to subscribe to anything anymore for fear they will be inundated with content or be hacked. Clicking a link that would take them to a blog one time is easier and safer. Second, you will get more visibility: if your blog posts are picked up and shared by others via social media, it can expand your reach to other widely read platforms. Several of my posts, for example, were picked by national organizations via social media leading to contacts and opportunities I never would have generated on my own. Also, tell people about your blog. I always include in my bio and c.v. that I am the publisher of *TechLaw Crossroads*. It alerts people to the blog’s existence (and under the theory fake it till you make it, it made it sound more than what it was, especially at the beginning).

**Measure and assess your impact.** Pay attention to what gets read and clicked. And then write more posts like it. I've had several posts on my blog that I thought were real winners which very few people looked at. Others that I was not particularly sure about turned out to be widely read. The only way to know that is to look at the metrics.

8

**9 Titles matter.** How and whether any of your blog posts get noticed depends in part on the title. So, yes, titles matter. Think about what words might get picked up on a search and if you are really stuck, there are sites that can help you. Here's a link to one: <https://coschedule.com/headline-analyzer>.

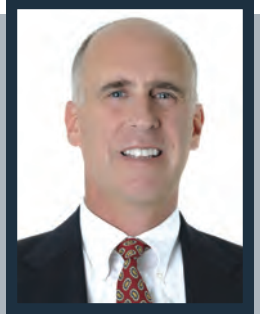
**Pick a good platform.** This is probably your first decision. If you are in a firm, you can of course use the firm website to host your blog. If you decide you want your own independent blog, then you have to get a host. *WordPress* is a popular one and offers a free service but its pretty bare bones. There are several pay sites that not only give you technical assistance but can also help with distribution of content. I use *LexBlog*, for example. The choice is up to you but if you are using a blog to get business and become known, then I would recommend a pay site. It will be more professional looking (unless you are really good at creating a website), you will get wider distribution and it's not terribly expensive.

10

And if you think that this is just a boondoggle, I can assure you, yes, I have gotten business and even a job offer as a result of my blog. By the way, here's a link to *TechLaw Crossroads*: <https://www.techlawcrossroads.com>.

#### ABOUT THE AUTHOR

**STEPHEN E. EMBRY** is a frequent speaker, blogger and writer. He is publisher of *TechLaw Crossroads*, a blog devoted to the examination of the tension between technology, the law and the practice of law. He is also co-author of a book entitled, "Mass Tort Claims Resolution Facilities," and the 2017 and 2016 editions of the American Bar Association's "TechReports." Formerly a member of Frost Brown Todd LLC and the firm's class action, privacy and mass tort groups, he is a national litigator and advisor who is experienced in developing solutions to complex litigation and corporate problems. He was recently recognized by *Best Lawyers In America* in the areas of Mass Tort/Class Actions. He now practices with his own firm, *embryoLaw LLC*. In addition to practicing law, his passions include education, officiating swimming on national and local levels and all things tech and travel related. And, finally, he is unabashedly and unapologetically a University of Kentucky basketball fan.



## KENTUCKY ATTORNEYS DOING GOOD



Do you and your firm or legal department enjoy volunteering in your community?

Do you have a great action shot from a recent community service project?

For a chance to be featured in "Kentucky Attorneys Doing Good" in a future issue of the *Bench & Bar*, please email pictures of you "in action" to KBF Executive Director Guion Johnstone at [gjohnstone@kybar.org](mailto:gjohnstone@kybar.org), along with the names of those pictured and a description of your project.

Your submission of a photograph constitutes your permission for it to be used by the Kentucky Bar Foundation, as well as the Kentucky Bar Association, in their programs, publications, newsletter, websites, social media pages, and any and all other print and online materials. By submitting, you acknowledge that you hold the rights to the photo for publication in all KBF or KBA materials.



# ATTENTION:

Kinhead & Stilz, PLLC attorneys **Cary B. Howard, Jr.** and **D. Barry Stilz** have been appointed Receivers for the abandoned Eric Conn Social Security Disability files. All the files have been removed from the prior offices of Mr. Conn and are now in the possession of the Receivers. The appointment, made by United States District Court Judge Danny C. Reeves of the Eastern District of Kentucky, involves collecting, inventorying, and, to the extent possible, distributing and making available for distribution more than 7,000 individual files.

Interested persons may contact the Receiver at [Receivers@ksattorneys.com](mailto:Receivers@ksattorneys.com) or by telephone at (859) 226-7580.



# SUMMARY OF MINUTES KBA BOARD OF GOVERNORS MEETING • JULY 20, 2018

The Board of Governors met on Friday, July 20, 2018. Officers and Bar Governors in attendance were, *President* D. Ballantine; *President-Elect* S. Smith, *Vice President* T. Kerrick, and *Young Lawyers Division Chair* J. Overmann. *Bar Governors 1<sup>st</sup> District* – F. Schrock, V. Sims; *2<sup>nd</sup> District* – J. Meyer; *4<sup>th</sup> District* – A. Cubbage; *5<sup>th</sup> District* – M. Barfield, E. O'Brien; *6<sup>th</sup> District* – G. Sergeant (via phone), T. McMurtry; and *7<sup>th</sup> District* – R. Blackburn, J. Vincent. Immediate Past President W. Garmer and Bar Governors M. Cook, M. Dalton, H. Mann and B. Simpson were absent.

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

- Heard a status report from the Task Force on Judicial Evaluations.
- KBA Chief Bar Counsel Jane Herrick presented the annual Bar Counsel Disciplinary Statistical Report.
- KBA Director of Accounting/Membership Michele Pogrosky presented the year-end financial summary.
- Approved the adoption of a bond resolution authorizing the execution, delivery, and performance by the KBA of a note in favor of the City of Frankfort, Kentucky, in an aggregate principal amount not to exceed \$6,000,000 for partial payment to withdraw from the Kentucky Employees Retirement System (KERS).
- Approved a proposed Ethics Opinion on Cybersecurity as a formal opinion
- Approved the adoption of ABA Resolution 105 "The Path to Lawyer Well-Being."
- Young Lawyers Division (YLD) Chair Jennifer S. Overmann reported that during her year as chair she intends to encourage more active involvement in YLD, outside of their executive committee, by pushing the YLD application process to the division at large. New positions will be created with some focusing on young lawyer wellness.
- President-Elect J. Stephen Smith reviewed with the Board that it's his responsibility to chair the FY 2019-2020 Budget & Finance Committee. Smith reported that the committee has been formed and their first meeting will be scheduled for late August.
- Approved the appointment of a KLEO Task Force to examine the best way to resume and continue funding for this program.
- President Douglas C. Ballantine reported that he will serve on the Kentucky Bar Foundation (KBF) Board in his capacity as KBA president and William R. Garmer will also serve on the KBF Board in his capacity as KBA immediate past president.
- President Ballantine reported that he will serve on the IOLTA Board of Trustees in his capacity as KBA president.
- Approved the reappointment of **Charles E. "Buzz" English, Jr.** of Bowling Green, **John G. Prather, Jr.**, of Somerset and **Marcia Milby Ridings** of London to serve on the Special Conflicts Committee for another one year term ending on June 30, 2019.
- President Ballantine reported that the 2019 Annual Convention will be held June 12-14 at the Galt House Hotel in Louisville. Amanda Main has agreed to serve as planning committee chair and J. Tanner Watkins and Eric Weihe have agreed to serve as co-chairs of the CLE planning committee.
- President Ballantine advised that the KLU Program will begin in late August and he plans to host receptions the night before each KLU to continue to have the opportunity to meet with local bar leaders, judiciary and past KBA leaders.
- Approved a voluntary confidential diversity survey to be distributed electronically to all members of the KBA via email. The survey is being conducted by Dr. Melanie D. Otis, Professor at the University of Kentucky College of Law Social Work. Compilation of results will be by Dr. Otis with no involvement of KBA staff or use of KBA mandatory dues revenue.
- Executive Director John D. Meyers reported that the final attendance for the 2018 KBA Annual Convention totaled 1,630. The final revenue numbers were not available at the time of his report.
- Meyers reported that the 2019 Diversity & Inclusion Summit has been set for Friday, March 22, 2019, in Covington at the Northern Kentucky Convention Center.

- Approved two disabled inactive status requests pursuant to SCR3.030(5)(a).
- Meyers reported that the dues statements will mirror the language required by SCR 3.023 indicating whether or not the member has malpractice coverage that complies with the rule which requires \$300,000 aggregate, \$100,000 per occurrence or will indicate that they are not covered. Members may also indicate that they are no longer practicing law and coverage is not needed or they are exempt. If members do not respond, a category has been indicated to show lack of response.
- Meyers reported that bids are being solicited from human resource groups to bring someone onsite one day a week, extra hours if needed, to assist with organizational structure, job descriptions, staff-wide training and to ensure that KBA policies are compliant with relevant regulations.
- Meyers reported that the KBA has been asked to co-sponsor the ABA Lawyer Retreat, to be held on Oct. 5, 2018, at the Four Seasons Resort in Vail, Colo., to address lawyers as a whole to focus on wellness. There is no cost to the KBA to co-sponsor.

- Meyers reported that the Supreme Court reappointed Jason F. Darnall of Benton and David B. Sloan of Crestview Hills to the CLE Commission for another three year term ending on June 30, 2021. Darnall was also reappointed to serve as chair of the CLE Commission. Meyers reported that the Supreme Court also appointed Brittany N. Riley of London and Benjamin W. Carter of Louisville to the IOLTA Board of Trustees for a three-year term ending on June 30, 2021.

## TO KBA MEMBERS

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

**January 18-19, 2019**

**March 15-16, 2019**

To schedule a time on the Board's agenda at one of these meetings, please contact John Meyers or Melissa Blackwell at (502) 564-3795.



**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](http://STURGILLTURNERMEDIATIONCENTER.COM).

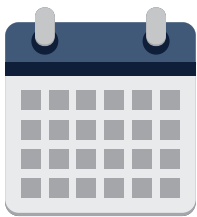
**STURGILL  
TURNER**  
MEDIATION CENTER



**BENCH & BAR  
EDITORIAL CALENDAR:  
SUBMISSIONS WELCOMED**

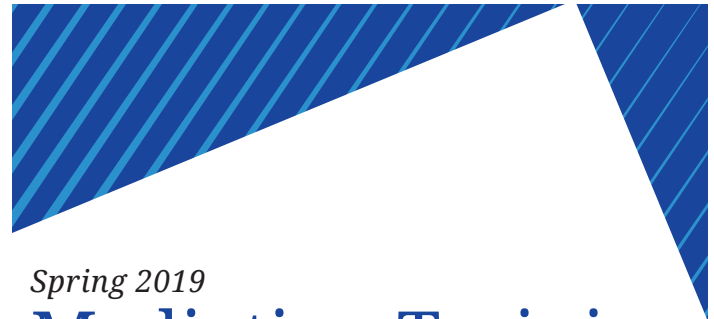
KBA members receive bi-monthly issues of the Kentucky Bench & Bar Magazine, which is designed to inform attorneys of new developments in the legal system, and to further educate attorneys in existing areas of the law. The information included in submitted articles should prove beneficial to Kentucky law practices. The Communications & Publications Committee always welcomes submission of articles and editorial comments from readers.

The 2019 Editorial Calendar is outlined below. Themes are tentatively scheduled. Changes in the law may occur that may nullify or cause rescheduling to any or all of these topics of interest.



**May 2019 - Tax Law**  
**July 2019 - Legislative Update**  
**September 2019 - Evidence**  
**November 2019 - TBA**

If interested in submitting an article for an upcoming edition of the magazine, please contact KBA Director of Communications, Shannon Roberts, via email at [sroberts@kybar.org](mailto:sroberts@kybar.org)



*Spring 2019*

# Mediation Training

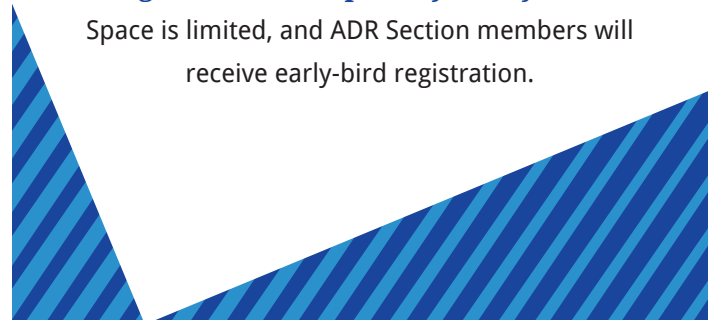
*Sponsored by the KBA's ADR and Family Law Sections*

**Save the Date** for spring 2019 Mediation Training!

A basic 40 hour mediation training sponsored by the ADR and Family Law Sections will be held **April 1-5 in Louisville, Kentucky**. General Civil and Family Law Training will be offered.

**Registration will open in January, 2019.**

Space is limited, and ADR Section members will receive early-bird registration.



## KBA Group Forums Service Now Available to all KBA Section and Division Members



Ask questions



Communicate



Network

**with fellow group members in your area of  
practice using the KBA Group Forums**

*Participation is completely voluntary and you must subscribe to participate*

**For more information** on how to subscribe, please visit the Forum Help (FAQ) page at <https://www.kybar.org/forumhelp>

**Not a Section member?** View a complete list of available Sections at <https://www.kybar.org/page/Sections> and join online any time!

# United States Postal Service

## Statement of Ownership, Management, and Circulation

**PUBLICATION TITLE:** B&B-Bench&Bar.

**PUBLICATION NUMBER:** 1521-6497.

**FILING DATE:** September 28, 2018.

The B&B-Bench & Bar is published Bi-monthly by the Kentucky Bar Association, 514 West Main Street, Frankfort, KY 40601-1812, (502) 564-3795. Number of issues Published Annually: Six. Annual Subscription Price: \$20.00. Contact Person: Shannon H. Roberts. The General Business Office of the Publisher is at the Kentucky Bar Association, 514 West Main Street, Frankfort, KY 40601-1812. The Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor are: Publisher, John D. Meyers, Kentucky Bar Association, 514 West Main Street, Frankfort, KY 40601-1812; Editor, James P. Dady, Kentucky Bar Association, 514 West Main Street, Frankfort, KY 40601-1812; Managing Editor, Shannon H. Roberts, Kentucky Bar Association, 514 West Main Street, Frankfort, KY 40601-1812.

The Owner of the publication is the Kentucky Bar Association, 514 West Main Street, Frankfort, KY 40601-1812. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities is U.S. Bancorp. Complete Mailing Address is U.S. Bancorp, U.S. Bancorp Center, 800 Nicollet Mall, Minneapolis, MN 55402.

The Tax Status Has Not Changed During Preceding 12 Months.

**PUBLICATION TITLE:** B&B-Bench & Bar

**ISSUE DATE FOR CIRCULATION DATA BELOW:** August 1, 2018

### EXTENT AND NATURE OF CIRCULATION

Average No. Copies Each Issue During Preceding 12 Months:

- a. Total Number of Copies: 18,950
- b. Paid Circulation (By Mail and Outside the Mail)
  - (1) Mailed Outside-County Paid Subscriptions Stated on PS Form 3541: 18,777
  - (2) Mailed In-County Paid Subscriptions Stated on PS Form 3541: 0
  - (3) Paid Distribution Outside the Mail Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS: 0
  - (4) Paid Distribution by Other Classes of Mail Through the USPS: 0
- c. Total Paid Distribution: 18,777
- d. Free or Nominal Rate Distribution (By Mail and Outside the Mail)
  - (1) Free or Nominal Rate Outside-County Copies included on PS Form 3541: 0
  - (2) Free or Nominal Rate In-County Copies included on PS Form 3541: 0

- (3) Free or Nominal Rate Copies Mailed at Other Classes Through the USPS: 5
- (4) Free or Nominal Rate Distribution Outside the Mail: 67
- e. Total Free or Nominal Rate Distribution: 72
- f. Total Distribution: 18,855
- g. Copies not Distributed: 95
- h. Total: 18,950
- i. Percent Paid: 99%

### NO. COPIES OF SINGLE ISSUE PUBLISHED NEAREST TO FILING DATE

- a. Total Number of Copies: 18,900
- b. Paid Circulation (By Mail and Outside the Mail)
  - (1) Mailed Outside-County Paid Subscriptions Stated on PS Form 3541: 18,777
  - (2) Mailed In-County Paid Subscriptions Stated on PS Form 3541: 0
  - (3) Paid Distribution Outside the Mail Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS: 0
  - (4) Paid Distribution by Other Classes of Mail Through the USPS: 0
- c. Total Paid Distribution: 18,777
- d. Free or Nominal Rate Distribution (By Mail and Outside the Mail)
  - (1) Free or Nominal Rate Outside-County Copies included on PS Form 3541: 0
  - (2) Free or Nominal Rate In-County Copies included on PS Form 3541: 0
  - (3) Free or Nominal Rate Copies Mailed at Other Classes Through the USPS: 10
  - (4) Free or Nominal Rate Distribution Outside the Mail: 50
- e. Total Free or Nominal Rate Distribution: 60
- f. Total Distribution: 18,837
- g. Copies not Distributed: 63
- h. Total: 18,900
- i. Percent Paid: 99%

If you are claiming electronic copies, go to line 16 on page 3. If you are not claiming electronic copies, skip to line 17 on page 3.

### PUBLICATION OF STATEMENT OF OWNERSHIP

If the publication is a general publication, publication of this statement is required. Will be printed in the November 29, 2018 issue of this publication.

I certify that all information furnished is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).

John D. Meyers, Publisher, September 28, 2018

# Supreme Court of Kentucky

Included in this edition of the Bench & Bar are three pages from the 2018-17 Order Correcting 2018-04 In Re Order Amending Rules of the Supreme Court SCR 4.300 Kentucky Code of Judicial Conduct. In order to save space in the magazine, we are only publishing the three pages that were affected by the new Order. To view the 2018-17 Order Correcting 2018-04 In Re Order Amending Rules of the Supreme Court SCR 4.300 Kentucky Code of Judicial Conduct in its entirety, please visit: [https://courts.ky.gov/courts/supreme/Rules\\_Procedures/201817.pdf](https://courts.ky.gov/courts/supreme/Rules_Procedures/201817.pdf).

## IN RE: ORDER AMENDING RULES OF THE SUPREME COURT (SCR) 4.300 2018-17

### Pg. 1

Canon 3, Rule 3.15 (B), Reporting Requirements in Supreme Court Order 2018-04 is hereby corrected, and is replaced with this Supreme Court Order 2018-17. This order is effective the date of entry and replaces the current Kentucky Code of Judicial Conduct with the following:

SCR 4.300 Kentucky Code of Judicial Conduct

### KENTUCKY CODE OF JUDICIAL CONDUCT

#### PREAMBLE

[1] An independent, fair, and impartial judiciary is indispensable to our system of justice. The United States and Kentucky legal systems are based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and

personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

### Pg. 36

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

#### RULE 3.15

##### *Reporting Requirements*

(A) A judge shall publicly report reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$100.

(B) When public reporting is required by paragraph (A), a judge shall report the date, place, nature of the activity, and the source of any reimbursement or waiver or partial waiver of fees or charges which the judge received.

(C) The public report required by paragraph (A) shall be filed with the Chief Justice within thirty days following the conclusion of the event or program.

(D) All judges and judicial candidates\* shall comply with KRS 61.710, *et seq.*

## COMMENT

[1] This Rule does not require public reporting of interest, dividends or other income received by a judge from his or her investments held as permitted under Rule 3.11.

## Pg. 45

with the Kentucky Registry of Election Finance.

### RULE 4.5

#### *Activities of Judges Who Become Candidates for Nonjudicial Office*

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

## COMMENT

[1] In campaigns for nonjudicial elective public office,

candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial\* to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The “resign to run” rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.

All sitting. All concur.

ENTERED: October 29, 2018.

  
CHIEF JUSTICE

**Outstanding results  
for you *and* your clients**



## Earn your LL.M. in Tax or Business Transactions online

The University of Alabama School of Law's online LL.M. programs deliver live lectures by leading scholars and practitioners from across the country to wherever you are. Start earning your degree now and experience the powerful, interactive connection of live online instruction.



**ALABAMA**LAW  
THE UNIVERSITY OF ALABAMA®  
Online Programs

[AlabamaLLM.ua.edu/bench](http://AlabamaLLM.ua.edu/bench)

# Supreme Court of Kentucky

2018-14

## IN RE: Proposed Amendment of Kentucky Rules of Evidence (KRE)

### ORDER

This Court is advised that pursuant to KRE 1103(b), a meeting of the Evidence Rules Review Commission was called by the Chief Justice to review a proposed amendment to the Kentucky Rules of Evidence, an addition of a new section KRE 807, a copy of which is attached. Amendments to the Kentucky Rules of Evidence are governed by KRE 1102 which: in subsection (a) grants the Supreme Court of Kentucky the power to prescribe amendments or additions to the Kentucky Rules of Evidence; in subsection (b) sets out the procedure for the General Assembly to adopt amendments to the Kentucky Rules of Evidence that do not constitute rules of practice and procedure, granted solely to the Supreme Court of Kentucky in Section 116 of the Kentucky Constitution; and in subsection (c) requires that "(n)either the Supreme Court nor the General Assembly should undertake to amend or add to the Kentucky Rules of Evidence without first obtaining a review of the proposed amendments or additions from the Evidence Rules Review Commission." Said rule provides a clear amendment process agreed to in 1992 by the General Assembly in HB 241 and by the Supreme Court of Kentucky. The Supreme Court of Kentucky, by order entered May 12, 1992, adopted the portions of the Kentucky Rules of Evidence that came within the rule making power of the Court, pursuant to Ky. Const. Sec. 116. The Court did not adopt the Commentary prepared to the KRE.

Pursuant to the call of the Chief Justice, The Kentucky Evidence Rules Review Commission (KERRC) met on several occasions to consider the proposed addition of KRE 807, taking testimony from presenters and reviewing surveys of the laws and rulings of other states, before issuing a recommendation against the adoption of the proposed amendment to the Kentucky Rules of Evidence (The Recommendation of the KERRC and the Minority Report are attached hereto.) Additionally, this Court heard comment upon the proposal during the Annual Convention of the Kentucky Bar Association and received and reviewed written comment thereon.

Upon review, the Supreme Court of Kentucky hereby adopts the recommendation of the Kentucky Evidence Rules Review Commission and thereby declines to adopt the proposed amendment. This Court recognizes the concern addressed in the proposed amendment and would consider alternate approaches upon presentation of future proposals.

All sitting. All concur.

ENTERED: September 21, 2018.

  
CHIEF JUSTICE

To access the items indicated as attached,  
visit [https://courts.ky.gov/courts/supreme/Rules\\_Procedures/201814.pdf](https://courts.ky.gov/courts/supreme/Rules_Procedures/201814.pdf).

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

Over 18,000 attorneys are licensed to practice in the state of Kentucky. It is vitally important that you keep the Kentucky Bar Association (KBA) informed of your correct mailing address. Pursuant to rule SCR 3.175, 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](mailto: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.



## Connecting Legal Professionals & Employers

**KBA Career Center will allow you to:**

- Post your job in front of our highly qualified members.
- Promote your jobs directly to candidates via the KBA eNews.
- Search the anonymous resume database to find qualified candidates.
- Manage your posted jobs and applicant activity easily on this user-friendly site.

# Chief Justice Minton says Judicial Branch is shaping the courts to meet needs of today's society in 2018 State of the Judiciary address

BY: LEIGH ANNE HIATT, ADMINISTRATIVE OFFICE OF THE COURTS

Chief Justice of Kentucky John D. Minton Jr. gave the legislature an update on Nov. 2, 2018, on how the Judicial Branch is improving court operations to meet the needs of the people it serves.

"I'm grateful when the legislature invites us to the table to tackle issues such as penal code and juvenile justice reform, enlists our help as it enacts new legislation, and provides adequate funding for court programs," he said. "We're stronger when we work together and the people of the commonwealth reap the benefits of our collaboration. That spirit of cooperation serves us well as we tap into the expertise of others to help us adapt to the changing legal and societal landscape."

These comments were part of the annual State of the Judiciary address before the General Assembly's Interim Joint Committee on Judiciary at the Louis D. Brandeis School of Law at the University of Louisville. The full address can be found at <https://courts.ky.gov/Documents/Newsroom/SOJ2018.pdf>.

## CIVIL JUSTICE REFORM INITIATIVE

Chief Justice Minton began by warning of a potential crisis in the country's civil justice system due to the cost, delay and complexity of litigation. "If we fail to change the way we operate, we run the risk of becoming obsolete – a risk that the legal profession must work to avoid," he said.

He is addressing those concerns by forming a Civil Justice Reform Commission, comprised of lawyers, judges and legislators, to recommend changes to the civil justice system. The commission's first recommendation is to develop a business courts pilot project that would hear complex commercial cases and business disputes to free up regular dockets and give these cases the attention they need.

## COURT EFFICIENCY COMMITTEE

"Our efforts on civil justice reform go hand in hand with our work to improve court efficiency" he said. He has created a Court Efficiency Committee of judges and circuit court clerks to look closely at court processes to see where to streamline operations.

## JUDICIAL REDISTRICTING

Chief Justice Minton said the judicial redistricting bill passed this year will provide relief to three Family

Courts in jurisdictions with the heaviest workloads, easing the burden on the existing Family Court judges in Lincoln, Pulaski and Rockcastle; Boone and Gallatin; and Bullitt counties. To allow for the creation of these new positions, the bill eliminated two District Court judgeships and one Circuit Court judgeship.

## PRETRIAL JUSTICE REFORM

He said the Kentucky Court of Justice is answering the growing call for pretrial justice reform by taking part in the Pretrial Justice Institute's 3DaysCount campaign, a national initiative to make pretrial justice safer, fairer and more effective by reducing the number of people in jail without sacrificing public safety. The program is based on the premise that even three days in jail can leave many people less likely to appear in court and more likely to commit new crimes because of the stress incarceration places on jobs, housing and family connections.

Kentucky's participation in 3DaysCount came about from the court system's Pretrial Bail Practices Committee, a group of 14 circuit and district judges who are evaluating the current risk assessment tool and recommending ways to improve pretrial practices and court rules.



Law School Dean Colin Crawford (left) poses with Chief Justice John D. Minton Jr. (center) and Kentucky Bar Association Executive Director John D. Meyers (right) after the State of the Judiciary address on Nov. 2, 2018, at the Louis D. Brandeis School of Law at the University of Louisville.

---

## **PRETRIAL ASSISTED RE-ENTRY & TREATMENT SERVICES PROGRAM**

Another pretrial innovation is a new pilot project in Jefferson County that's bringing a case management, service-oriented approach to the Monitored Conditional Release Program for defendants in Circuit Court.

"PARTS stands for the Pretrial Assisted Re-Entry & Treatment Services Program and will reduce the burgeoning jail population by allowing certain defendants to be released pending trial," Chief Justice Minton said. "Once released, defendants typically need help with substance use disorder and obtaining employment, housing and health insurance. Our goal is to give defendants the tools to become successful, productive members of society while ensuring they return to court and avoid future criminal activity."

He said he appreciates the circuit judges, commonwealth's attorney, public defender, Louisville Metro Department of Corrections and local treatment providers who are partnering with the court system on this important program.

## **OPEN FAMILY COURT PILOT PROJECT**

He also reported on the Open Family Court Pilot Project, which is opening some child protection cases to the public for the first time under a four-year program.

For two months this spring, judges in three jurisdictions – Hopkins; Jefferson; and Harrison, Nicholas, Pendleton and Robertson – opened their Family Courts to the public and the media for observation and evaluation. The results from the first phase are inconclusive regarding the benefits of opening Family Court proceedings, but the Department of Family & Juvenile Services will continue to collect information and report back annually for the remaining three years of the project.

## **JUVENILE JUSTICE REFORM**

Chief Justice Minton noted that four years into the implementation of juvenile justice reform, which passed as Senate Bill 200 in 2014, the Family Accountability, Intervention, and Response Teams continue to be effective in increasing the number of white young people avoiding formal court through diversion programs. However, the results are not as promising for minorities.

In response to the disproportionate and disparate outcomes for minority youth served by the juvenile justice system, the Department of Family & Juvenile Services has developed an agency model to reduce implicit bias and cultural collisions that may unintentionally contribute to disproportionate minority contact.

## **WINGS PROGRAM FOR ADULT GUARDIANSHIP**

Chief Justice Minton said that House Joint Resolution 33 passed in 2018 requested that the AOC and the Cabinet for Health and Family Services establish a WINGS Program. WINGS stands for Working Interdisciplinary Networks of Guardianship Stakeholders and is tasked with examining how adult guardianship is working for this fast-growing segment of the aging population.

WINGS brings together judges, the public and private bar, aging and disability networks, mental health agencies, advocacy groups, service providers and family members affected by guardianships. Their focus is to help the public navigate the complex system of services and laws that help aging parents and disabled children who will soon turn 18.

## **COURT TECHNOLOGY**

Chief Justice Minton said the court system is adopting new technology to improve its customer service by opening up eFiling to the public for small claims cases, sending text notifications to remind defendants to show up for court dates and offering payment plans online in a pilot project in Jefferson County.

## **AUDIT OF THE ADMINISTRATIVE OFFICE OF THE COURTS**

Chief Justice Minton said the Administrative Office of the Courts has contracted with Deloitte in response to the Kentucky Auditor of Public Accounts' recent audit of the AOC.

"We knew that we wanted to hire outside expertise to help shore up our internal controls in several areas and carry out the audit's recommendations," he said. "Deloitte has consulted on projects for the Kentucky Executive Branch and we're excited to partner with them on this project."

A team from Deloitte will be at the AOC for 12 weeks to develop an internal auditing function; document existing workflows related to travel reimbursements, inventory, county facility reimbursements and budget processes; and make recommendations about additional internal controls and technology related to the documented workflows.

"We want to use the audit as a catalyst for change by strengthening the AOC's financial and administrative operations and providing more transparency to the public," he said.

## **COURT FACILITY PROJECTS**

He said the AOC is working on several capital projects authorized by the legislature. These are an addition/renovation to courthouses in Henry and Oldham counties, new judicial centers in Bath and Nicholas counties, and the renovation of the lobby in the Jefferson County Hall of Justice.

Chief Justice Minton closed his remarks by noting that the hectic years as chief justice have contributed to his graying hair, but it's been worth the sacrifice.

"When I started this job 10 years ago, I could hardly have imagined the challenges we would face," he said. "I'm grateful for the 404 justices, judges and circuit clerks and 3,800 court employees who have jumped on board when we have repeatedly called for change. Together we're shaping the way the Judicial Branch meets the needs of today's society and there is no more worthy goal."

# The KBA Congratulates Its Newest Members



**DONNA GALLAGHER** from Greenup, Ky., poses with the Young Lawyers Division banner celebrating her status as a new attorney.

New attorneys received their oaths of office on Monday, October 22, in the chamber of the Supreme Court of Kentucky in the state Capitol in Frankfort. The Kentucky Bar Association (KBA) continued its tradition of honoring its newest members, their families and friends with a reception in their honor throughout the day at the Kentucky Bar Center. A total of 220 new attorneys were recommended for admittance to the practice of law following the July 2018 bar examination.



Bowling Green attorney, **CHRISTOPHER LEWIS**, poses with his family during the reception held at the Kentucky Bar Center.



After receiving his oath of office during the swearing-in ceremony at the Capitol, **DYLAN GORSKI**, center, from Monticello, Ky., visited the KBA with his father, Vincent Gorski and his mother, Sharon Sexton.



Lexington attorney **CARRIE O'CONNOR** and her children, Ainsley and Liam, take a quick picture together after enjoying the day's activities.



I found it on Casemaker

Casemaker?

Yes. Casemaker. You get it for free as a member of Kentucky Bar Association

Is it up to date?

They have editors adding cases and updating statutes and codes daily

What's their coverage?

All 50 states and Federal: cases, statutes, regs, the whole ball of wax

Is it easy to learn?

Super easy. Plus they have free webinars and support

How much again?

Free! Just login to [www.kybar.org](http://www.kybar.org) and click the Casemaker link

Comprehensive, Current and Free for members of the Kentucky Bar Association -  **Casemaker**



# Meditate on this

YVETTE HOURIGAN  
KYLAP DIRECTOR



In these last two editions of the Bench & Bar, we've explored the benefits of movement and mindfulness. In this third and final installment we address the third "M" of the trilogy: meditation. Even though terribly in vogue, a practice that would have buttoned-up lawyers levitating under the banyan tree may sound suspicious. That's not what we're talking about. Meditation is the process of focusing, calming, and soothing the mind thereby improving one's awareness, thinking, and ultimately their health.

Meditation isn't the same thing as mindfulness, although they're intertwined.

"Mindfulness and meditation are mirror-like reflections of each other: mindfulness supports and enriches meditation, while meditation nurtures and expands mindfulness. Where mindfulness can be applied to any situation throughout the day, meditation is usually practiced for a specific amount of time."<sup>1</sup>

Merriam-Webster defines meditation as follows:

## " INTRANSITIVE VERB

- 1: to engage in contemplation or reflection.
- 2: to engage in mental exercise (such as concentration on one's breathing or repetition of a mantra) for the purpose of reaching a heightened level of spiritual awareness. [Emphasis added]

## TRANSITIVE VERB

- 1: to focus one's thoughts on: reflect on or ponder over.
- 2: to plan or project in the mind: intend, purpose."<sup>2</sup>

In its truest yogic sense, it's a disciplining of the mind.

“Meditation is the process of quieting the mind in order to spend time in thought for relaxation or religious/spiritual purposes. The goal is to attain an inner state of awareness and intensify personal and spiritual growth. In practice, meditation involves concentrated focus on something such as a sound, image or feeling.”<sup>3</sup>

That’s what meditation is, but why do it and how does it work?

## WHY MEDITATE?

As lawyers, we think. We contemplate. We ruminate. We “focus on.” We are trained problem-solvers. What we don’t do, and what may not come naturally to us is contemplating and focusing our thoughts not on problem-solving, but on the present thing, and only one thing (for example, on our breath), with an actual goal of calming our mind—making it be still and quiet, and improving our well-being in the process. We don’t know how to internally self-soothe. Perhaps that’s why lawyers have such high rates of substance use disorder—our self-soothing is primarily external and not internal.

At its core, meditation is a disciplining and sharpening of the mind. Experientially, though, meditation is the mental equivalent of a nice big hug of our brain, or the “there, there” we unconsciously seek as we move through days filled with thoughts, feelings, or emotions that are either complex or troubling, or both. Our time is spent considering complex fact patterns and complex legal solutions, all typically wrapped around troubling circumstances. And even though we start with thoughts that are the equivalent of nice bright colors, after a while all of the complex thinking and spinning of the brain may cause the colors to blend. The colors (thoughts) fuse together and spin into a muddy brown with no clear-cut borders that are a bit of a mess.

The discipline of meditation allows us to tease the colors back

out of the muddled brown. It’s like running the mixing machine backwards. When we’ve calmed and soothed our brain with some focused breathing and relaxation, the colors are distinct again and we can solve complex problems more efficiently and effectively. Science proves this theory.

Through objective testing like MRIs and other brain scan tools, there is unequivocal evidence of structural differences and higher gray matter density in the lower brainstem of patients engaged in the long-term practice of meditation. Evidence has been published in multiple medical and scientific journals and is found on credible medical websites (Mayo Clinic, Johns Hopkins), that mindfulness and meditation literally change your brain. Meditators demonstrate superior performance on tests of self-regulation, resisting distractions and making correct answers more often than non-meditators. They also show more activity in the anterior cingulate cortex (ACC), which is a structure located inside the forehead, behind the frontal lobe.<sup>4</sup> Extensive practice involving sustained attention can lead to changes in brain structure.<sup>5</sup> Through studying the brains of Tibetan monks (research sanctioned by the Dalai Lama), scientists found that long-term practitioners had altered the structure and function of their brains.<sup>6</sup>

Meditation recently made headlines as helping the 12 young boys and their soccer coach stranded in a cave in Thailand for more than two weeks stay calm. Some credit the meditative practice led by their coach, a novice Buddhist monk, for keeping the boys alive through the experience.<sup>7</sup>

“[The coach] helped keep the boys breathing and emotionally balanced during the crisis, and also readied them for their hours-long treacherous escape guided by expert cave divers. In the process, he also gave them vital tools they needed—specifically, teaching them how to tap into their own tranquility and inner stillness. He taught them how to keep *themselves* calm; a minor but magnificent distinction.”<sup>8</sup>

These mental gymnastics may sound strange, but meditation is a *practice*, just like the *practice* of law. In both, we’re always learning and building upon existing knowledge. You just have to be willing to start—slowly at first, and then build upon that foundation.



## HOW TO MEDITATE

Mechanically, meditation is focus and breathing. Primary methods of meditation are Focused Attention (FA) and Open Monitoring (OM). Focused Attention



When the right  
players come  
together, it’ll be  
music to your ears.

WHEN FACING THE MUSIC of potential risks inherent to the legal profession, it helps to have the seasoned players at Lawyers Mutual by your side. We’ve been making beautiful music for Kentucky lawyers for 30 years – call us for a free quote today.

By Kentucky Lawyers. For Kentucky Lawyers.



Lawyers Mutual  
www.lmick.com

Waterfront Plaza | 323 West Main Street, Suite 600 | Louisville, KY 40202  
502.568.6100 | 800.800.6101 | LMICK.com

meditation is focusing on a chosen object in a sustained fashion. Open Monitoring meditation involves non-reactively monitoring the content of experience from moment-to-moment, primarily as a means to recognize the nature of emotional and cognitive patterns. These two types are often combined either in a single session or over the course of the practitioner's training.<sup>9</sup> Finding the focal point or method of focusing in order to free oneself from distraction may include sound, visualizing, gazing, and breathing.<sup>10</sup>

A good starting-point for a lawyer who wants to learn about the practices of mindfulness and meditation can be found in lawyer/meditator Jeena Cho's book, "The Anxious Lawyer: an 8-Week Guide to a Joyful and Satisfying Law Practice through Mindfulness and Meditation" (American Bar Association, 2016).<sup>11</sup> It is a step-by-step introduction of incorporating mindfulness and meditation into your daily regimen. Her website offers an eight-week online course.<sup>12</sup>

Cho is an author and practicing attorney in her own San Francisco law firm. She describes her own moment of clarity (her hair began falling out in clumps) when she realized her anxiety and stress levels were out of control. She was determined to find a way to reduce and manage her anxiety and stress-response that didn't include the Xanax and other benzodiazepines her doctors recommended. The result is a mindfulness and meditation practice prepared specifically for lawyers that instructs us how to incorporate both into our busy lives.

Even easier, download one of the many good meditation Apps like Insight timer, Calm, Headspace, or Happify, choose a guided meditation, and go. Pick short ones at first, and then move onto others as you're more comfortable. Five minutes can make a big difference in your thought processes. Try it before your next difficult conversation or meeting, or when you're facing a contentious hearing, or a day of depositions.

Meditation helps us make better complex decisions, which is precisely what we, as lawyers, are paid to do. We're paid to extricate our clients from complex problems. Any modality that improves our ability to do so should be immediately incorporated into our daily practice. Einstein said that we can't solve our problems from the level of thinking that we were at when we created them. Author Marianne Williamson says a different level of thinking doesn't mean just a different emphasis in our thinking, or a more loving kind of thinking. "It means what [Einstein] said, a different level of thinking, and, to me, that is what meditation is. Meditation changes us, as it returns us to our right mind."<sup>13</sup> [Emphasis added]. Our "right mind" is right where we need to be, as we navigate the complexities of managing law and life.

The selling point for many who practice meditation though, and what can benefit every lawyer who awakens at 3 a.m. in a panic over the possibility of a missed deadline, unreturned phone call, or upcoming trial is that it can help you sleep better. Meditation can help the one with difficulties falling asleep and also the one who

awakens in the middle of the night in returning to sleep. The Apps listed have specific guided meditations for getting to or returning to sleep. With guided focus of your thoughts on only one specific thing, your mind is able to relax and truly rest. Try it next time you bolt upright in bed at 3:17 a.m. The only thing you have to lose is a sleepless night.

## CONCLUSION

Well-being is multi-dimensional and physical, mental, emotional, and spiritual healths each play a role. Although reading ethical rules and acquiring continuing legal education credits are critical and mandatory pieces of the practice, being "fit" to practice is more than this. The voluntary and deliberate incorporation of exercise, mindfulness and meditation (the lifestyle practices) are the ones that can move the needle from so-so to great. They're no substitute for medical care if you're struggling with depression, substances, or another medical issue. But if your anxiety and stress levels are more uncomfortable than disabling, you can improve your situation by taking simple steps. Through these disciplines you'll also decrease the impact of stress on your body, manage anxiety better, lower your blood pressure, and make smarter and more efficient complex decisions. You may even find serenity. "Serenity is not freedom from the storm, it is peace amid the storm."<sup>14</sup>

## ABOUT THE AUTHOR

**YVETTE HOURIGAN** is the director of the Kentucky Lawyer Assistance Program (KYLAP). KYLAP provides assistance to all Kentucky law students, lawyers and judges with mental health issues and impairments including depression, substance or alcohol addictions, process addictions and chronic anxiety disorders. Hourigan is a graduate of the University of Kentucky College of Law, and practiced in all areas of civil litigation in Lexington before she was appointed as the KYLAP director.

Hourigan is credentialed as a certified employee assistance professional and an adult peer support specialist. She is a member of the ABA Commission on Lawyer Assistance Programs, chair of the ABA/COLAP Diversity & Inclusion Committee, and a member of the National Task Force on Lawyer Well-Being.

In 2014, she was awarded the Dave Nee Foundation's Uncommon Counselor Award which is given to a member of the legal profession who exhibits "extraordinary compassion and concern for co-workers, family, friends, and community." You may contact her at [yhourigan@kylap.org](mailto:yhourigan@kylap.org) and (502) 226-9373.



## ENDNOTES

1. <http://www.oprah.com/own-super-soul-sunday/is-there-a-difference-between-mindfulness-and-meditation-video>.
2. <https://www.merriam-webster.com/dictionary/meditate>.
3. <https://www.yogapedia.com/definition/4949/meditation>.
4. *Id.*
5. Bjarkam, Carsten R., Stubberup, Michael, Bertelsen, Jes, and Roepstorff, Andreas, "Long-term meditation is associated with increased gray matter density in the brain stem," *NeuroReport*, Vol. 20, No. 2, 2009, pp. 170-174.
6. *Id.*
7. <https://www.businessinsider.com/thai-cave-rescue-meditation-helped-keep-boys-alive-2018-7>.
8. [https://www.washingtonpost.com/news/inspired-life/wp/2018/07/11/thai-soccer-coach-meditated-with-boys-to-calm-them-in-the-cave-we-can-all-learn-from-them/?noredirect=on&utm\\_term=.e670023f0910](https://www.washingtonpost.com/news/inspired-life/wp/2018/07/11/thai-soccer-coach-meditated-with-boys-to-calm-them-in-the-cave-we-can-all-learn-from-them/?noredirect=on&utm_term=.e670023f0910).
9. Davidson, Richard J., and Lutz, Antoine, "Buddha's Brain: Neuroplasticity and Meditation," NIH Public Access Author Manuscript, published and edited form as: *IEEE Signal Process Mag.* 2008 January 1; 25(1): 176-174.
10. <https://www.yogapedia.com/definition/4949/meditation>.
11. Cho, Jeena, and Karen Gifford. *The Anxious Lawyer: an 8-Week Guide to a Joyful and Satisfying Law Practice through Mindfulness and Meditation*. American Bar Association, 2016.
12. [www.theanxiouslawyer.com](http://www.theanxiouslawyer.com).
13. [https://www.huffingtonpost.com/entry/mindfulness-meditation-whats-the-difference\\_us\\_5910c245e4b056aa2363d7e6](https://www.huffingtonpost.com/entry/mindfulness-meditation-whats-the-difference_us_5910c245e4b056aa2363d7e6). Accessed April 13, 2018.
14. S.A. Jefferson-Wright.



*A special thank you to*  
**Asa P. "Pete" Gullett III**  
*for his time and generosity!!*

The KYLAP Foundation expresses its sincere thanks to Lawyers Mutual Insurance Company of Kentucky and its Board of Directors for their generosity in naming the KYLAP Foundation as the beneficiary of all retirement gifts donated in celebration of the retirement of LMICK's CEO and chair of the KYLAP Commission, Asa P. "Pete" Gullett III.

**Nearly \$20,000 dollars was donated to the KYLAP Foundation in honor of Pete's service to LMICK.**

These donations, by lawyers and for lawyers, will be used exclusively to fund forgivable loans to Kentucky's lawyers who need financial assistance for the medical treatment of impairment issues.

For more information about the KYLAP Foundation, Inc., visit our website at [www.kylap.org/foundation](http://www.kylap.org/foundation).

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



is a website operated by Amazon with the same products, prices, and shopping features as Amazon.com.

The difference is that when you shop on AmazonSmile, the AmazonSmile Foundation will donate 0.5% of the purchase price of eligible products to the Kentucky Lawyer Assistance Program, Foundation, Inc., when you make it the charitable organization of your choice.

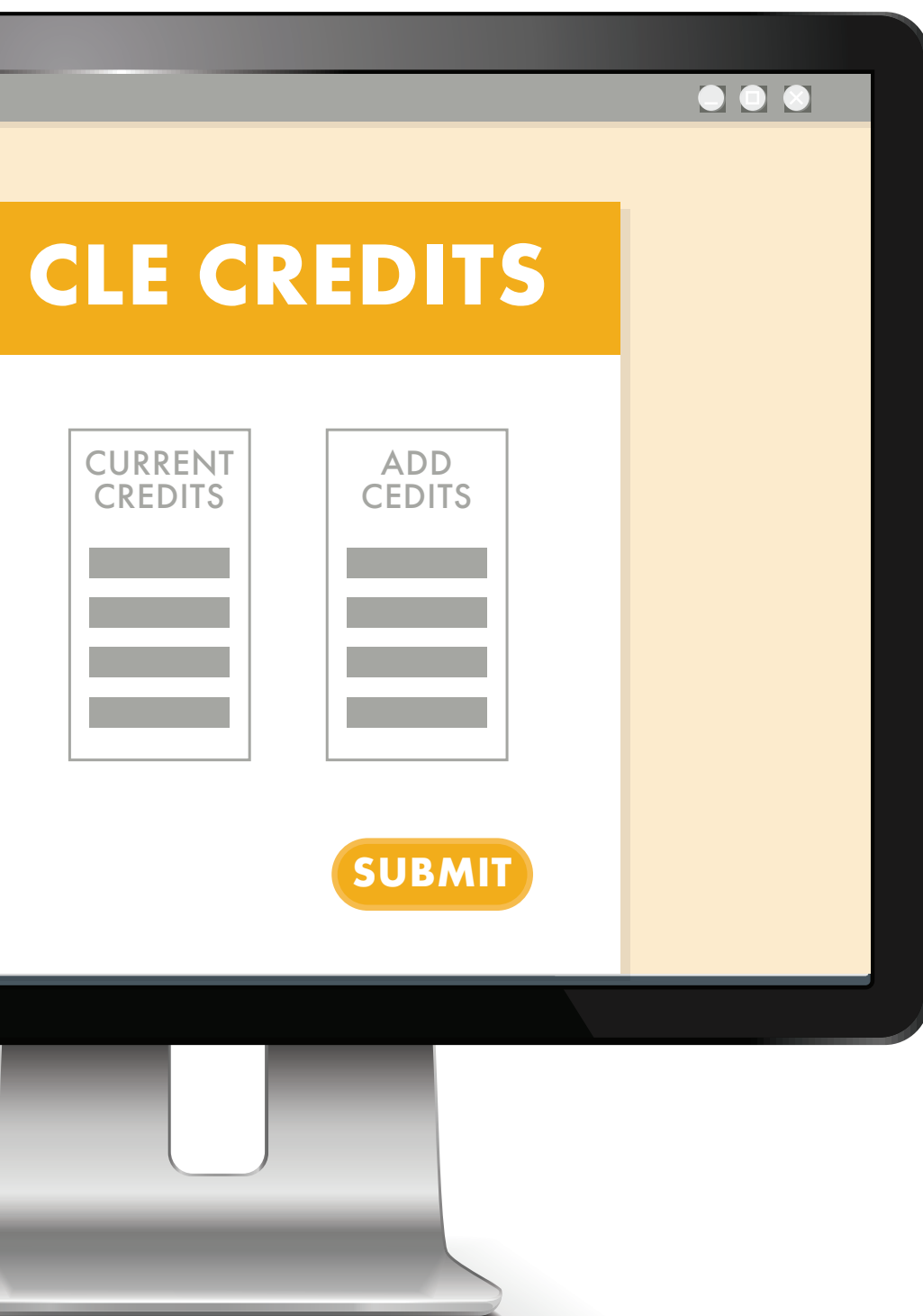
**Visit [www.amazon.com/smile](http://www.amazon.com/smile), select Kentucky Lawyer Assistance Program Foundation, Inc., and start shopping now!**

*"AmazonSmile and the AmazonSmile logo are trademarks of Amazon.com, Inc. or its affiliates."*



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

call: (502) 226-9373  
email: [yhourigan@kylap.org](mailto:yhourigan@kylap.org)



## WHAT CLE NERDS DREAM ABOUT...

### New, Interactive CLE Portal Available Now

Wouldn't it be easy if you could just enter your own CLE credits into your own record and see it update right away? What about applying for accreditation online with a form that automatically charges the correct application fee and allows for online payment? Have you ever printed off one of our forms and then wished you could just fill it out and submit it instead of completing it, scanning it and emailing or mailing it to us? What about paying for extensions? Wouldn't it be great to just pay those fees online and move on with life? Even just looking for information, wouldn't it be fantastic if you could look up your CLE profile and see clearly, without question, whether or not you have met your requirement? I mean, if someone would do the math AND tell you "yes" you are compliant or "no" you are not compliant, wouldn't that be better and easier?

Well, it is not a dream. We in CLE have been hard at work to improve and update our technology and processes to bring you an easier, more dynamic CLE portal. We have been and will continue to send out information on how to navigate the portal, but it is intuitive and you should check it out!

Visit <https://www.kybar.org/page/CLE> for more information and to view the new portal.



## 2017-2018 CLE COMMISSION MEMBERS

**Jason F. Darnall, Chair**  
First District Representative  
jason@bedlaw.com

**Frank Hampton Moore III**  
Second District Representative  
mooreiii@coleandmoore.com

**Graham C. Trimble**  
Third District Representative  
gtrimblelaw@gmail.com

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

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

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

**Leigh Gross Latherow**  
Seventh District Representative  
llatherow@vanattys.com

**Justice Laurance B. VanMeter**  
Supreme Court Liaison

**The 2017-18 CLE Commission:** Back Row: **Mary Beth Cutter**, Director for CLE; **J. Tanner Watkins** of Louisville (4<sup>th</sup> S.Ct. District); **David B. Sloan** of Covington (6<sup>th</sup> S.Ct. District); **Graham C. Trimble** of Corbin (3<sup>rd</sup> S.Ct. District); **F. Hampton Moore III** of Bowling Green (2<sup>nd</sup> S.Ct. District); **Leigh Gross Latherow** of Ashland (7<sup>th</sup> S.Ct. District); **Jason F. Darnall** of Benton, Chair (1<sup>st</sup> S.Ct. District) and **LaToi D. Mayo** of Lexington (5<sup>th</sup> S.Ct. District). Not pictured: **Justice Laurance B. VanMeter** of Lexington (Supreme Court Liaison).

INTERESTED IN ASSISTING WITH A CLE? HAVE IDEAS FOR A PROGRAM? Contact Mary Beth Cutter, KBA Director for CLE at [mcutter@kybar.org](mailto:mcutter@kybar.org), or any member of the Continuing Legal Education Commission.

## 2019 New Lawyer Program

Essential Fundamentals for the Professional and Ethical Practice of Law

### Save the Date

The KBA's next New Lawyer Program—scheduled for Feb. 5 & 6, 2019—will be held at the Northern Kentucky Convention Center, which is located in downtown Covington.

All newly admitted members of the Kentucky Bar Association are required to complete the New Lawyer Program within 12 months of admission, unless they have practiced in another jurisdiction for a minimum of five years and apply for an exemption.

Note: The program is only offered twice a year, once in the winter and again in June. This is the first offering of the program for the 2019 calendar year. The program is offered free of charge for attorneys seeking to fulfill their New Lawyer Program requirements, pursuant to SCR 3.640.

For more information regarding online registration, hotel booking options and the agenda visit the KBA Website at [www.kybar.org](http://www.kybar.org) and select the “CLE” tab then “New Lawyer Program.”

For questions about the program or your completion deadline, contact Sonja Blackburn at (502) 564-3795, ext. 226 or [sblackburn@kybar.org](mailto:sblackburn@kybar.org).

## 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.

# Thank You to Our Major Donors



**KBF**  
Kentucky Bar Foundation

The Kentucky Bar Foundation (KBF), the nonprofit, charitable arm of Kentucky's legal community, thanks all members of the Partners for Justice Society. These donors have helped the KBF award more than \$3.5 million in grants that have supported over 160 law-related programs and projects since 1988. Through the KBF, these generous donors have positively affected the lives of many citizens of our Commonwealth and furthered the administration of justice through programs that include:

- educating the public about law and the justice system
- helping at-risk children
- providing funding to assist abused women and children
- preserving legal history
- assisting veterans with legal problems by funding clinics offering free legal services
- providing funding to educate high school seniors about the abuse of credit

## JOIN THE PARTNERS FOR JUSTICE SOCIETY

You or your firm may join the Kentucky Bar Foundation's Partners for Justice Society by making a major gift to help the Foundation continue its mission of furthering the public's understanding of the judicial system and the legal profession through programs and philanthropic partnerships that help those in need. All gifts help support grants to agencies providing access to justice and law-related education throughout the state. There are five levels of giving and gifts may be made in a single payment or in installments over five years. All new Partners for Justice Society members will be honored at the Bar Foundation's Annual Luncheon during the KBA Convention in June.

For more information, contact KBF Executive Director  
Guion Johnstone at (800) 874-6582 or [gjohnstone@kybar.org](mailto:gjohnstone@kybar.org).

*Correction: KBF Fellow Susan Andrews attended Southwestern Law School. The previous edition incorrectly stated that she attended Southwestern University College of Law.*

# Partners For Justice Society

## \$75,000 KENTUCKY SUPREME COURT CIRCLE

Baird & Baird, P.S.C.	Frost Brown Todd LLC
Bingham Greenebaum Doll LLP	R. Harvey Johnston III and Sarah Johnston
William S. Cooper	

## \$50,000 CHIEF JUSTICE FRED VINSON CIRCLE

National Insurance Agency, Inc.
Stoll Keenon Ogden PLLC

## \$25,000 SENATOR HENRY CLAY CIRCLE

F. Thomas Conway	H. Harris Pepper, Jr. and Stephanie Pepper
English, Lucas, Priest & Owsley, LLP	Kenneth L. Sales
Todd S. Horstmeyer	Stites & Harbison PLLC
Landrum & Shouse, LLP	William T. Warner
Meredith L. Lawrence	Wyatt, Tarrant & Combs, LLP
John S. Palmore, Jr.	Wilbert L. Ziegler

## \$10,000 JUSTICE JOHN MARSHALL HARLAN CIRCLE

Glenn E. Acree	The Lawrence Firm, PSC
Kathryn Ross Arterberry	Lawyers Mutual Insurance Co. of Kentucky
Bowles Rice McDavid Graff & Love LLP	McBrayer, McGinnis, Leslie & Kirkland, PLLC
Bowling Green-Warren County Bar Association	O'Bryan, Brown & Toner, PLLC
Central Bank & Trust Co.	O'Hara, Ruberg, Taylor, Sloan and Sergent
Thomas M. Cooper	Eugene B. Pflughaupt
Jerry J. Cox	Wm. T. (Bill) and Joan Robinson III
DeCamillis & Mattingly, PLLC	Joseph D. Satterley
Dressman Benzinger LaVelle psc	John W. Stevenson
Elliott, Houlihan & Skidmore, LLP	Sturgill, Turner, Barker & Moloney, PLLC
Fifth Third Bank	Laurance B. VanMeter
Norman and Carole Harned	Wolnitzek, Rowekamp & DeMarcus, P.S.C.
Law Office of Richard Hay	
Hilliard Lyons	
Kerrick Bachert PSC	

## \$5,000 VICE PRESIDENT ALBEN WILLIAM BARKLEY CIRCLE

William M. Arvin, Sr.	Denton & Keuler, LLP	John R. Martin, Jr.	David A. Schneider
Baker, Kriz, Jenkins, Prewitt & Jones, P.S.C.	Francis, Kendrick & Francis	McCoy, West & Franklin	Gary J. Sergent
A. Stuart Bennett and Anita M. Britton	Fulton, Hubbard & Hubbard	McCracken County Bar Association	Sewell, O'Brien & Neal, PLLC
Bertram, Cox & Miller, LLP	Chadwick N. Gardner	Mickey McGuire	Erwin A. Sherman
John A. Bonar and Barbara D. Bonar	Graydon Head & Ritchey LLP	John G. McNeill	Taylor, Keller & Oswald, PLLC
David F. Broderick	W. B. Griffin & Son	George E. Meng	Thompson, Simons, Dunlap and Fore, P.S.C.
Cole & Moore, P.S.C.	Henry Watz Gardner & Sellars, PLLC	W. Douglas Myers and Jan Myers	Tooms & Dunaway, PLLC
A. V. Conway II	Sheila P. Hiestand	Eileen M. O'Brien	True Guarnieri Ayer, LLP
Bruce K. Davis	John Earl Hunt	Parry, Deering, Futscher & Sparks, P.S.C.	Washburn Key & Lowry PLLC
Larry C. Deener	Lawrence L. Jones II and Allison Emerson Jones	Hans G. Poppe, Jr.	Webb, Hoskins, Brown & Thompson, P.S.C.
DelCotto Law Group PLLC	J. Warren Keller	Marcia Milby Ridings	Whitlow, Roberts, Houston & Straub, PLLC
	Kinthead & Stilz, PLLC		Natalie S. Wilson

# In Memoriam

**A**s 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](mailto:sroberts@kybar.org).**

NAME	CITY	STATE	DATE DECEASED
Cletus Edward Amlung	Louisville	KY	August 9, 2018
Richard F. Casey	Louisville	KY	May 29, 2018
Joseph Martin Day	Louisville	KY	July 19, 2018
Joseph Raymond Gillespie	Louisville	KY	September 22, 2018
John V. Hanley	Louisville	KY	September 3, 2018
James W. Hengelbrok	Cincinnati	OH	November 19, 2017
Dennis E. Kurtz	Louisville	KY	March 9, 2018
Jane Davis Lollis	Louisville	KY	December 5, 2017
Robert Allen Miller	Brandenburg	KY	September 17, 2018
Guy Earl Millward Jr.	Barbourville	KY	May 7, 2018
Benjamin Hume Morris II	Anchorage	KY	March 27, 2018
Henry L. Rosenthal Jr	Winchester	KY	August 8, 2018
Jeffrey Barry Segal	Louisville	KY	September 1, 2018
Steven Lewis Story	Pomeroy	OH	June 16, 2018
Harry B. Troutman	Louisville	KY	September 1, 2018
Michael Coleman White	Louisville	KY	August 31, 2018

## CIRCUIT COURT JUDGE ROBERT ALLEN MILLER

died peacefully on Sept. 17, 2018. Judge Miller was the Division 2 Circuit Court Judge for the 46th Judicial Circuit comprising of Breckinridge, Grayson and Meade counties. He served in that position from 1999 until his death in September. Judge Miller was born on Jan. 9, 1954, and lived in Brandenburg, Ky., his entire life. He was valedictorian of his Meade County High School graduating class. He attended Centre College and graduated from the University of Kentucky College of Law. After law school, he returned to Brandenburg and began his career as an attorney for the late Wade F. Richardson. After Mr. Richardson passed away, Judge Miller took over that law practice and also was elected the County Attorney in Meade County in 1986. Judge Miller also served as the Brandenburg City Attorney for many years. Judge Miller is survived by his beloved children, Emily Miller, Allyn Miller, and Matthew Miller.



Judge Miller hired me, Darren Sipes, to work for his law firm in 1994 and I was his assistant in the Meade County Attorney's office until he became Circuit Court Judge in 1999. He and I were very close friends since 1994 and he was my mentor not only in my law practice, but life as well.

*This memoriam was written and submitted by Darren Sipes.*

**HENRY LEE ROSENTHAL, JR.**, known to his friends as Bussie or Buzzy, age 75, passed away peacefully on Aug. 8, 2018, at Clark Regional Medical Center. Bussie was born on Aug. 5, 1943, in Winchester, Ky., to Henry Lee Rosenthal, Sr., and Ada (Boone) Rosenthal. He was a graduate of Clark County High School, the University of Kentucky, and the University of Kentucky College of Law. Bussie practiced law in Winchester for 48 years. For at least 35 of those years he was the attorney for the Clark County Board of Education. He also represented the Planning and Zoning Committee and was instrumental in building the new Clark County Public Library. Bussie is survived by his wife of 46 years Pat; daughter Melissa (Jim) Lintner; son Lee (Cassidy) Rosenthal; grandchildren, Emmalee Lintner, Hallie Lintner, Will Lintner, Hope Lintner, Lydia Rosenthal, Webb Rosenthal, and Elliott Rosenthal; mother Ada Rosenthal; brother Vincent (Zella) Rosenthal; brother-in-law Richard (Kim) Webb; and nieces Andra (Travis) Sewalls and children Harper and Connley and Sarah Beth (Alex) Smith and daughter Vivian.

*The preceding memoriam for Henry Lee Rosenthal, Jr., is based upon information obtained from the Lexington Herald Leader, which published the obituary on Aug. 10, 2018. To access the obituary in its entirety, visit: <https://www.legacy.com/obituaries/kentucky/obituary.aspx?n=henry-lee-rosenthal&pid=189866815&fbid=20568>.*



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](mailto: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.



**Palmer "Gene" Vance II**, a partner with **Stoll Keenon Ogden PLLC ("SKO")** has officially accepted 'the gavel' as the 2018-19 Chair of the American Bar Association Section of Litigation. In this role, Vance leads the nearly 50,000 litigators, judges and arbitrators who comprise the largest section of the ABA. Vance's initiatives as chair include focusing on delivering

member benefits to solo and small firm litigators, continuation of the section's Children's Rights Litigation Committee, and improving lawyer well-being through its Mental Health & Wellness Task Force. During Vance's term, the section will host its second LGBT Forum focusing on issues relating to the community and LGBT litigators, as well as the Professional Success Summit, a conference focusing on networking and advancement for racially and ethnically diverse litigators. He will also stress the group's commitment to diversity and inclusion as reflected in its sponsorship of the ABA Initiative on Achieving Long Term Careers for Women in Law and the Judicial Intern Opportunity Program designed to place diverse law students with judges for summer clerkships.

**Fowler Bell PLLC** is pleased to announce that **Jamie L. Collins** has joined the law firm as an associate in the firm's workers' compensation, litigation, and commercial & business law groups, with a focus on workers' compensation. He specializes in evaluating, litigating, and settling workers' compensation claims, medical disputes and subrogation matters for employers and their insurers. Collins holds a B.S. in finance from Thomas More College. He received his J.D. from Northern Kentucky University's Salmon P. Chase College of Law.



**Wyatt, Tarrant & Combs, LLP**, is pleased to announce that **Jordan White** is the recipient of the 2018 Wesleyan Alumni Association Outstanding Young Graduate Award. He was honored at the Alumni Hall of Fame and Awards Reception & Dinner. The Outstanding Young Graduate Award is presented to a graduate of Kentucky Wesleyan College who, within the past 10 years, has distinguished him/herself through professional or personal achievement and has displayed outstanding leadership in their profession and community. White is a member of the firm's litigation & dispute resolution and labor & employment service teams. He focuses his practice on complex commercial disputes, creditors' rights litigation, products liability law and labor and employment issues. He received his J.D., *magna cum laude*, from the University of Louisville Brandeis School of Law and his B.S., *summa cum laude*, in 2012 from Kentucky Wesleyan College.

**Phillips Parker Orberon & Arnett, PLC**, is pleased to announce that **Noelle B. Haegele** has joined the firm as an associate. Haegele received her B.S. in nursing from Indiana University Southeast in 1995 and obtained her J.D. from the University of Louisville in 2010. She will focus her practice primarily on civil litigation defense.

**Strauss Troy** congratulates attorney **Liz Reeder** on winning the 2018 Next Generation Leader Award in the Legal Services category. The award, presented by Northern Kentucky Young Professionals (formerly LEGACY), salutes the region's young professionals under the age of 40 for significant accomplishments in their chosen professional field, demonstrated leadership, as well as their contribution to the community. Reeder has also been named a Business Law Fellow by the American Bar Association. Reeder was selected for the Fellows Program based on her substantive experience in business law and history of leadership opportunities in various bar associations. She is one of only 20 attorneys nationwide

selected for the two-year program, which was created by the ABA to provide a springboard to leadership opportunities and develop future leaders of the section. She focuses her practice on business law, counseling individuals and businesses from start-ups to established, regional companies.

Blue Grass Community Foundation has selected **Stites & Harbison, PLLC**, attorney **Richard Wehrle** as a member of its board of directors. Blue Grass Community Foundation is a public charity managed by a volunteer board and led by professionals experienced in local philanthropy. The foundation's mission is to enhance the quality of life in Central and Appalachia Kentucky through philanthropy and civic engagement. Wehrle is a member (partner) of Stites & Harbison based in the Lexington office. He is the chair of the trusts & estate planning service group. His practice focuses on trusts and estate administration, estate planning and charitable giving, charitable and nonprofit organizations, estate and gift taxes, probate and fiduciary law.



**Embry Merritt Shaffar Womack, PLLC**, is delighted to announce the addition of **Martha J. Griffin** to its growing practice. Griffin joins the firm as of counsel in the Lexington office. She will be concentrating in the areas of estate planning, business succession planning, probate, and trust administration. She

received her LL.M. in taxation from New York University, her J.D. from the Benjamin N. Cardozo School of Law and her B.A. in English from the University of Kentucky. She is admitted to practice in Kentucky, Florida and New York and previously practiced at Stroock & Stroock & Lavan, LLP, in New York.

**Wyatt, Tarrant & Combs, LLP**, is pleased to welcome **Timothy A. Schenk** to its Louisville office. Schenk joins the firm from Limestone Bank (formerly PBI Bank) where he served

as senior vice president of litigation. With a unique background as a trial lawyer and banker, he will focus his legal practice in the areas of loan workouts, banking regulatory compliance and governance, and commercial litigation. Schenk earned his J.D. from the University of Kentucky College of Law and his B.A., *summa cum laude*, from the University of Kentucky.



**Sturgill, Turner, Barker & Moloney, PLLC**, is pleased to announce that **Lauren Parsons**, the firm's director of marketing and client relations, has been selected to serve as director of outreach for the Legal Marketing Association's (LMA) Southeast Region Board of Directors. The Legal Marketing Association has more than 4,000 members in 33 countries divided into eight regions. The Southeast Region of LMA serves over 500 members in nine states: Alabama, Arkansas, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee. Parsons has been a member of LMA since she joined Sturgill Turner seven years ago, has served on LMA's Kentucky Chapter Board of Directors for the past several years, and currently serves as chair of the LMA Kentucky Chapter.

**Dinsmore & Shohl LLP's Jeremy Rogers** has received the Scripps Howard First Amendment Center's James Madison Award for outstanding service to the First Amendment. The Madison Award recognizes someone who has worked in one or more of these areas: open government and open records; promotion of the watchdog role of the press; defense against government or private censorship; or robust debate in the marketplace of ideas. It honors a long-term commitment to preservation or expansion of freedom of the press and/or freedom of speech. Rogers is a partner and trial attorney in Dinsmore's litigation department with experience representing



**Credentialed**  
**Flemingsburg, Lexington,**  
**Louisville, Maysville, & Richmond**  
**1.866.287.9604**  
**www.baldwincpas.com**

**Supporting Kentucky's Busy Lawyers**  
**Litigation/Valuation/Forensic Accounting**



**Chris Hatcher**  
CPA/CFF, CFE, CVA, CGMA



**Billy Upchurch**  
CPA/ABV/CFF, CFE, CVA

media outlets and numerous other clients in defamation, privacy and other First Amendment-related cases, as well as access-to-information cases.

**Diana L. Skaggs + Partners, PLLC**, is pleased to announce that **Emily T. Cecconi** has joined the firm as an associate attorney, practicing divorce and family law. Cecconi received her B.A. from Bellarmine University, *cum laude*, and her J.D. from the University of Kentucky College of Law, *cum laude*, where she served on the Kentucky Law Journal. While working toward her J.D. Cecconi served as a certified legal intern with the University of Kentucky College of Law Legal Clinic, where she used a limited license to advise, counsel, and represent indigent clients in a variety of civil legal matters, including divorce.



Attorney **Stephanie R. Rivas** recently was hired on at **Isaacs & Isaacs, PSC**, and concentrates her practice in representing individuals who have been injured from an automobile accident or a serious trucking accident.

**Stoll Keenon Ogden PLLC (“SKO”)** is pleased to announce **Thomas E. Rutledge** has been named the 2018 recipient of the Martin I. Lubaroff Award by the American Bar Association’s Section of Business Law LLCs, Partnerships and Unincorporated Entities Committee. The award, considered to be the highest honor that a business entity attorney can receive, was formally presented to Rutledge at the 2018 LLC Institute. Rutledge is an active member of the ABA’s Business Law Section. He has served as chair of the Committee on LLCs, Partnerships and Unincorporated Entities, which oversees the development of the laws governing limited liability companies, partnerships, limited partnerships, statutory trusts, and other unincorporated entities throughout the United States. He also serves on the Publications Board and is a member of the select (26 members nationwide) Committee on Corporate Laws. Rutledge’s knowledge of business organization law enables him to advise clients regarding all aspects of entity organization. He earned his J.D. from the University of Kentucky College of Law, studied medieval history at Notre Dame, and earned his B.A. from the University of St. Louis. He serves as an adjunct professor at the University of Kentucky College of Law, and is a Fellow of the University of Louisville Louis D. Brandeis School of Law.



Fastest smartest malpractice insurance. Period.

800.906.9654  
GilsbarPRO.com

**Embry Merritt Shaffar Womack, PLLC**, is excited to announce the addition of **Gentry Collins** to its growing practice. Collins joins the firm as an associate in the Lexington office. She will be concentrating in the areas of estate planning, probate, and trust administration. She received her J.D. from the University of Kentucky College of Law and her B.S. in accountancy from the University of Kentucky Gatton College of Business.



**Adams, Stepner, Woltermann & Dusing, PLLC**, is pleased to announce that **Corey T. Gamm** has joined the firm as an associate attorney. Admitted to the Kentucky Bar in 2010, Gamm practices in the areas of civil litigation and business transactions. He represents clients in all types of civil litigation, including creditor's rights, contract disputes, foreclosures, personal

injury and probate. He represents clients in business formations, acquisitions, private placements, real estate development, and contract negotiation. He received his B.A. degree in marketing from Northern Kentucky University, *cum laude*, and he graduated from the University of Kentucky College of Law with a J.D. in 2010, *cum laude*. He served as a law clerk for the Honorable Edward B. Atkins, U.S. Magistrate Judge, and was an Assistant Commonwealth's Attorney and Assistant County Attorney from 2014 – 2018.

**Green Chesnut & Hughes** is pleased to announce that **Jacqueline Nelson Graves** has joined the firm, practicing primarily in insurance defense litigation. Graves is a graduate of Campbellsville University and the University of Kentucky College of Law. Prior to joining the firm, Jacqueline interned for Kentucky Court of Appeals Judge Glenn Acree and worked at another insurance defense firm. During law school, she was a member of the Intrastate Trial Team, Kentucky Journal of Equine, Agriculture & Natural Resources Law, participated in the Legal Clinic and served as outreach coordinator for StreetLaw. Graves is a member of the Kentucky Bar Association, Fayette County Bar Association, Kentucky Defense Counsel, Claims and Litigation Management Alliance and the Central Kentucky American Inns of Court.

**Ziegler & Schneider P.S.C.** is pleased to announce that **Daniel A. Hunt** has recently been named its newest partner, effective July 1, 2018. Hunt obtained his B.A. in political science from the University of Louisville and his J.D. from Salmon P. Chase College of Law, *summa*



*cum laude*. Hunt started his legal career as an attorney with the firm in 2010. His respective areas of practice are business, corporate, and general litigation. He is admitted to practice in Kentucky and Ohio and is also a member of the Kentucky, Ohio, and Northern Kentucky Bar associations.



**Stites & Harbison, PLLC**, welcomes attorney **Dallas Selvy** to the Louisville office. Selvy joins the business litigation service group. Her practice is focused on civil litigation. Prior to joining the firm, she served as a staff attorney for the Honorable Irv Maze at the Kentucky Court of Appeals, where she also interned and externed during law school. She graduated *magna cum laude* from the University of Louisville Louis D. Brandeis School of Law in 2016. While in law school, Selvy was executive editor of the University of Louisville Law Review. Immediately following law school, she served as an Equal Justice Works AmeriCorps Veterans Law Fellow at the Legal Aid Society where she represented indigent veterans in an array of civil law actions.

The Cincinnati law firm of **Keating Muething & Klekamp PLL** is pleased to announce that it has elected **Ross J. Bextermueller** as a new partner. Bextermueller practices in the firm's business representation & transactions group. Bextermueller has experience advising public and private companies and private equity firms in all aspects of mergers and acquisitions. Bextermueller also has experience with corporate governance matters, joint-ventures, spin-offs, and venture capital investments as well as advising clients on import and export regulations and economic sanctions affecting international commercial activity. Bextermueller earned his M.B.A. from Saint Louis University in 2008 and his B.S. from Saint Louis University, *summa cum laude*, in 2006. He earned his J.D. from the University of Cincinnati College of Law, *cum laude*, in 2011.

## Your Complete Resource For Medical Cases

Gina I. Rogers, RN, BSN, LNCC

Medical Review Consulting, LLC provides litigation support for both the plaintiff and defense, from initial case-screening to locating experts to assisting with discovery and trial.

### Services Provided

- Analyze/Organize Medical Records
- Locate Board Certified Physician Experts
- Locate Nursing Experts
- Timelines/Chronologies
- Coordinate Case Development



**Medical Review Consulting, LLC**

Medical Consulting for the Legal Profession

Toll Free 1.866.542.8285 • [www.MedicalReviewConsulting.com](http://www.MedicalReviewConsulting.com)



Attorney **Paul Chumbley** was recently hired on at **Isaacs & Isaacs, PSC**. Chumbley was born and raised in Louisville, Ky., and recently became a member of the National Trial Lawyers Top 40 Under 40 Civil Plaintiff Attorneys for the state of Kentucky.



**Sturgill, Turner, Barker & Moloney, PLLC**, is proud to announce that attorney **Stephanie M. Wurdock** has been appointed the second vice-chair of the DRI Young Lawyers Committee for the 2018-2019 term, effective Oct. 20, 2018. Wurdock's past leadership roles with DRI include: co-vice-chair of the Public Service Subcommittee, DRI Philanthropic Committee (2017); co-chair of Membership, Young Lawyers Steering Committee (2017-2018); Young Lawyers Steering Committee, co-chair of Activities (2016-2017); and Young Lawyers Steering Committee, co-vice chair of Activities (2015-2016).

**Fisher Phillips**, a national labor and employment law firm representing employers, announces the addition of **Paul E. Goatley** as an associate in its Louisville office. Prior to joining Fisher Phillips, Goatley was an attorney at Littler Mendelson in its San Francisco, Calif., office, where he focused exclusively on labor and employment matters. Previously, he worked full-time for the Association of Corporate Counsel in Washington, D.C. There, Goatley developed practical resources and advocated on behalf of in-house counsel worldwide. Goatley earned his law degree from the American University, Washington College of Law and his undergraduate degree from the University of Louisville.

**Donald Mallory** joins **Wood + Lamping LLP** as an attorney focusing on insolvency, debtors' and creditors' rights with a focus on credit union representation, bankruptcy reorganizations, out-of-court workouts, financial and organizational corporate restructurings, complex litigation, and general business matters. Holding a J.D. from Northern Kentucky University's Chase College of Law, Mallory has nearly 20 years of experience representing debtors, secured lenders, trustees, and trade creditors in bankruptcy and insolvency-related litigation. He has also negotiated and drafted complex contracts, loan documents, and settlement agreements as well as provided proactive legal advice relating to corporate law and litigation. Mallory has appeared and argued extensively in federal and state courts throughout the United States.



The University of Kentucky recently named **Stites & Harbison, PLLC**, attorney **David Ratterman** as the recipient of the Department of Civil Engineering's Construction Management Founders Society (CMFS) Lifetime Achievement Award in a ceremony held on September 8. The CMFS Lifetime Achievement Award was established in 1993. The award

recognizes Kentuckians who have made significant contributions to the construction engineering profession. Honorees possess and exhibit outstanding ability, integrity and lifetime accomplishment in the construction industry. Ratterman is a senior member (partner) of Stites & Harbison in the construction service group. His practice focuses on general construction law, with particular emphasis on the fabricated structural steel industry. Ratterman received a B.S. in mechanical engineering from the University of Kentucky. In 2014, Ratterman was inducted into the UK College of Engineering Hall of Distinguished Alumni. In 2012, he received the Distinguished Service Award from the UK Alumni Association which recognizes those who have provided extraordinary service

to the university and the association. He is a life member and past president of the UK Alumni Association, a UK Fellow, and has been a member of the UK Advocacy Network since its inception.

## Nonprofit Organization Law Can Be Complex

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

#### Assistance Provided With

- Organization Formation
- Organizational Policies & Procedures
- Assessment of Operations
- Continuous Improvement Systems (Quality)
- Board Governance Issues
- Complex Tax Matters
- For-Profit Subsidiaries and Joint Ventures
- Merger, Consolidation or Dissolution of Nonprofits



Conley Salyer, Attorney, J.D., LL.M.; Alumni Examiner, Malcolm Baldrige National Quality Award (MBNQA). [csalyer@nonprofitattorney.net](mailto:csalyer@nonprofitattorney.net), (859) 281-1171, 710 E. Main Street, Lexington, KY 40502. [www.nonprofitattorney.net](http://www.nonprofitattorney.net) This is an advertisement.

**Dinsmore & Shohl LLP** is pleased to announce the launch of its ADR Center, a full-service dispute resolution practice serving parties' needs throughout the Midwest. Led by a group of veteran attorneys and neutrals, the ADR Center offers conflict resolution solutions in matters pertaining to litigation, employment, intellectual property, torts, business and estate issues, among others, as well as ADR training and consultation. The neutrals have experience in all sectors and industries. **Michael W. Hawkins**, a Harvard Law School-trained mediator, has mediated and arbitrated disputes since the 1990s. He has taught ADR courses at Xavier University and Northern

Kentucky University, written extensively on the topic and provided external training on how to successfully mediate and negotiate disputes. He is a National Academy of Distinguished Neutrals mediator and arbitrator. **Donna King Perry** has served as a mediator in a variety of matters including employment, commercial and business disputes. She has also participated in mediation as counsel for litigants in more than 100 cases in both state and federal courts.

**Southern Health Lawyers** is pleased to welcome **Tricia Shackelford** to their firm. Shackelford brings her expertise in working with a broad range of clients in the healthcare industry with her to Southern Health Lawyers, providing service in all areas of healthcare law. These areas include corporate, employment and bankruptcy issues, Medicare fraud and abuse, billing and coding. Shackelford also has experience with: EMTALA, HIPAA, accountable care, managed care and independent physician organizations, mergers and acquisitions, certificate of need, licensure defense, peer review and credentialing. Shackelford is licensed to practice in Kentucky, Florida, and the District of Columbia. She is located in the Lexington office.

**Gordon Rees Scully Mansukhani** welcomes **Denise M. Motta** as of counsel in the firm's Louisville office. Motta is a member of the



firm's commercial litigation, construction, drug & medical device, ERISA, insurance, employment law, and tort & product liability practice groups. As of counsel in the Louisville office, Motta's practice is focused on representation of clients in construction disputes, litigation of construction disputes, and defense of product liability, employment, and complex litigation cases. Motta earned her law degree, *magna cum laude*, from Northern Kentucky University, and her undergraduate degree, *cum laude*, from the University of Louisville. She is an active member of the DRI, where she has held numerous leadership positions, and presented at multiple seminars.



**Morgan & Pottinger, P.S.C.**, announced today that the firm name is changing to **Morgan Pottinger McGarvey**. The new name honors attorney **John McGarvey** and his contributions to the firm, legal community and banking industry. This is the first time the name has changed in the firm's nearly 45-year history. McGarvey joined Morgan & Pottinger on Jan. 1, 1975, shortly after the firm was founded in

Louisville in 1974. He is a member of numerous legal organizations, including multiple Uniform Commercial Code task forces and advisory committees. He has held a position on the UCC's Permanent Editorial Board since 2015. McGarvey is also an adjunct secured transactions professor at the University of Kentucky College of

# EXPAND YOUR PRACTICE

*Co-Counsel Your Eldercare Clients*



Mark Maddox JD

Robert L. McClelland JD, LLM, CELA

Richard F. Dawahare JD

## TAKE ADVANTAGE OF OUR EXPERIENCE WITH YOUR CLIENTS WHO NEED

- Eldercare Planning
- Medicaid Planning
- Medicaid Crisis Planning
- Special Needs Trusts
- Veterans Benefits Planning

Attorney Robert L. McClelland holds a master's degree in Elder Law (LLM) and has been certified in ElderLaw (CELA) by the National Elder Law Foundation, the only agency authorized by the American Bar Association to certify Elder Law attorneys.

Attorneys Mark Maddox and Richard Dawahare are experienced members of the National Academy of Elder Law Attorneys who assist clients with medicaid planning, probate, guardianship and veterans benefits issues.

ElderLawLexington, the office of McClelland & Associates, PLLC, has assisted hundreds of families in preserving their resources and serves as Trustee for the Kentucky Guardianship Association, Inc. Pooled Special Needs Trusts.



**ELDERLAWLEXINGTON**  
**McCLELLAND & ASSOCIATES, PLLC**

CALL BEFORE THE FALL®

1795 Alysheba Way, Suite #2102  
Lexington, KY 40509  
(859) 543-0061 • (800) 773-4040  
(859) 543-9228 Fax  
[www.elderlawlexington.com](http://www.elderlawlexington.com)  
[contact@elderlawlexington.com](mailto:contact@elderlawlexington.com)

Law. The firm has long been known for banking and finance law, creditor's rights and real estate law. As new attorneys have joined the firm in recent years, Morgan Pottinger McGarvey has expanded its focus to include practice areas such as tax and administrative law, personal injury, family law, employment law and trust and estates. Morgan Pottinger McGarvey's new website address is [mpmfirm.com](http://mpmfirm.com).

Leadership Lexington has selected **Stites & Harbison, PLLC**, attorney **Rebecca Wichard Sherman** as a member of the 2018-19 Leadership Lexington program. Through the 11-month program, participants are provided with opportunities to gain a better understanding of Lexington and the challenges it faces by meeting with and learning from today's leaders.



Sherman is an attorney with Stites & Harbison in the construction service group based in the Lexington office. Her practice focuses on advising clients throughout all phases of construction projects including planning, contract drafting and negotiation, project administration and disputes. Sherman is a board member of the Lexington Humane Society and Fayette County Bar Association's Young Lawyers' Division. She is a 2017 graduate of Elevate Kentucky and member of the Junior League of Lexington.

**Taft Stettinius & Hollister LLP** announced two new family-centered services that are now available to their attorneys: **Care@Work** and **Milk Stork**. The introduction of these services will help eliminate the stress of travel for new mothers and support an overall productive work-life balance. Care@Work, a 24/7 family care service that helps find caregivers for the whole family, will be available to Taft attorneys and benefits-eligible employees. Taft attorneys will have 24/7 access to Care.com's website and mobile app for when they are in need of a last-minute caregiver for in-home or

in-center childcare, or in-home adult care. Milk Stork, a service that provides overnight breast milk delivery, will allow breast-feeding attorneys to plan their business trips more efficiently. With the help of Milk Stork, Taft will reimburse all expenses related to traveling with breast milk for breast-feeding attorneys. By introducing these new family-centered services, Taft demonstrates its commitment to maintaining a productive work-life balance.



**Middleton Reutlinger** is pleased to announce that **Patrick Shane O'Bryan** has joined the firm's litigation group. O'Bryan has over 17 years of experience and focuses his practice in litigation with an emphasis on product liability, utility law, transportation law, insurance coverage litigation, insurance defense and commercial litigation. O'Bryan received his undergraduate degree in finance from the University of Kentucky in 1995. He then went on to receive his J.D., *cum laude*, from the University of Louisville Brandeis School of Law.

**Joseph L. Fink III** has been elected to serve on the **Executive Committee of the Liaison Committee on Medical Education (LCME)**. The LCME is the body recognized by the U.S. Department of Education to review for accreditation allopathic medical education programs leading to the M.D. degree in the U.S. LCME collaborative efforts also exist to issue accreditation to medical school programs in Canada. LCME accreditation is a voluntary, peer-reviewed process of quality assurance that determines whether the medical education program meets established standards. Fink is in his second three-year term as a public member of the LCME. Fink is professor of Pharmacy Law and Policy at the University of Kentucky College of Pharmacy as well as Kentucky Pharmacists Association Endowed Professor of Leadership at the University. He also holds professorial appointments in the UK College of Public Health, UK College of Health Sciences, and Martin School of Public Policy and Administration. He received his professional education in pharmacy at the Philadelphia College of Pharmacy and Science and holds a law degree from Georgetown University Law Center.

**Fisher Phillips** announces that it has launched its autonomous vehicles practice group, the first practice group of its kind among the nation's leading labor and employment law firms representing employers that will focus entirely on the technology's impact on the workplace and workforce. The firm will help to guide employers through emerging workplace issues that are likely to arise from rapid advancements in autonomous vehicle technology. The autonomous vehicles practice will address the emerging technology's impact on workplace safety; labor, unionizing



THE NATIONAL ACADEMY OF  
DISTINGUISHED NEUTRALS

**America's Premier Civil-Trial Mediators & Arbitrators Online**

*NADN is proud to partner with the National Defense and Trial Bar Associations*



The Voice of the **Defense Bar**



AMERICAN ASSOCIATION for JUSTICE  
SPONSOR

*View Bios & Availability Calendars for the top-rated neutrals in each state, as approved by local litigators*

**[www.NADN.org](http://www.NADN.org)**

Our free database was used by 8000+ law offices in 2017, to schedule over 100,000 mediations and arbitrations

and collective bargaining; employee defection and trade secrets; data privacy and security; gig economy workers; government advocacy and general employment matters.

**Michael Breen** is pleased to announce the publication of his short story collection *Modern Myths: Stories from the Bible*, available on Amazon.



Judge Karen Caldwell of the U.S. District Court for the Eastern District of Kentucky (Lexington division) presiding over MDL 2809 In re: Onglyza (Saxagliptin) and Kombiglyze (Saxagliptin and Metformin) Products Liability Litigation issued an order appointing Plaintiffs' Leadership Counsel, naming **Jennifer A. Moore** of **Grossman & Moore, PLLC**, as Plaintiffs'

co-lead counsel. As co-lead counsel for the national litigation, Moore is responsible for determining and coordinating all pre-trial discovery on behalf of all Plaintiffs in the Onglyza MDL. Hundreds of Onglyza cases are currently pending in federal court before Judge Caldwell. Plaintiffs' claims involve allegations against AstraZeneca Pharmaceuticals LP, Bristol-Myers Squibb Company, and McKesson Corporation regarding the drugs, Onglyza and Kombiglyze, particularly claims of heart failure, congestive heart failure, cardiac failure, and death caused by heart failure. Moore represents individuals and families who have been injured as a result of harmful drugs, products and medical devices, medical negligence, nursing home neglect and abuse, and automobile and truck wrecks. She is a founding partner of Grossman & Moore, PLLC, in Louisville.

**Step toe & Johnson PLLC** is pleased to announce the addition of four respected litigators to the firm's Louisville office. The new

attorneys include **Craig L. Johnson**, **James N. Martin Jr.**, **M. Tyler Reynolds**, and **Gregory L. Finch**. Their addition demonstrates the firm's commitment to the Louisville office and their Kentucky clients. Johnson will focus his practice in the areas of nursing home/long-term care defense, medical malpractice defense, civil litigation defense, and workers' compensation. He will also represent clients in general liability and employment matters. Johnson earned his law degree from the Louis D. Brandeis School of Law at the University of Louisville and his bachelor's degree from the University of Kentucky. Martin will practice in the area of civil litigation. Martin received his J.D. from the Louis D. Brandeis School of Law at the University of Louisville and his B.S. from the University of Louisville. M. Tyler Reynolds focuses his practice in the area of litigation. He represents clients in areas of medical malpractice, long-term care, employment, and business-related litigation. He received his J.D. from the Louis D. Brandeis School of Law at the University of Louisville and his B.S. from Murray State University. Finch will practice in the area of civil litigation and professional liability. He represents clients in the areas of medical and dental malpractice, long-term care defense, and employment matters. Finch earned his J.D. from the Louis D. Brandeis School of Law at the University of Louisville and his B.A. from Transylvania University.



*Craig L. Johnson*



*James N. Martin Jr.*



*M. Tyler Reynolds*



*Gregory L. Finch*



STAY TUNED FOR MORE DETAILS COMING SOON.

# BENCH & BAR MARKETPLACE

## EMPLOYMENT

### Workers' Comp. Attorney Needed

Northern Kentucky litigation firm seeking attorney to handle Kentucky workers' compensation defense claims. Three to five years workers' compensation experience needed. Salary and benefits negotiable. Reply to: Office Manager, P.O. Box 95, Florence, KY 41022-0095.

### Seminar Speaker/Consultant

Major financial institution consulting firm headquartered in Louisville, KY, is expanding its national education programs and is seeking a qualified, full-time Seminar Speaker/Consultant. Position requires a thorough understanding of Anti-Money Laundering/Bank Secrecy Act (AML/BSA) banking-related regulations, quality presentation skills, and extensive travel throughout the United States. Position also requires maintaining high level of subject matter expertise and excellent writing skills for content development.

Candidates must have experience with AML/BSA and deposit account statutes/regulations. Regulatory background, legal profession, or industry-recognized compliance certification preferred. Candidates should also have previous speaking and/or presentation or training experience. Bachelor's degree or higher required.

Excellent working environment and benefits package provided. Please submit resume and salary history to [info@probank.com](mailto:info@probank.com) for consideration. An Equal Opportunity Company M/F/H

## SERVICES OFFERED

### Whistleblower/Qui Tams:

Former federal prosecutor C. Dean Furman is available for consultation or representation in whistleblower/qui tam cases involving the false submission of billing claims to the government. Phone: (502) 245-8883. Facsimile: (502) 244-8383. E-mail: [dean@lawdean.com](mailto:dean@lawdean.com).

THIS IS AN ADVERTISEMENT.

## FOR SALE

### Office Furniture

Conference room table, 6 chairs, and credenza. Purchased new in 2015. Excellent condition. \$2500 OBO. Pictures available. If interested, contact Debra Nelson at [dnelson@debranelsonlaw.com](mailto:dnelson@debranelsonlaw.com) or (513) 407-7982.

### Books For Sale

Attorney retiring in Mayfield after 45 years. Wants to sell the following books:

- KY Digest 2d – 52 volumes through 2015
- KY Practice – Volumes 1-20 (various editions)
- Caldwell's KY Form Book – 3 volumes – 4th Edition
- Michie's KY Revised Statutes – 37 volumes through 2014

Each of these sets priced at \$5.00 per volume. Buyer picks up or pays for shipping.

Please contact Gayle Robbins at (270) 247-4606.

## LET THIS SPACE WORK FOR YOU!

### Classified Advertising:

\$30.00 for the first 20 words,  
\$.50 for each additional word.

**15% Discount for One Year  
Insertions Paid in Advance.**

**Call (502) 564-3795 for  
information and placement.**

**Deadline for the March 2019  
issue is January 1<sup>st</sup>, 2019.**

The KBA appreciates the support of our advertisers, but the publication of any advertisement does not constitute an endorsement by the Kentucky Bar Association.

# QDRO

Preparation and Processing of QDROs for:

- Defined Benefit & Defined Contribution Plans.
- Military, Municipal, State & Federal Employee Plans.
- Qualified Medical Child Support Orders.
- Collection of past due Child Support/Maintenance by QDRO.

**502-581-9700**  
Charles@MeersLaw.com Louisville, Kentucky  
**CHARLES R. MEERS**  
THIS IS AN ADVERTISEMENT

## Jim Mischner

### "Private Mortgage" Lender

Jim Mischner is a "private mortgage" lender. He loans his own money to real estate investors who either are purchasing non-owner occupied properties or are refinancing the non-owner occupied properties they already own. These properties include commercial, multi-family and all rental properties.



644 N. Broadway • Lexington, KY 40508  
**859.806.1932**  
www.jimmischner.com

## WEBSITE & SOCIAL MEDIA

MARKETING, ONLINE PAYMENTS  
EMPLOYEE/CLIENT LOGIN PORTALS  
AUTOMATIC EMAILS & TEXTS  
STREAMLINE YOUR PROCESSES

### INTERNET-RELATED IDEA? LET US BUILD IT FOR YOU.



**GENIN MEDIA** ATTORNEY OWNED  
15+ YEARS EXP.  
geninmedia.com 601.707.9270

**Put a WINNER**  
on your next campaign.



*Emmons & Co., Inc.*  
**DALE EMMONS**  
Professional Political Services  
228 W. Main St., P.O. Box 1551  
Richmond, KY 40475  
859-623-3266  
Fax 859-623-3633 • Cell 859-333-6674  
dale@politicskentucky.com  
www.politicskentucky.com

## Patent, Trademark, Copyright & Unfair Competition Law

### CARRITHERS LAW OFFICE PLLC

(502) 452-1233  
Louisville and Bardstown locations  
carritherslaw@kypatent.com  
www.carritherslaw.com  
THIS IS AN ADVERTISEMENT

## Landex Research Inc.

DOMESTIC & INTERNATIONAL  
PROBATE RESEARCH

### MISSING/UNKNOWN HEIRS LOCATED NO EXPENSE TO ESTATE

1345 Wiley Road, Suite 121  
Schaumburg, Illinois 60173  
847-519-3600/800-844-6778  
Fax: 800-946-6990  
www.landexresearch.com

## Environmental Law

### Ronald R. Van Stockum, Jr.

Attorney  
at Law



Shelbyville Kentucky  
Phone: (502) 568-6838  
rvs@vanstockum.com  
THIS IS AN ADVERTISEMENT

## REALTY SOLUTIONS INC.

**Real Estate Valuation & Consulting:**  
Litigation Support • Expert Witness  
Property Tax Appeal • Estate Filings  
Property Damage • Insurance Claims

Glen D. Katz, MAI, SRA, AI-GRS, AI-RRS  
gkatz@usa.net  
Jack C. Porter, MAI, SRA  
jporter@acrky.com



Appraisal  
Institute®  
OFFICE: (502) 396-6664 FAX: (800) 701-5380  
**www.RSAPPRAISE.com**

## Want to advertise on this page?

### Auction Services

Sam Rock, Attorney and Apprentice Auctioneer. You handle the legal and we will handle the auction. Real estate, equipment and personal property. Estate auctions/bankruptcies/divorces/liquidations or court ordered. Sam Rock, KBA member since 1996. Chip Foley, Principal Auctioneer. [www.foleyauctions.com](http://www.foleyauctions.com). Contact: [sam@rocklawgroup.com](mailto:sam@rocklawgroup.com). 859-259-1000



### KINKEAD & STILZ

#### Cary B. Howard, Jr.

Experienced, effective representation of lawyers across the Commonwealth in all aspects of attorney disciplinary and professional licensure issues

301 East Main Street, Suite 800  
Lexington, KY 40507  
choward@ksattorneys.com  
www.ksattorneys.com  
THIS IS AN ADVERTISEMENT

## 2 1/4" x 2"

**\$75 Members** \$85 Non-Members

15% Discount for one-year  
ad paid in advance

Add color for only an additional \$25!

Actual Ad Size

Call (502) 564-3795 for  
information and placement.



# LAWPAY IS FIVE STAR!



LawPay is easy, accurate, and so efficient - it has increased our cash flow tremendously. The recurring pay option for clients is the best! Can't beat the rates and the website is easy to use! We love LawPay—it has really enhanced our firm!

—Welts, White & Fontaine, P.C., Nashua, NH

Trusted by more than **35,000** firms and verified '5-Star' rating on Trustpilot

**Invoice Payment**  
Payment Detail

Amount  
\$ 500.00

Reference  
Case 1234

Card Information

Name on Card  
Roy Smith

Card Number  
5555 5555 5555 5555

**VISA** **AMERICAN EXPRESS** **mastercard** **DISCOVER**

**PAY ATTORNEY**

# LAWPAY®

AN AFFINIPAY SOLUTION

## THE #1 PAYMENT SOLUTION FOR LAW FIRMS

Getting paid should be the easiest part of your job, and with LawPay, it is! However you run your firm, LawPay's flexible, easy-to-use system can work for you. Designed specifically for the legal industry, your earned/unearned fees are properly separated and your IOLTA is always protected against third-party debiting. Give your firm, and your clients, the benefit of easy online payments with LawPay.

**877-958-8153** or visit [lawpay.com/kybar](http://lawpay.com/kybar)

LawPay is proud to be a vetted and approved Member Benefit of the Kentucky Bar Association.



Special offer for bar members.  
**Call for details**



# Standing Ready to Work with You.

## HARE | WYNN

NEWELL & NEWTON

*Lawyers Helping People—Since 1890*

**HARE WYNN** has more than 125 years of experience and a team of more than 65 lawyers, staff, and in-house experts ready to serve you. By partnering with us, you won't have to put a hold on other cases or miss out on quality time with your family. As your ally, we'll bear the burden, and you'll see the results. With us in your corner, you have everything to gain.

IF YOU'D LIKE TO PARTNER WITH US ON A CASE, GIVE US A CALL.

**855-359-6555 | [REFERRAL@HWNN.COM](mailto:REFERRAL@HWNN.COM)**

### PARTNERSHIPS THAT GET RESULTS

**\$11  
MILLION**

Settlement in Texas –  
Trucking Accident

**\$8  
MILLION**

Verdict in Kentucky –  
Nursing Home Abuse

**\$1.25  
MILLION**

Settlement in Kentucky –  
Nursing Home Abuse

**\$4.5  
MILLION**

Settlement in Kentucky –  
Crashworthiness/Product  
Liability

**\$750  
MILLION**

Settlement in Missouri –  
GMO Rice Contamination

**\$392  
MILLION**

Settlement in Texas –  
Whistleblower

**\$1.55  
MILLION**

Trucking Settlement for  
Kentucky Driver

**\$25  
MILLION**

Settlement in Kentucky –  
Consumer Protection  
Case

Our team has significant experience litigating both personal injury and complex cases. We value our co-counsel relationships and have achieved these results and shared success by partnering with lawyers just like you. To us, it's not about the size of the case, it's about achieving justice for our clients and providing an exceptional experience along the way. Team up with us for a partnership that gets results.



#### LEXINGTON

200 West Vine Street, Suite 700  
Lexington, KY 40507  
Matthew C. Minner, Managing Partner