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## Contents

<table>
<thead>
<tr>
<th>Page</th>
<th>Section</th>
</tr>
</thead>
</table>
| 2    | President's Page  
By: Mike Sullivan  |
| 6    | Practical FCA Cases: A Primer for Attorneys  
By: C. Dean Furman, Jr.  |
| 12   | Successfully Preparing and Filing a Qui Tam Action Under the False Claims Act  
By: Katherine A. Crytzer  |
| 16   | Whistleblower Retaliation Provisions Under Federal False Claims Act; Sampling of Federal Whistleblower Anti-Retaliation Laws  
By: Theresa M. Mohan  |
| 20   | Kentucky's Whistleblower Act  
By: Kash Stilz  |
| 24   | Young Lawyers Division  
By: Rebecca R. Schafer  |
| 26   | University of Kentucky College of Law  |
| 28   | Northern Kentucky University Salmon P. Chase College of Law  |
| 29   | University of Louisville Louis D. Brandeis School of Law  |
| 32   | Effective Legal Writing  
By: Melissa N. Henke  |
| 36   | Judicial Conduct Commission  |
| 38   | Chief Justice State of the Judiciary Address  |
| 40   | Order Amending Rules of Criminal Procedure (RCr) 2016-07  |
| 41   | Order Amending Rules of Criminal Procedure (RCr) 2016-08  |
| 42   | Notice Regarding Joint Local Rules  |
| 47   | Kentucky Lawyer Assistance Program  |
| 48   | Continuing Legal Education  |
| 52   | Kentucky Bar Foundation  |
| 56   | In Memoriam  |
| 57   | Who, What, When and Where  |

### Features:

**False Claim Qui Tam and/or Whistleblower Laws**

- **President's Page**: By Mike Sullivan
- **Practical FCA Cases**: A Primer for Attorneys  
  By: C. Dean Furman, Jr.
- **Successfully Preparing and Filing a Qui Tam Action Under the False Claims Act**: By: Katherine A. Crytzer
- **Whistleblower Retaliation Provisions Under Federal False Claims Act; Sampling of Federal Whistleblower Anti-Retaliation Laws**: By: Theresa M. Mohan
- **Kentucky's Whistleblower Act**: By: Kash Stilz

### Bar News

- **Judicial Conduct Commission**
- **Chief Justice State of the Judiciary Address**
- **Order Amending Rules of Criminal Procedure (RCr) 2016-07**
- **Order Amending Rules of Criminal Procedure (RCr) 2016-08**
- **Notice Regarding Joint Local Rules**

### Departments

- **Kentucky Lawyer Assistance Program**
- **Continuing Legal Education**
- **Kentucky Bar Foundation**
- **In Memoriam**
- **Who, What, When and Where**

**Cover image**: Front Row, left to right: Lay Member Brenda Hart, Louisville; Lay Member Judy McBryar Campbell, Frankfort; Immediate Past President Douglass Farnsley, Louisville; Vice President Douglas C. Ballantine, Louisville; President R. Michael Sullivan, Owensboro; President-Elect William R. Garmer, Lexington; YLD Chair Rebecca R. Schafer, Louisville and Eileen M. O’Brien (5th SCD). Back Row, left to right: John Vincent (7th SCD); Gary J. Sergent (6th SCD); Michael M. Pitman (1st SCD); Earl “Mickey” McGuire (7th SCD); Melinda G. Dalton (3rd SCD); Amy D. Cabbage (4th SCD); Executive Director John D. Meyers, Lexington; Howard O. Mann (3rd SCD); Thomas N. Kerrick (2nd SCD); W. Fletcher Schrock (1st SCD); Lay Member Dotty Moore, Elizabethtown; Mindy G. Barfield (5th SCD), Lay Member Dr. Leon Mooneyban, Shelbyville and J. Stephen Smith (6th SCD). Not available for the photo were J.D. Meyer (2nd SCD) and Bobby Simpson (4th SCD).

Cover and CLE Commission photos by Mark Cornelison  
Several inside graphics by ©istockphoto.com/JesiWithers
Just as advances in technology change our everyday life, they also are changing the practice of law and the future of legal services. In August 2014, then-ABA President William C. Hubbard established the Commission on the Future of Legal Services to study this and other issues and make suggestions for new methods to deliver legal services. The Commission published its report earlier this year, which is available on the ABA website.¹

The purpose of the report, as well as this article, is to encourage the thoughtful review of the current status of the legal practice and consideration of changes that are in the public’s interest. Since the report is almost 100 pages in length, I will only summarize a few of its findings in this article. One barrier to a full study and evaluation of the issues is the lack of data in regard to potential solutions to the problem. The Commission noted that limited data has impeded its efforts to identify and assess the most effective innovations in legal services delivery. Thus, the Commission’s study cites many problems, but few solutions.

The main focus of the report was the public’s inadequate access to legal services, especially for low income and moderate income consumers. In regard to civil legal matters, the Commission noted that 63 million (1 in 5) Americans met the financial requirement for services provided by Legal Services Corporation (“LSC”), the independent non-profit established by Congress in 1974 to provide financial support for civil legal aid to low-income Americans. However, in some jurisdictions, more than eighty percent of litigants in poverty are unrepresented in matters involving “basic life needs”, such as evictions, mortgage foreclosures, child custody disputes, child support proceedings, and debt collection cases. This figure is consistent with the estimate of some scholars that over 80 percent of the legal needs of the poor and a majority of the needs of middle-income Americans remain unmet.

The Commission noted 2014 numbers from the State of Utah where 98 percent of defendants in 66,717 debt collection cases were unrepresented, whereas 96 percent of the plaintiffs in those same cases had a lawyer. That same year, 97 percent of the defendants in 7,770 eviction cases defended themselves, and in only 12 percent of 14,088 divorce cases did both sides have a lawyer.

The Commission believed that so long as LSC is not adequately funded, this access to justice issue will continue. Also, while attorneys can provide pro bono representation, and are encouraged to do so, pro bono work alone cannot solve the problem. The Commission cited data showing that “U.S. lawyers would have to increase their annual pro bono efforts. . . to over 900 hours each to provide some measure of assistance to all households with legal needs.”

The Commission also cited another issue recognized by many judges and lawyers in Kentucky, i.e., that these unrepresented parties in court adversely impact all litigants, including those represented by lawyers. The Conference of Chief Justices reported that “large numbers of unrepresented litigants clog the courts, consume the time of court personnel, increase the legal fees of opposing parties due to disruptions and delays, and result in cases decided on technical errors rather than the merits.” Many of you reading this article have been present during motion hours and witnessed unrepresented parties causing, or suffering the consequences of, these very issues. One possible and partial solution to the problem, along with legal representation of these persons, would be the development of uniform and reliable forms in certain types of proceedings that would help unrepresented persons understand the process and forward their interest in the process in both an efficient and effective manner.
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By Kentucky Lawyers. For Kentucky Lawyers.
At the same time that we see many persons unrepresented by lawyers, we see many lawyers, especially recent law school graduates, under-employed. This may be because the traditional law practice business model, which is built upon individualized, one-on-one lawyering, with billing for services on an hourly basis, cannot meet the type of need cited in these studies. We see this need now being met by others entering the legal services area, such as on-line providers with innovative ways to provide legal services, including document preparation.

The Commission also cited the issue of which we are all aware involving representation of indigent defendants in criminal cases. While most criminal defendants have a constitutional right to counsel, public defenders, including those in Kentucky, lack adequate resources and have caseloads well beyond recommended maximums.

While circumstances may demand a change in approach by lawyers, law may be one of the professions most resistant to change. This may be expected in a profession that relies on the past (i.e., precedent) to predict the future. The Commission found that law firms have been slow to respond to demands from clients for more efficiency, predictability, and cost effectiveness in the delivery of legal services that they purchase. The Commission noted that many corporate clients have reduced the volume of work referred to outside counsel and found other more efficient and cost-effective ways to meet their legal needs, including bringing matters in-house and outsourcing certain types of work to companies, many overseas, that can provide the services at a lower cost.

The Commission rightly noted that technology has disrupted and transformed virtually every service area, including travel (remember travel agents?), banking (remember tellers?), and stock trading. However, the legal services industry has not yet fully harnessed the power of technology to improve the delivery of, and access to, legal services. The Commission believes that the profession is “at the cusp of a disruption, a transformative shift that will likely change the practice of law in the United States for the foreseeable future, if not forever.” Examples of technology innovations include electronic tools for document review, document automation (using pre-existing data to assemble a new document), and “cognitive computing” such as IBM's Watson, which is a machine learning system that famously beat a Jeopardy game show champion. Watson technology is being used at Ross Intelligence to provide an artificial intelligence legal researcher that allows lawyers to perform legal research more efficiently in a fraction of the time.

The Commission did note several advances in technology that have already been implemented in the justice system, including courts making some services available remotely, such as document filing and docket/record searches. In some jurisdictions, legal service providers other than lawyers are being allowed to address unmet legal services. In federal courts, there are bankruptcy petition preparers that are allowed to populate existing forms. The Board of Immigration Appeals (Department of Justice) and the U.S. Citizenship and Immigration Services (DHS) permit accredited representatives who are not licensed lawyers to represent individuals in immigration proceedings. The Social Security Administration permits individuals who are not licensed to practice law to represent claimants. The Washington Supreme Court authorized certification of limited practice officers to select and complete real estate closing documents, and limited license legal technicians, again accredited according to certain standards, to provide some legal advice in the area of family law. The California legislature implemented a legal document assistance program in 2000 that allows non-lawyers to assist the public in uncontested divorces, bankruptcies and wills, among other areas.

The Commission analogized these changes to the healthcare field, which was once populated by only doctors, but now has “an increasing array of licensed and regulated providers, such as nurse practitioners, physician’s assistants, and pharmacists.” The Commission stated that these other legal service providers are not meant to replace lawyers or reduce their employment opportunities, but to fill gaps where lawyers have not satisfied existing needs. However, in certain areas of the United States, including some areas of Kentucky, the problem may not be lack of lawyers, like lack of doctors has been in the problem in the healthcare field. Thus, some lawyers will most likely suffer if these non-lawyer legal service providers are allowed to compete against them.

The Commission concluded its report by making several recommendations, including the following:

- The legal profession should support the goal of providing some form of effective assistance for essential civil legal needs to all persons otherwise unable to afford a lawyer.
- Courts should consider regulatory innovations in the area of legal services delivery, which would include allowing non-lawyers to practice in certain areas.
- All members of the legal profession should keep abreast of relevant technologies.
- Courts should be accessible, user-centric, and welcoming to all litigants, while insuring fairness, impartiality, and due process.
- Bar associations should make the examination of the future of legal services part of their ongoing strategic long-range planning.

Many of the issues have only recently been identified, and the discussion of solutions to these issues is only just beginning. In Kentucky, we certainly want to be aware of the issues and the proposed solutions and make sure lawyers are involved in, if not leading, this process.

ENDNOTES

2017 Distinguished Service Awards
Call for Nominations

The Kentucky Bar Association is accepting nominations for 2017 Distinguished Judge and Lawyer, Donated Legal Services and Bruce K. Davis Bar Service Awards. Nominations must be received by December 30, 2016. 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.

DISTINGUISHED JUDGE AWARD & 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.
In an election year filled with as much or more hyperbole than prior ones, one undeniable fact is that the federal government loses money to fraud and waste every year. The federal government recovered over $3.5 billion dollars in fiscal year 2015 from federal contractors who cheated, stole, and defrauded American taxpayers for government paid services. From 2009 through 2015, the amount of recovery from federal contractors involved in scamming the federal treasury exceeded $26 billion dollars. Considering these amounts are the ones that were actually repaid in lawsuits, the amount of unknown fraud is likely a multiple of what the government was able to prove, perhaps in the many tens of billions of dollars per year.

The recovery of these fraudulent funds are a direct result of the Federal False Claims Act, 31 U.S.C. § 3729, et seq. ("FCA"), a Civil War era statute enacted to combat war profiteering. The statute remained largely unused as a tool to combat fraud until 1986 when amendments to the statute made it easier to bring private-party originated FCA lawsuits, called *qui tam* actions (from a Latin phrase meaning "he who brings a case on behalf of our lord the King, as well as for himself"), and increased the role of whistleblowers and their counsel. Today, the FCA creates an opportunity for committed whistleblowers (referred to as "relators" in *qui tam* actions) to expose fraud and false billings that harm taxpayers.

These FCA opportunities are well worth it. The amount of money spent by the federal government to investigate FCA claims creates a positive rate of return to the national treasury. In a study of FCA litigation and federal enforcement budgets, the federal government recovered an estimated twenty dollars ($20.00) for every one dollar ($1.00) it spent on investigating and litigating FCA cases. The only thing surprising about this is that the government does not spend more resources in ferreting out fraud among federal contractors in light of the positive rate of return.

With the reach of federal spending, the FCA applies in broad circumstances, including state projects that have partial federal funding. Federal contractors include highway construction companies, federally subsidized farmers, Medicare and Medicaid providers (including physicians, chiropractors, physical therapists, nursing homes, and hospitals), defense manufacturers and suppliers, and private colleges. In any federally funded project, if there is a false claim or fraudulent scheme to cheat federal taxpayers, the government can recover a multiple of the stolen money and fines for every false claim submitted. The federal contractor could also face exclusion from federal programs. The whistleblower who brought the claim and his or her counsel can receive a percentage of the government’s recovery and attorney’s fees, both of which are incentives in the FCA to bring fraud to light.

**A. STATUTORY SCHEME**

To understand the FCA, let’s review the eight essential parts of the FCA statutes:

1. **What Constitutes Liability under the FCA.**
First, 31 U.S.C. § 3729 delineates what actions constitute liability under the FCA:

(a) Liability for certain acts.—
(1) ... any person who—
(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

... (G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty . . . plus 3 times the amount of damages which the Government sustains because of the act of that person.

Examples of actions that create FCA liability include billing for work not actually performed, purposefully avoiding specifications to save costs (such as using inferior materials than specified in the government contract), upcoding medical procedures to receive higher reimbursement, and using unqualified individuals to perform work that only qualified individuals can do. The violation of other statutes, such as the Anti-Kickback statute (42 U.S.C. § 1320a-7b) and the failure to return overpayments statute (42 U.S.C. § 1320a-7k), can also trigger FCA liability. For each FCA violation, the government can recover treble damages and significant fines, which are currently a maximum of $11,000 per false claim, but may rise to $21,563.00 if the Department of Justice prevails in increasing the FCA fines for the next fiscal year.

(2) Definition of Knowing under the FCA.

Second, 31 U.S.C. § 3729 defines what is “knowing” for purposes of placing liability on a defendant or defendants for a false claim:

(b) Knowing and knowingly defined.—For purposes of this section, the terms “knowing” and “knowingly” mean that a person, with respect to information—
(1) has actual knowledge of the information;
(2) acts in deliberate ignorance of the truth or falsity of the information; or
(3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

The key to liability for alleged FCA violations is knowledge. If the federal contractor acted mistakenly or negligently, then the case is not an FCA violation and is usually handled as an administrative matter for which the government simply recovers the mistaken payment, rather than a multiple of the payment and a fine. A common example of this may be where a physician’s medical practice accidentally billed a procedure because a coder transposed numbers for a similar procedure. The physician would repay the amount, but not be liable for the harsher FCA penalties, which could include Medicare and Medicaid exclusion.

(3) Definition of a Claim under the FCA.

Third, 31 U.S.C. § 3729 defines what a “claim” is for determining whether it is actionable under the FCA:

(2) The term “claim”—
(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—
(i) is presented to an officer, employee, or agent of the United States; or
(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government’s behalf or to advance a Government program or interest, and if the United States Government—
(I) provides or has provided any portion of the money or property requested or demanded; or
(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

The broad definitions of claim and presentment allows the FCA to encompass more than false claims directly against the federal government. For instance, in road construction fraud cases, a state government often manages the project and directly pays state contractors to build or to repave roads. However, federal funding can encompass the majority of the source funds, allowing a whistleblower to use the FCA even though the false claim is presented to a state rather than the federal government.

(4) Exclusions from the FCA.

Fourth, 31 U.S.C § 3729 and § 3730 exclude tax fraud and other circumstances for FCA recovery:

(c) Exclusion.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.


(c) Certain actions barred.—
...
(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4)(A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—

(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party;

(ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or

(iii) from the news media,

unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, “original source” means an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.


These restrictions on FCA cases foreclose tax fraud cases, which are handled by a separate federal statute, 26 U.S.C. § 7623. They also place hurdles for whistleblowers by creating first to file and original source rules. If a second whistleblower suit is brought concerning the same subject matter as an earlier filed suit, the second suit is dismissed. The original source rule stops parasitic suits derived from already disclosed conduct by requiring the dismissal of a suit based on one of the enumerated sources of information, such as a federal investigation or a news article, unless the whistleblower is the original source of the information used in the earlier federal investigation or news report. This prevents whistleblowers who may be tempted to file suits based on information the government already knows unless the whistleblowers are the source for the original information.

(5) What is Awarded to the Whistleblower.

Fifth, 31 U.S.C. § 3730 provides the statutory authority for the whistleblower’s recovery, as well as a potential recovery of fees and costs by defendants:

(d) Award to qui tam plaintiff.—

(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appro-

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appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

This FCA section provides the incentive for whistleblowers and their attorneys to bring suits. The whistleblower receives a share of the government's recovery and the attorney receives fees. Although reinstatement is an option for retaliated workers, it is rarely used because most whistleblowers would not want to return to the company that fired them for taking a stand against the company's fraud. Instead, for successful retaliation claims, the back pay and compensation for special damages, such as emotional distress, is sufficient compensation for being punished in pursuing an FCA claim. Finally, it is important to note that the three-year statute for retaliation claims is half the amount of time allowed for pursuing the primary FCA claim for the actual false claims.

(6) Whistleblower Employment Protections.

Sixth, 31 U.S.C. § 3730 provides some protections and remedies for whistleblowers who are retaliated against by their employers:

1. In general.--Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter.

2. Relief.--Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

3. Limitation on bringing civil action.--A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.

Although reinstatement is an option for retaliated workers, it is rarely used because most whistleblowers would not want to return to the company that fired them for taking a stand against the company's fraud. Instead, for successful retaliation claims, the back pay and compensation for special damages, such as emotional distress, is sufficient compensation for being punished in pursuing an FCA claim. Finally, it is important to note that the three-year statute for retaliation claims is half the amount of time allowed for pursuing the primary FCA claim for the actual false claims.

(7) Statute of Limitations in an FCA Case.

Seventh, 31 U.S.C. § 3731 provides the statute of limitations for an FCA case:

1. More than 6 years after the date on which the violation of section 3729 is committed, or
(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(8) Evidence and the Effect of a Criminal Trial.
Finally, under 31 U.S.C. § 3731, the FCA provides the standard of proof and the evidentiary consequences of a criminal conviction:

(d) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(e) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.

B. WHAT THE FCA STATUTE MEANS.
Putting aside the technical terms of the FCA statute, the FCA establishes liability when a government contractor has submitted a false claim for payment with the intent to defraud, with a reckless indifference, or with deliberate ignorance as to whether a claim is proper. What is fraud? The basic definition is simple—it’s lying, stealing, or cheating for the purpose of making money. The FCA, under 31 U.S.C. § 3729(b)(3), is clear that “no proof of specific intent to defraud is required” to prove an FCA violation. The lower reckless indifference or deliberate ignorance standards allows the government to hold federal contractors liable under the FCA when they purposely play loose with the truth or falsity of their government billings.

The government can be harmed under the FCA in numerous ways. A medical provider can submit a bill for services never rendered, or charge for a higher service than what was provided to or required for the patient. A construction contractor can charge for excess materials that were never used on a project. A federal prime contractor can create fictitious companies as suppliers, marking up invoices by factors of 10 or more, to fraudulently increase a cost-plus government contract.

False claims can be direct, such as the previous examples with submitted fraudulent charges or invoices. False claim cases can also be subtler and involve a contractor that is required to follow all terms of a federal contract, including all applicable statutes and regulations. If the contractor knowingly and materially breaches

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From Left: Kathryn E. Smith (Partner), David S. Stollard (Of Counsel), John P. Davis (Partner), Gregory J. Lunn (Partner), Kurt A. Summe (Partner) Legal services may be performed by others.

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the contract without informing the government, the contractor could be held liable under the FCA for contract payments received by the contractor.

The most persistent problem with potential clients becoming whistleblowers is knowing that a remedy exists for fraud against the government. Many employees are dissatisfied with their jobs because of ethical lapses by their employers. Employees can even find themselves terminated for questioning their company's billing practices. Without knowing about the FCA or finding an attorney who does, the potential whistleblower will let the opportunity to right the wrong, and be compensated for doing so, pass.

In addition to the federal remedies for false claims, 28 states have their own false claims acts that allow states and/or citizens to bring direct state FCA claims involving fraud of solely state funds. Kentucky has no state false claim / *qui tam* statute on the books. Regionally, three border states, however, have their own versions of state false claims statutes designed to address such issues as contractors who file false claims and benefit from state funds: Indiana, Tennessee, and Virginia.

**C. RECENT QUI TAM ACTIVITIES IN KENTUCKY FEDERAL COURTS.**

Each of the two United States Attorney’s Office in Kentucky have civil attorneys who handle FCA cases on behalf of the government. While some are brought independently by the government without whistleblowers, most FCA cases arise from *qui tam* filings. The Western District of Kentucky United States Attorney’s Office has had the following recent settlements in FCA cases: Defendant MD2U paid $3.3 million for alleged home healthcare false claims;6 Defendant PremierTox 2.0 paid $2.5 million for alleged false claims involving drug tests;7 and Defendant Lockheed Martin Corporation paid $5 million for alleged false claims from its operations of the Paducah Gaseous Diffusion Plant.8

The Eastern District of Kentucky United States Attorney’s Office settlements and judgments over the last two years have included the following: Defendant Dr. Philip Robinson lost at a FCA trial and was ordered to pay $1,257,225.00 for false claims for eye care services;9 Defendant Lafferty Ambulance Services, LLC paid $948,000.00 for false claims from ambulance services;10 Saint Joseph Health System, Inc. paid $16.5 million for false claims arising from heart procedures;11 and King’s Daughters Medical Center paid a $40.9 million dollar settlement for heart procedures.12

These claims, and the many like them that government attorneys and private whistleblower attorneys bring each year, serve the public. They expose corruption in our public contracts and deter others from committing the same type of fraud against the federal government. For the successful *qui tams*, while the whistleblower personally benefits, all taxpayers reap the benefits of the repayments made by federal contractors back to the federal treasury. **B&B**

**ENDNOTES**


**ABOUT THE AUTHOR**

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“For every ten [False Claims Act] cases filed by relators, the government ultimately intervenes in only two.”2 But “[s]ince 1986, nearly 70% of all False Claims Act recoveries can be attributed to qui tam matters” filed by a relator.3 As these statistics show, the False Claims Act (“FCA”), 31 U.S.C. § 3729 et seq., is most effective where the United States government and relators work together to detect and prevent fraud.

But where do you start? What is a federal qui tam action? How does counsel representing a relator file a qui tam action under the FCA? What makes a strong qui tam action? What lessons can be learned from prior qui tam actions? An entire body of law has arisen out of the FCA. While this article cannot address every facet of the FCA and is not a substitute for reading the Act and relevant case law, it will highlight those aspects that are most important to successfully preparing and filing a qui tam action.

WHAT IS A QUI TAM ACTION?
The FCA generally authorizes a cause of action against individuals and entities that have committed fraud against the Government.4 Under the FCA, any person who—

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government is liable for violating the FCA.5

The initial touchstone then is that an FCA action must involve Government funds, property, or goods. Given the breadth of spending by the federal government and the scope of the FCA, successful cases have been brought in federal courts within Kentucky involving a wide variety of government programs.
Practitioners should identify the nexus to federal government spending and interests—some of which may be obvious, others more obscure—when considering filing a *qui tam* complaint. Some areas of recent successful FCA matters in Kentucky include healthcare, federal grants, military procurement, environmental, small business administration, transportation, and disadvantaged business enterprises.  

In some instances, an individual or entity that discovers it has violated the FCA may wish to make a self-disclosure to the Government—which encourages self-disclosure and views it favorably when assessing liability. In other instances, an entity or individual may be required to report a potential violation or face FCA liability.  

A private party, generally known as a “relator,” may file a *qui tam* complaint in the name of the United States against the individual or entity that allegedly committed fraud. As an incentive to encourage *qui tam* actions and prosecution, the FCA provides for treble damages and penalties for each and every violation committed. In a successful *qui tam*, a relator may be entitled to up to thirty percent (30%) of the amount the United States recovers. A successful relator is also entitled to receive reasonable expenses and attorneys’ fees.  

The United States must investigate the allegations in a *qui tam* action. After conducting an investigation, the United States will determine whether to intervene in the action. 

**HOW TO FILE A QUI TAM ACTION**

Every potential relator has a number of procedural and strategic hurdles he or she must jump before filing a *qui tam* complaint. Given the low percentage of *qui tams* in which the United States intervenes, the relator who has worked diligently with thoughtful counsel to prepare a complaint has an inherent advantage. 

**PREPARING TO FILE A FEDERAL FCA ACTION**

As an initial matter, a relator must be represented by counsel to file a *qui tam*. Aside from ensuring the relator is sufficiently advised, this requirement ensures that relator’s allegations are adequately investigated by counsel in advance of filing an action that will necessitate Government investigation. The best relator’s counsel not only satisfies his or her investigatory obligations but also proactively investigates relator’s allegations with an eye toward proving the necessary elements of the FCA claim.  

As part of the pre-filing investigation, relator’s counsel should identify key documents which support relator’s allegations and identify individuals and entities critical to proving FCA liability. This includes (1) identifying and interviewing individuals who corroborate relator’s allegations, (2) locating and interviewing individuals who are knowledgeable about the relevant facts and actions, to the extent possible, and (3) researching and identifying individuals and entities that potentially face FCA liability under the facts collected. 

Once the facts have been collected and potential violators have been identified, counsel should consider issues unique to the FCA. While it is impossible to address all potential FCA pitfalls in this brief article, there are two recurring issues to consider. 

First, an FCA action generally may not be filed against a federal agency or federal personnel acting in his or her official capacity; a state, state entities, or state personnel acting in his or her official capacity.  

Second, the FCA contains certain statutory bars. Chief among the FCA’s statutory bars are the (1) “original source” bar, which generally prevents a relator from bringing an action based on previously disclosed allegations, unless the relator is an “original source” of the information and (2) “first-to-file” bar, which prohibits a relator from bringing an action based on allegations that are already the subject of administrative proceedings or litigation in which the Government is a party. After counsel has completed a robust investigation, identified the proper defendants, and prepared an order of proof, counsel is ready to prepare a complaint.  

An FCA complaint must satisfy Federal Rule of Civil Procedure 12(b)(6), and the FCA claims must be pled with particularity under Rule 9(b). The FCA also contains its own statute of limitations and jurisdiction provisions, which counsel should consider before drafting. When drafting the complaint, counsel may want to review prior FCA complaints filed by the United States for guidance. 

In addition to preparing a *qui tam* complaint, counsel must prepare a written disclosure statement that contains “substantially all material evidence and information the person [relator] possesses.” This disclosure statement, which will be served on the United States, is counsel’s first chance to share his or her vision of the case with the Government. 

At a minimum, the disclosure statement should include the facts and evidence discovered while investigating relator’s allegations and any relevant documents. The best disclosure statements are substantive, adding material beyond the allegations in relator’s complaint. In the past, strong disclosure statements have identified individuals with knowledge of relevant facts for interview or anticipated the needs of the investigation and suggested a path forward. Crafting a strong disclosure statement is advantageous to both relator and the Government.  

Prior to filing a *qui tam*, counsel should consider whether it would be advantageous to meet with the U.S. Attorney’s Office to discuss the allegations in the complaint. Both U.S. Attorney’s Offices in Kentucky welcome the opportunity to discuss potential actions with relator’s counsel pre-filing and have a team of Assistant United States Attorneys (“AUSAs”) devoted to FCA actions, among other things. Counsel should, however, be aware that meeting with the U.S. Attorney’s Office does not constitute filing an action for purposes of the first-to-file bar.
FILING AN FCA ACTION

The FCA has specific provisions addressing filing and service of a qui tam action. Failure to follow these provisions can be detrimental to a relator's action. First of these provisions is the requirement that every qui tam action be filed with the court under seal.25 Practically, in Kentucky’s federal courts, relator’s counsel must file an FCA complaint in person with the court clerk—the complaint may not be filed electronically on the Court’s CM/ECF system.

Once the complaint is filed, counsel must serve the complaint and its disclosure statement on the Government.26 While not intuitive, this provision requires counsel to serve both the U.S. Attorney’s Office where the action was filed and the United States Attorney General. Counsel should follow Federal Rule of Civil Procedure 4’s provisions for service on the U.S. Attorney’s Office and Attorney General. Failure to properly serve the Government may be an impediment to proceeding with the qui tam action. If counsel previously met with the U.S. Attorney’s Office to discuss the complaint pre-filing, consider sending a courtesy copy of the complaint to relevant members of the U.S. Attorney’s Office. But beware—sending a courtesy copy of the complaint to the U.S. Attorney’s Office is generally not sufficient service.

Relator’s complaint will remain under seal for at least sixty (60) days after service while the United States investigates the allegations.27 The United States will likely interview the relator and other relevant individuals. The FCA also provides investigative tools called civil investigative demands the United States may use to collect documents, information, and testimony during its investigation.28 Almost every investigation will take longer than the sixty (60) days initially provided in the FCA. So, the United States will likely seek court approval to keep the complaint under seal for more time, as the United States completes its investigation.29

While the complaint remains under seal, the relator may not disclose the existence of the qui tam action, and relator may not serve the complaint on the defendant until ordered by the Court.30

WHAT MAKES A STRONG FEDERAL QUI TAM ACTION?

It is impossible in one article to articulate all legal theories that would potentially make a strong qui tam under the FCA. But there are four key elements that generally make it easier for the United States to investigate and substantiate the relator’s allegations: (1) identification of knowledgeable witnesses, (2) pre-filing investigative work that corroborates relator’s allegations and theories, (3) evidence of materiality, and (4) evidence of knowledge.

First, counsel should strive to identify knowledgeable witnesses by name with contact information in the disclosure statement. The United States will likely use this information during its investigations. The facts surrounding the alleged FCA violation, and the witnesses who will testify to them, are key to the United States’ decision whether to intervene in a qui tam.

Second, counsel can help the Government and his or her client by proactively investigating and corroborating the relator’s allegations and FCA legal theories. The FCA defendant will undoubtedly question the motives of the relator, and it is difficult to proceed with a case that is predicated on the relator’s word alone. The best counsel legally31 gathers documents and evidence that support the factual allegations and provides this information to the United States. Likewise, savvy counsel researches the legal theories underlying the qui tam and locates similar successful FCA cases (within your jurisdiction or outside) which support the action.

Third, and more fundamentally, “materiality” is often a critical element of an FCA action.32 Relator’s complaint and disclosure statement should focus on the core, provable facts that establish the wrongdoing the defendant perpetrated and its importance to the government decision maker. Counsel should avoid overly broad allegations, and should instead focus on the particular facts that will meet the required elements of the FCA action.

Finally, nearly every action requires proof the defendant “knowingly” violated the FCA—that is the defendant had “actual knowledge” or acted with “deliberate ignorance” or “reckless disregard” of the truth or falsity of the information.33 Thus, knowledge is often at the heart of an FCA action. Those relators who can present robust evidence of the defendant’s knowledge of the wrongdoing are at an advantage. Powerful knowledge evidence includes, but is not limited to, admissions of individuals, direction from decision makers, evidence of individual or entity practices regarding the wrongdoing, and evidence of individual or entity policies regarding the wrongdoing. Focus on “knowledge” early may help direct an investigation.

LESSONS FROM RECENT SUCCESSFUL QUI TAM ACTIONS

Recent successful FCA actions in Kentucky federal courts show that the private-public partnership formed through a qui tam action can be an effective tool to detect and prosecute fraud. This partnership has also been advantageous for relators (and their counsel) who have received a portion of the amount the Government recovered. Below are a few lessons that can be learned from Kentucky’s recent FCA successes.

The Government is increasingly using “parallel proceedings” to conduct investigations. In a “parallel proceeding,” criminal and civil AUSAs both investigate an allegation of fraudulent conduct. When parallel criminal and civil investigations are conducted, the civil relator will normally have little, if any, knowledge of or involvement in the criminal investigation. A recent parallel proceeding involving a federal contractor led to a $16.5 million settlement; with relators receiving $2.5 million.34 The investigation also led to the criminal conviction of an individual physician working at the federal contractor.35

The Department of Justice has also emphasized individual accountability in criminal and civil corporate matters, including FCA actions.36 In a recent FCA case against an entity participating in federal programs and its owners, the Government recovered $3,739,325; $283,412 of which was paid to the relator.37 In a similar matter, the United States resolved FCA claims against a
corporation participating in federal programs, its deceased former owner, and its former Executive Director. The corporation and estate of the deceased owner agreed to a $16 million judgment, and the former Executive Director paid over $1 million. These actions against corporations and responsible corporate leadership show that the Department of Justice continues to strengthen its “commitment to holding individuals accountable for corporate misdeeds.”

A recent environmental matter is also instructive for potential relators. This year, the United States settled a *qui tam* against Lockheed Martin Corporation and subsidiaries Lockheed Martin Energy Systems and Lockheed Martin Utility Services arising out of operations at the Paducah Gaseous Diffusion Plant. The plant was operated under contracts with the Department of Energy and another government corporation. The *qui tam* was brought, in part, by former employees who worked at the plant. Lockheed Martin Corporation agreed to pay the United States $4 million to resolve allegations that it submitted false claims, and the relators collectively received $920,000.

**CONCLUSION**

A well-investigated and prepared *qui tam* action can be a powerful tool in detecting and prosecuting fraud against the Government. Armed with the FCA and the operative facts, relator’s counsel should feel confident preparing and filing a *qui tam* action.

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**ENDNOTES**

1. The views expressed herein are those of the author in her individual capacity and are not to be deemed or otherwise construed as official positions of the United States Department of Justice. Thank you to Benjamin S. Schelter, Civil Chief, Assistant United States Attorney for the Western District of Kentucky, for his thoughtful input and comments on this article.


3. See id.


5. Id. at § 3729.


8. See, e.g., 42 U.S.C. § 1320a-7(k)(d) (requiring reporting and repayment of Medicare or Medicaid overpayment).


10. Id. at § 3730(a)(1).

11. Id. at § 3730(d). However, an individual who “planned and initiated the violation” is or “conspired of criminal conduct arising from his or her role in the violation” may be barred from recovery. Id. at § 3730(d)(3).

12. See id. at § 3730(a).

13. Section 3730(c) of the FCA lays out the full panoply of options and rights of the parties to a *qui tam* action.

14. Federal Rule of Civil Procedure 11 requires relator’s counsel to conduct a reasonable inquiry of relator’s allegations. By signing a *qui tam* complaint, counsel certifies that “to best of . . . [his/her] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.” Fed. R. Civ. P. 11.

15. See Kreipke v. Wayne State Univ., 807 F.3d 768, 774-75 (6th Cir. 2015).


17. See id. at § 3730(e)(4).

18. See id. at § 3730(e)(3).

19. See id. at § 3730(b).

20. See id. at § 3730(b).1.

21. See id. at § 3732.

22. See id. at § 3730(b).2.

23. See id. at § 3730(b).3.

24. See id. at § 3730(b).4.

25. See id. at § 3730(b).5.

26. See id. at § 3730(b).

27. See id. at § 3730(b).

28. See id. at § 3730(b).

29. See id. at § 3730(b).1.

30. See id. at § 3730(b).

31. Counsel should be cautious not to provide information or documents that are privileged.


37. See United States ex rel. Mahmud v. Elizabethan Hematology Oncology, PLLC, et al., Civ. No. 3:11-cv-376 (W.D. Ky.).


39. Id.


42. Id.
The term whistleblower is used to cover a spectrum of actions including making disclosures to reveal wrongdoing, abuses, or dangers that threaten public interest. Even the 2016 Summer Olympics had its share of whistleblowers drawing attention to matters of public interest. Ms. Yuliya Stepanova was credited (or blamed) with both blowing the whistle on alleged drug doping schemes in Russia and being excluded from participating by the Russian Olympic Committee.1

This article is focused on the anti-retaliation provision of the Federal False Claims Act and an overview of some of the federal laws which provide individuals options and anti-retaliation provisions when blowing the whistle.

ANTI-RETALIATION PROVISIONS OF FEDERAL FALSE CLAIMS ACT AND WHISTLEBLOWER PROTECTION ACT

The most well-known whistleblower statute in the United States is the Federal False Claims Act ("FCA").2

FCA’s anti-retaliation provision reflects policy to afford whistleblowers (referred to in FCA actions as “relators”) with protection from their employers for blowing the whistle. The anti-retaliation portion of the FCA, titled “RELIEF FROM RETALIATORY ACTIONS,” is found at 31 U.S.C. § 3730(h) and provides:

“(1) IN GENERAL. Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section or other efforts to stop 1 or more violations of this subchapter.

(2) RELIEF. Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

(3) LIMITATION ON BRINGING CIVIL ACTION. A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.”

FCA’s whistleblower anti-retaliation provisions require the relator to have a reasonable belief the information she or he reported constitutes a violation of one of the FCA provisions. Generally, a claim for retaliation under FCA requires the relator to have engaged in protected activity; that the employer knew of such acts; and the employer took adverse action against the would-be relator as a result of these acts.3 As noted in Section 3730(h), adverse action is not limited to discharge of the employee. The statute extends to the protection from harassment or threatening of employees who assist in or bring a claim.4

A public employee may have some federal-related anti-retaliation protections under the Whistleblower Protection Enhancement Act (“WPEA”).5 WPEA strengthens and overlaps the provisions of the Whistleblower Protection Act of 1989.6 Retaliation in the context of federal agencies includes taking or threatening to take personnel action against an employee or candidate because she or he: disclosed wrongdoing; filed an appeal, complaint, or grievance; testified, cooperated, or disclosed information to appropriate department or personnel, or; refused to obey an unlawful order.

Personnel actions under WPEA can include (poor) performance reviews, demotion, suspension, termination, or the revocation or downgrade of security clearance. Federal civilian employees may make disclosures to the Office of Inspector General or file a complaint with the Office of Special Counsel.7

Both FCA and WPEA provide for relief to the whistleblower, including restoration of employment, reversal of adverse actions, back pay, and damages such as attorney fees, expenses incurred due to the retaliation, compensatory damages, and litigation costs.8

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT, SARBANES-OXLEY ACT AND OTHER WHISTLEBLOWER ANTI-RETALIATION EMPLOYEE PROTECTIONS

In 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”),9 which included legislation amending the Securities Exchange Act of 1934 to require the Securities and Exchange Commission (“SEC”) to enact a whis-
The SEC has been vigilant in applying anti-retaliation and protections to would-be whistleblowers under Rule 21F-17. This rule provides “[n]o person may take any action to impede an individual from communicating directly with the Commission staff about possible securities law violation...” The SEC has extended this rule to all confidentiality and non-disclosure agreements that many employers require exiting employees sign. SEC has enforced its whistleblower protection rule by cease and desist orders, payment of penalties, and requiring remedial measures to reverse any chilling effect of a blanket confidentiality agreement.

Dodd-Frank also provides a private right of action for employees subjected to retaliatory action from their employer for reporting fraud. Dodd-Frank shores up relevant provisions of the Sarbanes Oxley Act of 2002 (“SOX”), increasing the statute of limitations to 180 days, providing jury trials in SOX cases brought in federal court, and invalidates pre-dispute arbitration agreements to the extent the agreement purports to apply to SOX retaliation claims. An employee seeking relief under SOX anti-retaliation provision must file the claim with the Occupational Safety and Health Administration (“OSHA”) of the U.S. Department of Labor (“DOL”). However, the SEC Whistleblower Program allows the SEC to prosecute violations of the Dodd-Frank anti-retaliation provisions through the Commission’s own enforcement actions. The anti-retaliation protections should apply regardless of whether a whistleblower qualifies for an award under the SEC Whistleblower Program.

Thus far, only the SEC has promulgated a rule to expressly provide confidentiality agreements cannot be enforced where they would prevent an employee or former employee from providing information to the Commission as relates to a securities violation. The SEC has issued an order instituting a cease-and-desist proceedings against a corporation based on the language contained in its confidentiality statements. The respondent was ordered to cease and desist from committing further violations and sanctioned to pay a civil money penalty of $130,000. Likewise, a whistleblower’s interference with an internal system for reporting can be a factor to decrease the amount of an award.

In addition to strict deadlines for filing or preservation of private rights, anti-retaliation statutes often have restrictions as to who
may take advantage of the provision. For example, SOX might not extend to an independent contractor. A whistleblower who has a special relation with his or her employer also might not have the protections of the anti-retaliation provision. Employees who are outside the United States should also review the statutes to see if the provisions apply.

Dodd-Frank established a whistleblower program regarding futures trading subject to the Commodities Exchange Act (“CEA”) through the Commodity Futures Trading Commission (“CFTC”). The CFTC does not require whistleblowers to report violations internally, but does consider a whistleblower’s internal report as a factor that could increase the amount of award. A whistleblower may be eligible for an award for reporting original information internally if the employer later reports the information to the Commission, and that report leads to a successful enforcement action.29

The Commission prohibits retaliation against any individual for reporting violations of the CEA. The individual who is retaliated against may bring a private cause of action against the employer in federal district court.30 Like the SEC Whistleblower Protection Program, employers may not require their employees to waive any rights or remedies associated with the CFTC Whistleblower Program, including waiver of the anti-retaliation protections.31

Finally, Title X of Dodd-Frank created the Consumer Financial Protection Bureau as an independent agency with the Federal Reserve System. The Bureau protects employees who work for a financial products or services company from retaliation for testifying, filing or causing to be filed any proceeding under any federal consumer financial law, or objecting to or refusing to participate in any activity that the employee reasonably believes to be a violation of any law or standard subject to the jurisdiction of the Bureau.

Like all newly enacted legislation, cases are filtering through the courts in an attempt to determine scope and applicability of the anti-retaliation provisions. Dodd-Frank and the various employee protections are no exception to this process. A practitioner would do well to confirm the deadlines for preserving claims under this whistleblower act or any employee protection statute.32

**DEPARTMENT OF LABOR ADMINISTERED ANTI-RETALIATION LAWS**

DOL enforces anti-retaliation provisions of 22 whistleblower statutes.33 From Affordable Care Act34 to Wendell H. Ford Aviation Investment and Reform Act for the 21st Century,35 DOL is tasked with the responsibility of overseeing investigations of claims of retaliation under the various acts.36 Most, but not all, of the investigations are routed through OSHA. After OSHA investigates and issues a decision, either employee or employer may request a full, de novo, hearing before an administrative law judge from DOL.37 DOL asserts whistleblower protection is a priority over the next four years.38

While anti-retaliation provisions of these statutes have the same goal of protecting the whistleblower, there are distinct differences in statutes of limitation, relationships between the protected activity and the adverse action,41, and whether a private right of action exists.40 Some acts provide an option for an employee to file in federal court (“kick-out provision”) if the agency does not issue a decision within a specified time.41 Practitioners should review the deadline for filing a complaint,42 the proof of the adverse action,43, and potential alternate avenues for reporting a complaint.44

**EMPLOYER COUNTERCLAIMS AND RECENT SAFE HARBOR PROTECTIONS**

Whistleblowing employees and their employers should pay attention to liability through federal and state statutes such as Computer Fraud and Abuse Act,46 theft of property, or claims such as breach of contract, tortious interference, or breach of fiduciary duties. An employer’s claim that is not a pretext for further retaliation, or an employer who seeks protection of its confidential or trade secrets unrelated to a whistleblower’s claim, is far more likely to prevail.46

New federal Defend Trade Secrets Act of 2016 (“DFTSA”) created a federal cause of action for trade secret misappropriation. The act became effective immediately, but only applies to misappropriation occurring on or after the law’s effective date.48 The act permits employers to obtain equitable remedies, actual damages, attorney fees, and in certain circumstances, ex parte seizure order.49 DFTSA likewise contains immunity and anti-retaliation provisions to protect those who may need to disclose trade secrets in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, or in a document filed in a lawsuit or other proceeding if such filing is made under seal.50 DFTSA requires the employer to provide notice of the DFTSA immunity and anti-retaliation provisions in employment agreements (including severance, non-compete, non-solicitation agreements), independent contractor agreements, and proprietary rights agreements. At the time of this article submission, no statutory penalty exists for failure to provide the notice.

In light of enforcement of Rule 21F-17 of Dodd-Frank and the recent enactment of DFTSA, employers and their counsel would be well-served to analyze and update employers’ current documents to conform to anti-retaliation and anti-interference provisions of whistleblower acts. Employees would also be in a better position to avoid counterclaims and loss of employment by obtaining advice from legal counsel before taking action. B&B

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ENDNOTES


2. 31 U.S.C. § 3729 at seq. FCA prohibits any person from presenting a “false or fraudulent claim for payment or approval” to the United States. Congress included a qui tam provision to allow individuals to sue companies or individuals who were defrauding the government on the government’s behalf. FCA originated in 1863 and is still sometimes referred to as “Lincoln Law” or the “Qui Tam Statute.” Qui tam is a shortened version of the Latin phrase indicating he who sues for the King as well as himself. The incentive for those who would expose fraud on the government is based on sharing a percentage of the recovery with the whistleblower, referred to with respect to this statute as a relator.

3. 31 U.S.C. § 3729 at seq.


7. “The DoD’s ability to protect our warfighters and safeguard the taxpayer’s money depends on each of us. We rely heavily on our military members, civilian employees, and contractors to freely report issues of fraud, waste, and abuse without fear of retaliation.” Patrick Gookin, Department of Defense Whistleblower Protection Ombudsman.


10. Section 922 of the Dodd-Frank Act.

11. Section 21F(a)(6).


15. Id.

16. C.F.R. § 240.21F-4(b)(y).

17. C.F.R. § 240.21F-4(b)(ii).

18. Rule 21F-9(c).

19. Id.

20. Rule 21F-17(c).


23. Section 806 SOX; Section 21F(c) Dodd-Frank.


25. 17 C.F.R. § 240.41F-17(a).


27. Id.

28. 17 C.F.R. § 240.41F-17(a).

29. 17 C.F.R. § 165.9(b)(4).

30. 7 U.S.C. § 26(b); 17 C.F.R. § 165.9(b)(1).

31. 7 U.S.C. § 26(b); 17 C.F.R. § 165.

32. For example, a whistleblower has 180-day statute of limitations for a claim under SOX, but a three- or six-year statute of limitations for SOX or under ACA, and 180-days to file, and AIR21 still has a 90-day filing deadline. See, United States Department of Labor Whistleblower Protection Program site at www.whistleblowers.gov.

33. The protected activity for a CFPA retaliation claim is a contributing factor to the adverse action, but the threshold for OSHA retaliation claim remains as a “motivating factor.” Department of Labor may refer an untimely OSHA retaliation complaint to the National Labor Relations Board.

34. Compare Cafasso v. General Dynamics C4 Systems, Inc., 637 F.3d 1047 (9th Cir. 2011) (the need to facilitate valid claims does not justify the wholesale stripping of a company’s confidential documents), or JDS Uniphase Corp. v. Jennings, 473 F. Supp. 2d 697 (E.D. Va. 2007) (SOX is not a license to steal documents and break contracts) to United States ex rel. Quintairos v. Cancer Treatment Centers of America, 350 F. Supp. 2d 765, 773 (N.D. Ill. 2004) (confidence agreement cannot trump the False Claim Act’s strong policy of protecting whistleblowers).


39. [Employee’s] engagement in protected activity need not be the sole consideration behind discharge or other adverse action. 29 C.F.R. § 1977.6.

40. For example, OSHA does not have a private right of action.


42. OSHA and SDWA have a 30-day limitation, while more recent SOX and ACA have 180-days to file, and AIR21 still has a 90-day filing deadline. See, United States Department of Labor Whistleblower Protection Program site at www.whistleblowers.gov.

43. The protected activity for a CFPA retaliation claim is a contributing factor to the adverse action, but the threshold for OSHA retaliation claim remains as a “motivating factor.” Department of Labor may refer an untimely OSHA retaliation complaint to the National Labor Relations Board.


45. Compare Cafasso v. General Dynamics C4 Systems, Inc., 637 F.3d 1047 (9th Cir. 2011) (the need to facilitate valid claims does not justify the wholesale stripping of a company’s confidential documents), or JDS Uniphase Corp. v. Jennings, 473 F. Supp. 2d 697 (E.D. Va. 2007) (SOX is not a license to steal documents and break contracts) to United States ex rel. Quintairos v. Cancer Treatment Centers of America, 350 F. Supp. 2d 765, 773 (N.D. Ill. 2004) (confidence agreement cannot trump the False Claim Act’s strong policy of protecting whistleblowers).


47. Id.

48. Id.

49. Id.

50. Id.
Kentucky enacted its protection for state level whistleblowers in the 1980s. The current version is found in four sections of Chapter 61, Title VIII of the Kentucky Revised Code. Mention of the term “whistleblower” might conjure images of Russell Crowe portraying Jeffrey Wigand in Hollywood’s 1999 take on the unmasking of the tobacco industry titled The Insider. A lone, brave employee risking his job, his family, and perhaps his freedom, or life, by exposing the nefarious deeds of his employer. The film provides a dramatized look at what can happen to an employee who “blows the whistle” on an employer.

This article will take a brief look at Kentucky’s statutory protections and remedies under the Kentucky Whistleblower Act (“KWA”). The KWA has dual purposes. The first purpose is to protect employees who possess concealed or otherwise not publicly known information of a violation of law or abuse of office, and provide them an avenue to disclose the information to the proper authorities without fear of retribution. The second purpose of the KWA is to discourage wrongdoing in government.

WHO IS PROTECTED BY THE KWA AND WHO HAS TO WORRY ABOUT THOSE PROTECTIONS?

Individuals seeking the protection of the KWA must demonstrate they are employees. The KWA defines an employee as a person “in the service of the Commonwealth of Kentucky, or any of its political subdivisions, who is under a contract of hire, express or implied, oral or written, where the Commonwealth, or any of its political subdivisions, has the power or right to control and direct the material details of work performance.” In other words, the individual seeking protection must demonstrate they are in an employee/employer relationship (as opposed to, for instance, an independent contractor relationship) with a covered party.

A covered “employer” under the KWA is the Commonwealth, any of its political subdivisions, and “any person authorized to act on behalf of the Commonwealth, or any of its political subdivisions, with respect to formulation of policy or the supervision, in a managerial capacity, of subordinate employees.” Identifying the larger bodies of state government or a county is not difficult. Figuring out if one of the smaller agencies is a “political subdivision” is not as easy. Whether or not a given agency or entity is a state political subdivision is analyzed on a case by case basis. A person who seeks protection under the KWA must demonstrate the agency exercises a governmental function that is integral to state government. Some entities have been scratched off the list through court interpretation. For instance, privately owned state contractors are not employers under the KWA even though they may be performing such functions. Furthermore, cities are not a
political subdivision of the state. As a result, city employees are not protected by the KWA unless the employee can find a statute that makes the employee a statutory agent of the state.\(^\text{10}\)

While the KWA also describes individuals as potential employers, there is no individual civil liability for policy makers or managers.\(^\text{11}\) This is in line with federal anti-discrimination statutes, such as Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act.

### WHAT ACTIVITY BY AN EMPLOYEE IS PROTECTED?

Simply stated, the employee has to say something (or threaten to say something), related to a particular set of topics, for the right reasons, and to the right people. The KWA provides protection for employees who report, divulge or disclose facts or information related to one of two types of governmental wrongdoing: 1) actual or suspected violations of any law, statute, executive order, administrative regulation, mandate, rule or ordinance of the Commonwealth (including its political subdivisions) or the United States, or 2) mismanagement, waste, fraud, abuse of authority, or a substantial and specific danger to the public health.\(^\text{12}\) The statute encompasses quite a bit of activity. In fact, the disclosure does not even have to touch on a matter of public concern.\(^\text{13}\) But there are limits as to what constitutes a protected disclosure. For instance, disclosure of public information is not protected.\(^\text{14}\) Moreover, merely complaining of unfair treatment by a superior or simply disagreeing with a superior is not protected.\(^\text{15}\) Expressing an opinion that does not concern a violation of law is not a protected disclosure.\(^\text{16}\)

The KWA also specifies two situations where an employee’s activities are not authorized or their activities may be limited. An employee cannot simply leave their assigned work area during normal hours to make a disclosure without following the law or agency protocol. The only exception is when the employee is requested to appear before the Kentucky Legislative Ethics Commission, the Executive Branch Ethics Commission, or a legislative committee. The KWA also does not authorize an employee to represent a personal opinion as the opinion of the employer.\(^\text{17}\)

Furthermore, the disclosure must be made in good faith. This does not require first-hand knowledge on the part of the employee, but there must be a reasonable belief by the employee that a violation has occurred and the employee must manifest a desire to correct the wrongful conduct.\(^\text{18}\) A quick practice point: Whether or not an employee acted in good faith is a question of fact, which Kentucky courts say does not lend itself well to summary judgment.\(^\text{19}\) The good faith disclosure of a suspected violation of law must be made to an appropriate body or authority.\(^\text{20}\) The authorities listed in the statute are the Kentucky Legislative Ethics Commission, the Kentucky Attorney General, the Kentucky Auditor, the Executive Branch Ethics Commission, the General Assembly, the Legislative Research Commission, the Judiciary, Law Enforcement, or any other appropriate body or authority.\(^\text{21}\)

The members of these authorities are also appropriate persons to whom the employee can make a disclosure. An employee can make a protected disclosure to the employee’s own agency, but it must be made to a person or body that has investigatory authority or authority to remedy the problem.\(^\text{22}\)

### WHAT ACTIVITY BY AN EMPLOYER IS PROHIBITED?

Certainly, government officials should not be breaking the law or abusing their office by mismanagement or waste of public resources. When they do, and an employee discloses the wrongdoing, the employer is prohibited from retaliating against the employee. As an initial matter, an employer is not allowed to require an employee to provide notice to the employer prior to making the protected disclosure.\(^\text{23}\) KRS 61.102(1) provides a laundry list of actions that should not be taken after the employee’s disclosure.

An employer cannot directly or indirectly use or threaten to use any official authority or influence in any manner that tends to: discourage, restrain, depress, dissuade, deter, prevent, interfere with, coerce, or discriminate against the employee because of the protected disclosure.\(^\text{24}\) Kentucky courts interpreting this provision have held that the KWA prohibits overt acts of reprisal as well as the subtle exercise of official influence to deter employees from blowing the whistle. As a result, an employee does not need to demonstrate a concrete “adverse employment action” such as termination or demotion.\(^\text{25}\) But a whistleblower must establish a materially adverse change in the terms and conditions of employment to state a claim.\(^\text{26}\)

The KWA also discusses what activity the employer is specifically not forbidden to engage in when interacting with an employee who has or is about to disclose information to an appropriate person or entity. An employer is not prohibited from requiring the employee to inform the employer of an official request\(^\text{27}\) for information, the substance of the employee’s testimony made or to be made, and when the employee intends to testify on behalf of his employer.\(^\text{28}\) Additionally, an employer is not prohibited from disciplining an employee if the employee discloses information known to be false (or with reckless disregard to the truth or falsity of the information), information exempt from disclosure by the Kentucky Open Records Act, or is otherwise made confidential by law.\(^\text{29}\)

### PROVING RETALIATION

After demonstrating an employee/employer relationship, proving the employer is covered by the KWA, properly disclosing to the appropriate persons, and pointing to an adverse change in the terms and conditions of the job, the employee also must show a nexus between the disclosure and the retaliatory act. Typically, in employment discrimination and retaliation cases, an employee has two avenues to meet the initial evidentiary burden, either through direct or circumstantial evidence.\(^\text{30}\)

Direct evidence is that evidence which, if believed, requires the conclusion that unlawful retaliation was at least a motivating factor in the employer’s actions. Consistent with this definition, di-
rect evidence of retaliatory motive does not require a factfinder to draw any inferences in order to conclude that the challenged employment action was motivated at least in part by the whistleblower's disclosure of the employer's wrongdoing. The evidence must establish that the employer was predisposed to retaliate, and that the employer acted on that predisposition.31

Finally, an employee who has presented direct evidence of improper motive does not bear the burden of disproving other possible non-retaliatory reasons for the adverse action. Rather, the burden shifts to the employer to prove by a preponderance of the evidence that it would have made the same decision absent the impermissible motive.32 Finding direct evidence of retaliatory motive is rare. Most employers are wise enough not to leave such a trail of evidence. This means the employee usually must turn to circumstantial evidence. Circumstantial evidence can include an employer’s knowledge of a protected disclosure and the proximity in time between a disclosure and the personnel action.33

The KWA codifies these principles.34 KRS 61.103(3) dictates that an employee must prove, by a preponderance of the evidence, the disclosure was a contributing factor to the personnel action.35 Once established, the burden of proof shifts to the employer to prove by clear and convincing evidence the disclosure was not a material fact in the personnel action. There is a presumption under the KWA that action taken by an official was a contributing factor if “the official taking the action knew or had constructive knowledge of the disclosure and acted within a limited period of time so that a reasonable person would conclude the disclosure was a factor in the personnel decision.”36 A whistleblower need only demonstrate the disclosure is a contributing factor, not the only factor that brought about the employer’s retaliatory conduct.37

Furthermore, there is no hard and fast rule as to what period of time is short enough to establish a causal connection. A one-year period between a disclosure and a personnel action is probably too remote, but not as a matter of law.38 In addition to overcoming timing issues, circumstantial evidence must be based on facts, not mere speculation or surmise.39

WHAT REMEDIES ARE AVAILABLE TO A WHISTLEBLOWER EMPLOYEE WHOSE EMPLOYER IS COVERED BY THE KWA?

After the liability dragon is slain, the employee proceeds to the second step in any civil litigation: proving damages. KRS 61.990 contains the remedies available to employees who can establish liability under the KWA. The court is given substantial latitude to fashion an appropriate remedy including reinstatement to the job, back wages, full reinstatement of fringe benefits and seniority, exemplary or punitive damages, or any combination.40 Punitive damages are available even in the absence of compensatory damages.41 KRS 61.103(2) authorizes injunctive relief. The court can also award the successful employee attorney’s fees and costs, including witness fees.42 Here is another helpful practice point: If successful at trial, attorneys for the whistleblower should file the motion for fees and costs before the judgment becomes final and the court loses jurisdiction to award them.43

KRS 61.102 is also a criminal statute. While not technically a “remedy” for a whistleblower, an employee might take some additional solace when the conduct they have faced is so egregious that the wheels of criminal justice spin. The elements of the crime are: 1) the defendant is an officer of the state, 2) the person affected is an employee, 3) the employee made a good faith disclosure, and 4) the defendant acted to punish the employee.44 It is classified as a Class A Misdemeanor.45

GETTING TO COURT

Whistleblowers have to file their civil actions quickly after the personnel action is taken, particularly if the whistleblower wants to seek injunctive relief or punitive damages. The KWA affords only a 90-day statute of limitations. However, the 90-day statute of limitations only applies to claims for punitive damages and injunctive relief; it does not apply to a claim for other damages specified in the statute.46 Cases arising under the KWA are filed in the Circuit Court of the county where the violation occurred, where the whistleblower resides, or the county where the employer resides or has its principal place of business.47 Litigants can request trial by jury.48

CONCLUSION

The KWA is important social legislation, and like any good piece of social legislation, it acts as both shield and sword. It provides a shield to those who are able, and more importantly willing, to shine a light on government fraud, waste and abuse. It also acts as an awaiting sword for those who abuse their position and retaliate against those brave enough to expose the abuse. 

ABOUT THE AUTHOR

KASH STILZ is a partner at Roush & Stilz, P.S.C., in Covington. He maintains a litigation practice in Kentucky and Ohio in the areas of employment law, civil rights law, injury law, and criminal defense.

ENDNOTES
1. KRS 61.101 - 103, 61.990.
3. Id.
5. KRS 61.101(1); see also Cab. for Health & Family Servs. v. Cumming, 163 S.W.3d 425, 428 (Ky. 2005).
6. KRS 61.101(2).
12. KRS 61.102(1).
17. KRS 61.102(3)(c).
20. Thorton, 292 S.W.3d at 328.
21. KRS 61.102(1).
22. Workforce Development Cab., 276 S.W.3d at 793.
23. KRS 61.102(1) (compare this with Ohio’s whistleblower protection statute, O.R.C. 4113.52(A)(1)(a), which requires the employee to notify the employer before making any other disclosure).
24. KRS 61.102(1).
27. “Official request” is defined in KRS 61.101(3) as a request from the General Assembly, the Legislative Research Commission, the Auditor, the Attorney General, the Governor, and the media.
28. KRS 61.102(3)(a).
29. KRS 61.102(3)(d).
31. Id. at 415.
32. Id. at 415.
34. KRS 61.103.
35. KRS 61.103(1)(b) (“Contributing factor” is defined by the KWA as “any factor which, alone or in connection with other factors, tends to affect in any way the outcome of a decision”).
36. KRS 61.103(1)(b).
39. Id.
40. KRS 61.990(4).
42. KRS 61.104(4).
44. Woodward v. Com., 984 S.W.2d 477, 480-481 (Ky. 1998).
45. KRS 61.990(3).
47. KRS 61.103(2).
Currently, one in six adults and one in five children in Kentucky struggle with food insecurity. Insecurity means having to choose between paying for utilities and paying for food. Sixty-seven percent of Kentucky food bank clients report facing this decision. Insecurity means having to choose between paying for medicine and paying for food. Sixty-nine percent of Kentucky food bank clients report facing this decision. Insecurity means having to choose between paying for transportation and paying for food. Sixty-three percent of Kentucky food bank clients report facing this decision. And the most recent statistics gathered by the Kentucky Association of Food Banks reveal that 39 percent of Kentucky food banks do not have enough food to meet client needs. This is a solvable problem. Kentucky lawyers, we invite you to be part of the solution.

The KBA Young Lawyers Division is excited to partner with the Kentucky Association of Food Banks and Attorney General Andy Beshear in Kentucky’s first statewide hunger relief effort by its legal community. On Feb. 7, 2017, Attorney General Beshear will host the statewide kickoff event for the Legal Food Frenzy at the State Capitol Rotunda. The kickoff will begin at 1pm Eastern Time and we invite you to attend!

Then, from March 27 – April 7, 2017, law firms, legal offices, and law schools across the state will engage in a friendly competition to raise food and money donations for Kentucky’s food banks. We are looking for every member of the KBA to take part in this initiative. Our goal may sound like a lofty one—to raise 600,000 pounds of food in two weeks. However, this represents one pound of food per person who relies on the Kentucky Association of Food Banks.

Law firms and legal organizations can sign up online between now and March 26, 2017, at www.kyfoodfrenzy.com. At signup, each firm and organization will be asked to designate a “Firm Champion.” The Firm Champions will promote the competition within their organization and coordinate food donation pickup with their local food bank. Participants will also be encouraged to donate online at the Legal Food Frenzy website. The best way to support hunger relief is by making a financial donation, which allows the Kentucky Association of Food Banks to use their buying power to acquire healthy, nutritious food at deeply discounted rates. Each dollar contributed will count as four pounds of food towards the firm’s total in the competition. There will also be “bonus pounds” awarded to encourage participants to volunteer at their local food bank.

And no matter where your law firm or legal organization is located across the Commonwealth, your donations will go towards supporting your local community. The Kentucky Association of Food Banks is comprised of seven regional food banks that distribute food in all 120 counties in Kentucky through a network of 800 local charitable feeding organizations such as soup kitchens, food banks, and shelters.

Awards will be presented to the winners in the following categories:

- Solo law firms (one-three attorneys) – awarded based on the most pounds per lawyer
- Small law firms (four – 10 attorneys) – awarded based on the most pounds per lawyer
- Mid-sized law firms (11 – 49 attorneys) – awarded based on the most pounds per lawyer
- Large law firms (50+ attorneys) – awarded based on the most pounds per lawyer
- Corporate legal departments – awarded based on total pounds collected
- Government entities – awarded based on total pounds collected
- Law schools – awarded based on total pounds collected

The winning law firms and legal organizations will receive recognition at the 2017 KBA Annual Convention during a special awards luncheon and reception, as well as acknowledgement in the Bench & Bar. The law firm or legal organization that raises the most overall total pounds will be awarded the prestigious Attorney General’s Cup and supreme bragging rights! Most importantly, the support of attorneys across our Commonwealth will help bring Kentucky one step closer to ensuring that all of its citizens have access to adequate food.

For more information and to sign up for the Legal Food Frenzy, visit http://www.kyfoodfrenzy.com. Please join the YLD for the kickoff event on Feb. 7, 2017, and #FeedTheFrenzy!

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**Kentucky Legal Food Frenzy**

The food drive of the Kentucky Bar Association. All proceeds to benefit the Kentucky Association of Food Banks.

**Sign up online by March 26, 2017.**

**Donations collected March 27, 2017 – April 7, 2017.**

Attorney General Cup awarded to the winner on June 22, 2017.

Kentucky Association of Food Banks is comprised of 7 regional food banks that distribute food to all 120 counties located in Kentucky.

Kentucky Association of Food Banks feeds 1 in 7 Kentuckians annually.

A huge thank you to our sponsors:

- YLD
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1 in 5 children living in Kentucky lack consistent access to enough food.

1 in 6 adults living in Kentucky lack consistent access to enough food.

情報 overload warning.
UK ANNOUNCES Establishment of the Heyburn Initiative—Programming to Enhance Public’s Understanding of Federal Judiciary
BY: JAY BLANTON

University of Kentucky President Eli Capilouto, U.S. Senate Majority Leader Mitch McConnell and Dr. Martha K. Heyburn on Monday, October 10, announced the establishment of a national, nonpartisan federal judicial initiative at the university in honor of the trailblazing U.S. Senior District Judge John G. Heyburn II.

The Heyburn Initiative for Excellence in the Federal Judiciary, in partnership with the UK College of Law and UK Libraries, will establish an archives and oral history program for Kentucky’s federal judges and a national lecture series on relevant judicial topics. It also will play host to federal judicial conferences.

“The John G. Heyburn Initiative for Judicial Excellence is a perfect tribute to my friend,” Sen. McConnell said. “John was kind, he was thoughtful, he was principled—and the Heyburn Initiative will remind us that these virtues count both on the bench and in life. Dedicated to the preservation and study of judicial history in Kentucky, I look forward to the Heyburn Initiative becoming an integral part of Kentucky’s judicial community and a national focal point and destination for all students of our legal system.”

Based on the recommendation of Sen. McConnell, President George H.W. Bush appointed Judge Heyburn to the U.S. District Court for the Western District of Kentucky in 1992. He served as chief judge in the Western District of Kentucky from 2001 to 2008.

Heyburn’s opinions on same-sex marriage are well known: He struck down Kentucky’s ban on same-sex marriage and the state’s refusal to honor such marriages from other states, ruling that both violated the Equal Protection Clause of the Constitution. He died on April 29, 2015, at age 66 of cancer.

Dr. Heyburn, his wife of nearly 39 years, said the initiative seeks to spark a continuing conversation about the rule of law and aid in the constant improvement of the judiciary.

“No one independent or university-based center currently offers these unique components, UK officials said.

“The importance of today’s announcement is two-fold,” said President Eli Capilouto. “First, the university is proud to honor the legacy of astute jurisprudence and public service left by Judge Heyburn. Indeed, his contributions to legal doctrine ensuring fair and equitable application of the law are renowned and far-reaching. Second, as the home of the new Heyburn Initiative, the Uni-
Dean David A. Brennen announces the Honorable John G. Heyburn II Lecture Series and the Honorable John G. Heyburn II Conference, two parts of the Heyburn Initiative that will help further distinguish UK Law from other law schools.

University of Kentucky is enhancing and extending its capacity as a place of knowledge, discourse and service. The mission and programs of the Heyburn Initiative going forward will support scholars and jurists for many years to come, building on our role as a public flagship and land-grant research university.

In addition to his well-known opinions on same-sex marriage, Heyburn played a significant role in the Jefferson County Public Schools student assignment plan, ruling that schools cannot use race or gender as the sole factor in determining admittance, but that busing could continue. The case eventually went to the U.S. Supreme Court.

An independent advisory board will be created to support the Heyburn Initiative. Funding to support the Heyburn Initiative will be raised and managed by the Community Foundation of Louisville.

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 — 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.
The lights will come on earlier in the year when Salmon P. Chase College of Law makes some of the most significant changes to its part-time evening program since it was founded more than a century ago as The Night Law School.

Chase, which offers both full-time and part-time programs at Northern Kentucky University, will advance the start of the part-time academic year to May from September, change on-campus class schedules, and offer more online courses. The changes begin in spring.

**WHY CHANGE IS OCCURRING**

With 123 years of experience in part-time legal education, Chase clearly knows how to operate an evening program. How students have ordered their personal and professional lives throughout that period, however, has changed.

When Chase was founded in 1893 and held classes in downtown Cincinnati the next 79 years, downtown was the employment center of a metro area with relatively closely stitched suburbs. Since then:

- Chase merged with NKU in 1971 and subsequently moved to its Highland Heights, Ky., campus, about seven miles from downtown.
- The metro population that had spread first to the east and northeast has steadily expanded southward, beyond Florence, Ky., and northward, approaching the Dayton, Ohio, suburbs.
- Employers have followed the population.

“Part-time students have many demands on their time, coming to law school three nights a week for four years is a daunting challenge,” Associate Dean Michael Whiteman says. “People with professional careers travel, they work from home, and the downtown core is no longer the only hub of professional life.”

**WHAT A NEW SCHEDULE MEANS**

Instead of attending classes three nights a week—but with no change to graduation requirements—students will attend:

- Two nights a week for a 12-week summer session that begins in May.
- Two nights a week each 14-week fall and spring semester.
- 10 Saturdays a year.

Professors’ optional use of online instruction in some core courses and more online electives can further reduce the time on campus. “Combining live classroom lectures with some online additions, Chase will be able to offer the same-quality part-time program,” Dean Whiteman says.

“This switch will allow working professionals, including those who live in Louisville, Lexington, Dayton, and beyond an opportunity to pursue a law degree, whereas the three–night-a-week commitment prevented them from attending.”

“Technology will extend instruction beyond a physical classroom.”

- CHASE ASSOCIATE DEAN MICHAEL WHITEMAN

**HOW STUDENTS WILL BENEFIT**

Less time driving to and from classes can mean more time studying. Combining travel and classroom time, some students could shift four hours a week from class time to study time. Other anticipated benefits for students are:

- More concentrated class preparation and review with only two classes a week.
- Smoother course scheduling in a more structured curriculum.
- More time in legal writing and legal studies classes to develop skills for success in other courses.

**WHERE TECHNOLOGY FITS IN**

For most of its history, there has been only one way to learn at Chase: Go to class. That began to change after the century changed.

“Technology has advanced to the point professors can integrate it into their classes and create hybrid in-class/online environments that allow learning to continue beyond the physical classroom,” says Dean Whiteman, who oversees the Chase law library and the college’s adoption of new technology. Online courses will expand elective options.

Recognizing that times have changed for technology and the metropolitan area in which Chase is located, faculty members studied the old-school structure of the part-time program and decided now is the right time for a new day for evening classes.
ENTERTAINMENT ATTORNEY. PRIVATE INVESTOR. GOVERNMENT OFFICIAL.

Graduates of the Louis D. Brandeis School of Law at the University of Louisville hold these titles and more.

At our Law Alumni Council Awards Oct. 21, we recognized 12 of the many impressive people who make up the Brandeis Law community.

Below, we will share a bit about our honorees. But first, we also want to celebrate ERNIE ALLEN, a member of the Class of 1972 and UofL’s Alumnus of the Year. Allen was a founder of the National Center for Missing & Exploited Children. To extend the effort globally, he created the International Centre for Missing & Exploited Children. Considered an expert on the digital economy, public-private partnerships and child protection, he frequently speaks to global audiences on these issues. He advises governments, law enforcement, technology companies and others. In 2015 he was appointed by UK Prime Minister David Cameron to head a global initiative to combat online child exploitation.

Allen was honored, along with alumni fellows from UofL’s schools and colleges, at an event Oct. 20.

LAWRENCE GRAUMAN AWARD
The highest award bestowed by the Law Alumni Council is the Lawrence Grauman Award, named after the judge of the Jefferson Circuit Court Commons Pleas Branch, Fifth Division, from 1950–64.

This year’s recipient is CHUCK SCHNATTER, a 1988 graduate of Brandeis Law. Schnatter is a private investor with ownership interests in companies in a variety of industries, including real estate, technology, restaurants and consumer products.

From 1988 through July 2010, he served in various roles with Papa John’s International Inc. His positions at Papa John’s included senior vice president and chief development officer, secretary and general counsel. He was a member of the Board of Directors of Papa John’s from 1988 through 2001.

Schnatter has served as a director of Skyline Chili LLC, a 133-store restaurant chain based in Cincinnati, Ohio, since 2001.

DISTINGUISHED ALUMNI
JEREMIAH BYRNE is a trial lawyer in the litigation department of Frost Brown Todd LLC. He focuses his practice in the areas of personal injury defense, transportation litigation, fire litigation and insurance coverage. He has experience at all stages of litigation, including prelitigation dispute resolution, arbitration, pretrial discovery, trial and appeal. Byrne has served as first-chair trial counsel in numerous civil jury trials and devotes a substantial amount of his time to defending insurers and self-insured entities.

CHARLES J. (MIKE) CRONAN IV is a member and former managing partner (1994–1997) of Stites & Harbison, PLLC. His practice focuses on civil litigation, with emphasis on business and complex litigation, health care law and alternative dispute resolution.

Cronan’s civic and community involvement includes the Rotary Club of Louisville, GuardiaCare Services Inc., Holy Spirit Church, Citizens for Better Judges, Medical Foundation of the Jefferson County Medical Society and the Louisville Bar Association.

GRANT M. HELMAN specializes in family and criminal law. He has been in private practice since 1969 after clerking for the Honorable Chief Justice John S. Palmore in the Kentucky Court of Appeals.

He was admitted to the United States District Court in 1970; to the United States Court of Appeals, Sixth Circuit, in 1976; and to the United States District Court, Eastern District in 1983.

He has been a member of the Kentucky Board of Bar Admissions’ Character and Fitness Committee since 1979 and its chairman since 1982. In 2002, Helman received the Outstanding Lawyer Award from the Kentucky Bar Association.

NEVA-MARIE POLLEY is an attorney and executive director of Louisville’s Legal Aid Society. Polley has served in multiple capacities at the Legal Aid Society since 2005. She was a litigator in the office’s Family Law Unit and developed and launched the Domestic Violence Advocacy Program, a partnership with numerous agencies that helps victims of domestic violence obtain protective orders and seek safety through the court system.

In 2013, Polley was named the Legal Aid Society’s director of volunteer services and community engagement. She revitalized the program and engaged private attorneys through innovative projects.

Polley began her legal career as an advocate for indigent criminal de-
MIKE SLAVEN served as the director of the Brandeis School of Law’s Entrepreneurship Law Clinic from January 2012 to May 2016.

He helped establish and supervised the law school’s first entrepreneurship clinic, which provides opportunities for law school students to gain practical skills through the representation of business school students in the Entrepreneurship MBA program. For nearly 25 years, Slaven worked at Capital Holding/Providian/AEGON in a variety of capacities involving securities law, corporate law and insurance law matters.

RECENT ALUMNUS AWARD
NATHAN HANEY, a 2009 alumnus of Brandeis Law, is deputy secretary of the Executive Cabinet for Kentucky Gov. Matt Bevin.

In November 2015, Haney was tapped to be the deputy transition director for the newly elected Gov. Bevin, who then asked Haney to stay on as the deputy secretary of the Governor’s Cabinet. In 2016, Haney spearheaded two important initiatives, the Criminal Justice Reform Initiative and the Red-Tape Reduction Initiative, both of which have received national acclaim.

Prior to public service, Haney practiced law for five years. In his practice, he advocated for the disabled and disadvantaged. In 2011, Haney started a trucking company. The company has doubled year after year and has added four more divisions.

Haney served as the youngest-ever chair of the Republican Party in both Jefferson and Johnson counties. He is the co-chair with Kentucky Treasurer Allison Ball of the Republican Party of Kentucky’s Young Guns. He serves on the Executive Committee of the Republican Party of Kentucky.

GAIL ROBINSON AWARD
This award is named for 1976 Brandeis Law alumna Gail Robinson, a long-time employee of the Kentucky Department of Public Advocacy. Robinson died in 2012 and will be remembered for her numerous contributions, but especially for her work with Kentucky’s juvenile law. She and her colleagues were responsible for freeing an innocent juvenile death row inmate in 2002.

The award is presented to an alum who has dedicated their career to public interest law, and this year’s recipient is JUDGE DENISE CLAYTON.

Judge Clayton became the first black woman to serve on the Kentucky Court of Appeals in October 2007. She represents the 4th Appellate District, Division 2.

Prior to her appointment and election to the Court of Appeals, Judge Clayton was chief circuit judge for Jefferson County, where

HANK JONES
Insurance & Personal Injury Mediation

PAT MOLONEY
Healthcare, Nursing Home & Medical Malpractice Mediation

STEVE BARKER
Employment & Business Disputes Mediation

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 quality, prompt mediation services. Located in Lexington and available for mediations statewide. Learn more about mediators Hank Jones, Pat Moloney and Steve Barker at STURGILLTURNERMEDIATIONCENTER.COM.
she had been a circuit judge for nearly seven years. She was the first black woman to be a Kentucky Circuit Court judge. She was also chief regional circuit judge for the Metro Region for several months before serving on the Court of Appeals. Judge Clay-nton previously served in Jefferson County as a judge for District Court, Family Court and Drug Court.

DEAN’S SERVICE AWARD
The Dean’s Service Award is presented to someone who has served the law school in a significant way. With his role as an adjunct professor and his volunteer work with the Summer Law Institute—co-hosted by Brandeis Law, the Louisville Bar Association and Bellarmine University—this year’s recipient, JUDGE MCKAY CHAUVIN, makes important contributions to Brandeis Law.

Judge Chauvin, judge in Jefferson Circuit Court Division 8, spent 15 years as a prosecutor in state and federal court. As an assistant commonwealth’s attorney, he served as division chief of the Special Prosecutions and Capital Trial units.

As an assistant United States attorney, he was the violent crimes coordinator for the Western District of Kentucky and founded the nationally recognized anti-gun crime initiative called “Project Backfire.”

ALUMNI FELLOW
Nancy Niederman is this year’s Brandeis Law Alumni Fellow. The Alumni Fellows program was founded by the UofL Alumni Association in 1983 to recognize graduates who have distinguished themselves in their chosen fields and are exemplary ambassadors for the university and their college or school.

Niederman began her legal career in a preeminent Beverly Hills entertainment firm and then segued to the legal department of Columbia Pictures, where she served as senior counsel in the motion picture division.

In 1986, Niederman moved to MGM/UA where, as the senior vice president of studio legal affairs, she oversaw the studio’s legal department and was in charge of all theatrical, television and video production legal matters. Niederman then joined Twentieth Century Fox, where for 20 years she was a senior legal executive overseeing some of the studio’s biggest franchises. At Fox, her legal portfolio included James Cameron’s Lightstorm Entertainment and Ridley Scott’s Scott Free Productions.

She retired from Fox in 2013 and is now outside counsel for Lionsgate Entertainment and STX Entertainment, providing legal services on feature film productions.

OUTSTANDING TEACHER AWARD

She co-directs the Brandeis Human Rights Advocacy Program, which works actively with other nonprofits and stakeholders in the community to advance the human rights of immigrants, non-citizens and refugees. Current initiatives are focused on language access, educational access, health care access and media rhetoric. Abrams was awarded the 2014 University of Louisville Presidential Multicultural Teaching Award for her demonstrated commitment to teaching, research and service that integrate diverse perspectives.

OUTSTANDING STAFF MEMBER
JENNIFER DISANZA is assistant dean for student services at the Brandeis School of Law. She has been working in law school student services for 15 years. Prior to Brandeis Law, DiSanza worked at Capital University Law School in Columbus, Ohio, and the University of Maryland School of Law.

DiSanza believes the partnership between student life and academics is core to the mission of the school. Students need support in all aspects of their law school education, and as student advocates, Student Life personnel listen to issues, concerns and stressors and try to help students cope with the unexpected events that happen while in law school.

DiSanza served on the Executive Committee of the Student Services section of the Association for American Law Schools from 2011-2015. She was the chair of the section in 2013.
You read over the brief several times to make sure it was perfect. You were certain you made all necessary corrections. You even fixed the dangling modifier on page four. So you filed the brief and served it on opposing counsel. And then you found it—right there on page one—a glaring typo.

Sound familiar? Most of us have had an experience like this one time or another. Perhaps it has happened more times than you care to admit. You may even have wondered whether the time spent proofreading is actually worth it, especially when it seems impossible to make the document perfect. Well, the answer is yes.

While proofreading is time-consuming, a polished document is important for your credibility as a writer and lawyer. Consider the following quote from a text devoted entirely to editing strategies for legal writing: “When you are not careful about a little detail, like where an apostrophe belongs, your reader will begin to doubt whether you were careful about other, bigger things.”

This column offers some tips and strategies that can improve the proofreading process you use. To be clear, I use the term proofreading to refer to the final stage of editing. Of course proofreading can never take the place of earlier stages of rewriting or revising for organization, content, clarity, or conciseness. But this final stage of editing is crucial, because it is where you identify and fix any problems with spelling, grammar, and punctuation that leave your document looking less than polished.

1. PROOFREAD WITH A FRESH OUTLOOK.
Leave yourself plenty of time to take breaks from the document you are proofreading. If you have a day or two to set the document aside, then by all means, take it. If not, an hour or even 20 minutes away from the document can help clear your head in a way that affords the fresh outlook needed for effective proofreading. Bryan Garner refers to this technique as “distanced editing,” which he says “will lower the chance of your ‘reading’ what you intended to say instead of what you actually said.”

2. WORK FROM A PRINTOUT AND CONSIDER READING OUT LOUD.
As I often tell my students, proofreading a document on the computer or tablet screen is not the most effective way to edit. Instead, print the document so that you can proofread with a hardcopy of the paper and a pen. Read the document very slowly and, if possible, read out loud so you are sure to read each word. This is a tip I have incorporated into my own editing process for years. I find that by reading my text out loud, I am more likely to hear grammatical errors than when reading the text silently to myself.

3. READ THE ENTIRE DOCUMENT OVER SEVERAL TIMES.
One careful proofread is usually not enough. Instead, build in time to read the document over from start to finish, and then do it again, and perhaps even again. With each read, look for different types of errors. For example, I read the entire document looking only for spelling and other typographical errors. Then I read the entire document again, this time looking for grammar and punctuation errors. If you know there are specific grammar or punctuation rules that give you trouble, you may want to break this second stage down even further to review the document separately with those particularly troublesome rules in mind, and then again for all other grammar and punctuation rules.

4. DO NOT RELY EXCLUSIVELY ON YOUR COMPUTER’S SPELL CHECK OR GRAMMAR CHECKER.
Checking your spelling, rather than relying exclusively on a spell check, will ensure you find unfortunate or even potentially embarrassing typos. Perhaps the auto correct function tried to fix an error, but did so incorrectly. For example, your spell check will not necessarily appreciate the difference between the words “principal” and “principle.” Or perhaps the spell check did not flag an error because the word you used is a word, just not the one you meant to use. For example, you meant to use the word “their” but instead typed “there.” The spell check will not catch this error. This advice likewise applies to your computer’s grammar checker, which may be even less reliable than the spell check. Remember that incorrect punctuation can affect the meaning of text or cause an unintended ambiguity.

Consider the following example I use with my students:

Correct punctuation: “Let’s eat, Grandma.”
Incorrect punctuation: “Let’s eat Grandma.”

5. CREATE A PERSONAL PROOFREADING CHECKLIST.
Create a personal proofreading checklist that incorporates the above tips and techniques. Next, add in tips about specific grammar and punctuation rules that are commonly misused. More than one resource I reviewed suggests including the following tips on your checklist:

- Check for sentence fragments or incomplete sentences.
- Check for effective use of parallel structure.
- Check verb tense and subject-verb agreement.
- Check for proper use of commas, semi-colons and colons.
- Check quotation marks.
- Check apostrophes (proper use of plurals and possessives).

Finally, keep track of errors you make often, and then add those to your personal...
checklist. This last step is important because proofreading is a learning process, and a personal checklist will help you learn to avoid making the same mistakes in the future.

6. REFER TO A STYLE GUIDE OR HANDBOOK.

Find and use one of the many respected style guides or handbooks that are available, which include shorter resources that can serve as a quick reference, as well as longer resources that offer more detailed guidance. In addition to print resources, some writers find well-known online resources to be helpful and accessible.

7. FORGIVE YOURSELF.

Remember that writers are humans, and thus we all make mistakes. One legal writing professor offers the following sound advice in response to this reality: “You’ll become a better writer if you learn from those mistakes, but you’ll gain nothing by dwelling on them.” So stop dwelling on the typo in the document you filed last week. Focus instead on the document you are drafting today. My proofreading tips and strategies are not meant to result in perfection, but they can help ensure the time you do devote to the final stage of editing will result in a more polished finished product.

ABOUT THE AUTHOR

MELISSA N. HENKE is the Robert G. Lawson & William H. Fortune Associate Professor of Law and the law school’s director of Legal Research and Writing. Henke teaches legal writing. She is a member of the Legal Writing Institute and the Association of Legal Writing Directors.

Prior to joining UK Law, she was an associate professor of legal research and writing at the Georgetown University Law Center. Before she began teaching full-time, Henke practiced law with the Washington, D.C., firm Hogan & Hartson (now Hogan Lovells), where she represented clients in a wide range of commercial litigation matters, including breach of contract and business torts, and defended against nationwide RICO and state class actions involving the healthcare field. In 2007 and 2008, she served as the senior associate in the law firm’s premiere pro bono practice group, litigating high-impact and individual pro bono matters involving civil rights, employment discrimination, wrongful convictions, and immigration. Before joining Hogan & Hartson in 2002, she clerked for Judge Gary Allen Feess of the U.S. District Court for the Central District of California. She also served as an adjunct professor of legal research and writing at the George Washington University Law School in the 2004 and 2006 academic years.

Henke earned her J.D. with highest honors from the George Washington University Law School in 2001, and graduated summa cum laude from the University of Kentucky in 1998.

ENDNOTES

1. Professor Henke is the Robert G. Lawson & William H. Fortune Associate Professor of Law and Director of the Legal Research & Writing Program. She is a graduate of the University of Kentucky and the George Washington University Law School.


3. Id.

4. Id.


7. Wells, supra note 5.

8. Id.

9. McAlpin, supra note 2, at 117.

10. Id. at 119.


12. McAlpin, supra note 2, at 108–37; Cupples & Temple-Smith, supra note 11, at 61.

13. McAlpin, supra note 2, at 108.

14. Id. at 139.

15. E.g., Cupples & Temple-Smith, supra note 11; Richard C. Wydick, Plain English for Lawyers (5th ed. 2005).


17. E.g., The Online Writing Lab (OWL) at Purdue (Purdue Univ.); Grammar Girl (Mignon Fogarty).

18. McAlpin, supra note 2, at 139.
The Board of Governors met on Friday, July 22, 2016. Officers and Bar Governors in attendance were, President M. Sullivan; President-Elect W. Garmer; Vice President D. Ballantine; Immediate Past President D. Farnsley, Young Lawyers Division Chair R. Schafer and Incoming YLD Chair Eric M. Weihe. Bar Governors 1st District – M. Pitman, F. Schrock; 2nd District – T. Kerrick, J. Meyer; 4th District – A. Cubbage, B. Simpson; 5th District – M. Barfield, E. O’Brien; 6th District – G. Sergent, S. Smith; and 7th District – J. Vincent. Bar Governors absent were M. Dalton, H. Mann and M. McGuire.

In Executive Session, the Board considered eight (8) default disciplinary cases, involving three attorneys and one (1) restoration. Judy Campbell of Frankfort, Dottye Moore of Elizabethtown and Dr. Leon Mooneyhan of Shelbyville non-lawyer members serving on the Board pursuant to SCR 3.375, participated in the deliberations.

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

- President R. Michael Sullivan administered the Oath of Office to 4th Supreme Court District Bar Governor Bobby Simpson and 7th Supreme Court District Bar Governor John Vincent, who were unable to attend the formal swearing-in ceremony at the 2016 Annual Convention.
- Heard the Annual Bar Counsel Disciplinary Statistical Report from Chief Bar Counsel Tommy Glover.
- Heard the year-end financial summary from Director of Accounting/Membership Michele Pogrotsky.
- On behalf of the KYLAP Commission, Director Yvette Hourigan presented a proposal from Human Development Company of Louisville that would supplement KYLAP’s work of expanding mental health services for Kentucky lawyers in need.
- Section Liaison Lori Alvey presented the section report. She reported that the two main goals for sections moving forward are to increase section membership and increase participation of other members. She expressed the need to increase section communication, increase CLE opportunities focusing on new technology, online programming, and help reach members statewide.
- Young Lawyers Division (YLD) Chair Rebecca Schafer reported that 26 YLD members were in attendance for the YLD Executive Committee meeting. Schafer reported that due to the promotional email and free trial membership YLD’s membership has increased by nearly 700 new members. Schafer also reported on the following activities of the YLD: Diversity Pipeline/Why Choose Law Program, the hosting of several networking events and the two 2016 KLU programs.
- President-Elect William R. Garmer reviewed with the Board that it is his responsibility to chair the 2017-2018 Budget & Finance Committee. He advised that the following will serve on the Committee: President R. Michael Sullivan, Vice President Douglas C. Ballantine, Bar Governors Amy Cubbage and Eileen O’Brien, Chair of Clients’ Security Fund Franklin Farris Jr., CLE Chair William Mitchell Hall Jr., Chair of Inquiry Commission Greg Parsons, Chair IOLTA Board of Trustees David F. Latherow, at large members Carl N. Frazier and W. Douglas Myers, KBA Executive Director John D. Meyers and Supreme Court Liaison Justice Michelle Keller.
- President Sullivan reported that he will serve on the Kentucky Bar Foundation Board (KBF) in his capacity as KBA president and Douglass Farnsley will also serve on the KBF Board in his capacity as KBA immediate past president.
- President Sullivan reported that he has appointed Vice President Douglas C. Ballantine as his designee to serve on the IOLTA Board of Trustees.
- Approved the reappointment of Robert C. Ewald of Louisville, George E. Long II of Benton and Jerry D. Truitt of Lexington to serve on the Special Conflicts Committee for another one year term ending on June 30, 2017.
- President Sullivan reported that the 2017 Annual Convention will take place on June 21-23 in Owensboro, Ky., at the Owensboro Convention Center. Bar Governor J.D. Meyer of Owensboro will serve as Annual Convention Planning Committee chair and Matt Cook of Bowling Green will chair the CLE Program Committee.
- President Sullivan advised that the KLU Programs will begin in September and he plans to host receptions the night before each KLU to continue to have the opportunity to talk with the local bar leaders, judiciary and past KBA leaders.
• Ratified the appointment of Patricia Ann Thomas to the Appalachian Research & Defense Fund of Kentucky.

• Approved purchasing a table at the Brandeis Medal Dinner where United States Supreme Court Justice Elena Kagan will receive the Brandeis Medal Award.

• Executive Director John D. Meyers reported the final attendance for the 2016 Annual Convention held in Louisville the week of May 9-13 was 2,007.

• Approved two (2) members for disabled inactive status pursuant to SCR 3.030(5)(a).

• Meyers gave an update on the IT project.

• Approved upgrading the Bar Center telephone system to a VoIP (Voice over Internet Protocol) System.

• Approved the AV proposal from On Q.

• Meyers reported that the Diversity & Inclusion Summit will take place in Lexington on April 7, 2017 at the Hilton Downtown.

• Approved notifying the KBA Sections that the Board is considering limiting the section’s reserves to one year’s expenses; the excess being swept to the General Fund. In addition ask the sections to provide feedback and possible alternative proposals to review during the September meeting.

TO KBA MEMBERS

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

January 20-21, 2017
March 17-18, 2017

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.
COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

ORDER OF PRIVATE REPRIMAND

The Commission issues this order of private reprimand to a judge for violation of the Code of Judicial Conduct, SCR 4.300, Canon 3B(8).

Canon 3B(8) requires a judge to dispose of all judicial matters promptly, efficiently, and fairly. The judge in question allowed cases in his court to remain active, in some cases for several years, without ruling on pending motions or issuing final orders.

The judge recognizes that allowing cases to languish delays and disrupts the administration of justice. The judge has taken immediate steps to move his cases forward by rendering timely dispositions and is committed to taking additional corrective action, including case reporting and monitoring for six (6) months.

The Commission appreciates the judge’s candor and willingness to address these issues. However, all judges must be diligent in managing their cases so that all parties who appear before the court are able to be heard and have their cases decided in a timely manner. Based upon the foregoing conduct, the judge is hereby privately reprimanded.

In issuing this private reprimand, the Commission duly considered that the judge fully cooperated in the investigation.

Date: September 7, 2016

__________/s/__________________________
Stephen D. Wolnitzek, Chair

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:
LISA OSBORNE BUSHELMAN, FAMILY COURT JUDGE
16TH JUDICIAL CIRCUIT

AGREED ORDER OF PERMANENT RETIREMENT

WHEREAS, the parties to this Agreed Order, Kenton Family Court Judge Lisa Osborne Bushelman and the Kentucky Judicial Conduct Commission (the “Commission”) state:

STATEMENTS OF FACT
1. The Commission has authority, pursuant to Kentucky Constitution §121, Supreme Court Rule 4.020, et seq., and KRS 21.345 et seq. to order and effect the permanent retirement of a judge who is suffering from a disability that seriously interferes with the performance of the judge’s duties.

2. Judge Bushelman has the right to require the Commission to conduct a hearing into allegations that she is suffering from a disability that seriously interferes with the performance of her duties pursuant to Supreme Court Rule 4.020(1)(a). Judge Bushelman specifically waives her right to such hearing.

3. On May 3, 2016, the Commission granted Judge Bushelman’s request for leave through September 1, 2016 based upon medical reasons.

4. Judge Bushelman’s medical issues continue to this day, and the parties to this Order agree that these issues will seriously interfere with the future performance of her duties.

5. Pursuant to Supreme Court Rule 4.270, Commission Orders shall become effective 10 days after service on the judge, unless she appeals therefrom within that time. The parties agree that the nature of an Agreed Order obviates the need to comply with such time limits.

NOW THEREFORE, in the interest of justice and upon good cause, the parties hereby consent to the entry of this Agreed Order as follows:

a. Judge Bushelman waives her right to a hearing into these matters;

b. Judge Bushelman waives the time limit to appeal.

c. Judge Bushelman is retired for disability pursuant to Kentucky Constitution §121, SCR 4.020 et seq., and KRS 21.345 et seq., effective September 1, 2016.

IT IS SO ORDERED.

August 23, 2016

__________ /s/__________________________
KENT WESTBERRY, CHAIRMAN
KENTUCKY JUDICIAL CONDUCT COMMISSION

HAVE SEEN AND AGREED

__________ /s/__________________________  8/19/16
Lisa Osborne Bushelman
Date

__________ /s/__________________________  8/19/16
Stephen P. Ryan
Counsel for Judge Bushelman
Date

Chairman Stephen D. Wolnitzek and Judge Karen Thomas recused from any consideration of this matter.
IN RE THE MATTER OF:
KATHY W. STEIN, CIRCUIT COURT JUDGE
22ND JUDICIAL CIRCUIT

AGREED ORDER OF SUSPENSION

Kathy W. Stein is Family Court Judge for Kentucky's 22nd Judicial Circuit located in Fayette County. Judge Stein has waived formal proceedings and has agreed to the entry of this Order.

During a preliminary investigation resulting from a complaint, the Commission received information that on December 4, 2015, Judge Stein was approached, *ex parte*, by counsel for the father in Fayette Family Court Case No. 07-Cl-04247, styled *Carlie Simone Schindler v. Charles Joseph Schindler*. Counsel sought an order granting immediate, temporary custody of the parties' child to the father. Without conducting a hearing or giving the mother an opportunity to respond, Judge Stein granted the *ex parte* motion. She then participated in an *ex parte* telephonic conference with an administrator from the child's school with counsel for the father. During the telephone conference, Judge Stein told the school administrator that the child's father was allowed to pick up the child that day and further instructed the school administrator that the child's mother did not need to be informed of the Order. Immediately following the Order, the child's father took the child from school under the guise of taking the child to a counseling session. Instead, the father absconded with the child to Mississippi and remained there until the Court of Appeals granted the order and ordered the child be returned to Kentucky. On January 26, 2016 the Kentucky Court of Appeals granted the mother's writ of prohibition ruling that Judge Stein acted erroneously in granting the *ex parte* motion and ordered an evidentiary hearing on custody of the child.

The Commission concludes that by the conduct described above, Judge Stein violated SCR 4.300, the Code of Judicial Conduct, Canon 1 by failing to maintain high standards of conduct and by failing to uphold the integrity and independence of the judiciary; Canon 2A by failing to comply with the law and act in a manner that promotes public confidence in the integrity of the judiciary; Canon 3B(7) by failing to accord every person who has a legal interest in a proceeding the right to be heard; and, Canon 3B(8) which requires a judge to dispose of matters promptly, efficiently, and fairly.

Therefore, in light of the foregoing conduct, Judge Stein is hereby suspended from her duties as Family Court Judge without pay for a period of 7 consecutive days beginning September 28, 2016 and ending October 4, 2016. In entering this Order with the agreement of Judge Stein, the Commission has duly considered that she fully cooperated in the Commission's investigation and pledged the offending conduct will not be repeated.

Date: 9/12/16

/s/
STEPHEN D. WOLNITZEK, CHAIR

Agreed to:
/s/
Hon. Kathy W. Stein

Jeffrey C. Mando, Counsel for the Commission

IN RE THE MATTER OF:
VERNON MINIARD, JR., CIRCUIT COURT JUDGE
57TH JUDICIAL DISTRICT

AGREED ORDER OF SUSPENSION

Vernon Miniard, Jr. is Circuit Judge for Kentucky's 57th Judicial District consisting of Russell and Wayne Counties. Judge Miniard has waived formal proceedings and has agreed to entry of this Order.

During a preliminary investigation resulting from a complaint, the Commission received information that on or about August 17, 2015, Judge Miniard presided over Wayne Circuit Case No. 14-CR-00009 styled *Commonwealth v. Baker*, which was set for trial. He was informed by the prosecution that a subpoena was issued for Christy D. Cooper-Stinson but that officers were unable to serve her with the subpoena and believed she was intentionally attempting to evade service. The prosecution requested a material witness warrant for Ms. Cooper-Stinson's arrest. After taking testimony from law enforcement officers, Judge Minion issued a warrant for Cooper-Stinson's arrest for contempt of court.

Cooper-Stinson was arrested on August 26, 2015 and remained incarcerated until November 2, 2015 without the court ever appointing an attorney to represent her, setting bond or holding a hearing on the contempt charge.

The Commission concludes that by the conduct described above, Judge Miniard violated SCR 4.300, the Code of Judicial Conduct, Canon 1 by failing to maintain high standards of conduct and uphold the integrity and independence of the judiciary; Canon 2A by failing to comply with the law and act in a manner that promotes public confidence in the integrity of the judiciary; and, Canon 3B(7) by failing to accord every person who has a legal interest in a proceeding the right to be heard.

Therefore, for the foregoing conduct, Judge Miniard is hereby suspended from his duties without pay for a period of 14 consecutive days beginning 12/17/16 and ending 12/30/16. In entering this Order with the Agreement of Judge Miniard, the Commission has duly considered that he fully cooperated in the Commission's investigation, that he had no prior infractions, and that he has pledged the offending conduct will not be repeated.

Date: 9/2/16

/s/
STEPHEN D. WOLNITZEK, CHAIR

Agreed to:
/s/
Hon. Vernon Miniard, Jr.

Jeffrey C. Mando, Counsel for the Commission
Kentuckians benefit when the three branches of state government work together, Chief Justice of Kentucky John D. Minton Jr. said Sept. 23 in his annual State of the Judiciary Address. He presented the address before the General Assembly’s Interim Joint Committee on Judiciary at the Capitol Annex in Frankfort. The full address is available at www.courts.ky.gov/Documents/Newsroom/2016SOJ.pdf.

“Leading our state court system is an incredible honor and one that I take very seriously,” Chief Justice Minton said. “After eight years in this role, one of the lessons I’ve learned is that nothing great is accomplished in a vacuum. We rarely perform our best when operating in silos.

“The real achievements come when we work together, an often messy process that forces us to find solutions in the midst of different experiences, perspectives and priorities. That struggle is rewarded when we can produce the best results for our fellow Kentuckians. With that in mind, I want to take a look at what happens when all three branches are partners in good government.”

He thanked the House, Senate and Gov. Matt Bevin for supporting a viable Judicial Branch budget for fiscal years 2017 and 2018. “After a tense budget session that went down to the wire, we ended up with the court system’s healthiest budget in the last 10 years and I am very grateful for your support. Our final budget was a win-win for the commonwealth as the court system received sufficient funding to continue operations at nearly current levels and avoid the mass layoffs and program cuts that would have occurred under earlier versions of our budget bill.”

IMPLEMENTING NEW LEGISLATION

He said the Judicial Branch is an essential partner with the Legislative and Executive branches when it comes to implementing important legislation. “I appreciate our judges, circuit court clerks and court employees for their willingness to move quickly and decisively when new legislation changes our laws.” He gave the recent examples below:

House Bill 40 – Felony Expungement. “The AOC put in countless hours to implement House Bill 40 and was ready to offer resources to those applying for a felony expungement when the bill went into effect,” he said. “We worked with the Governor’s Office, the Kentucky State Police, the Kentucky Justice & Public Safety Cabinet and other criminal justice partners to prepare for the transition.”

The AOC has received requests for 8,400 criminal record reports for expungement since the law was effective July 15, 2016. That number is nearly double the number of expungements requested at this time last year.

Senate Bill 200 – Juvenile Justice Reform. He reported that mounting evidence shows juvenile justice reform is working as intended as more cases involving youth are being handled out of court through successful diversion or dismissal. The Family Accountability, Intervention, and Response Teams work with court designated workers to identify service gaps, coordinate access to services for juveniles and families, and determine the appropriate terms for diversion. As the AOC moves from initial implementation to more advanced stages of reform, progress is being made in other critical areas such as these:

- The AOC is making it a priority to address the needs of minorities, who are over-represented in the juvenile justice system.
- The CDW Program is using the GAIN-Q3 assessment tool to more quickly and accurately identify the needs of youth in diversion programs.
- In October, the Supreme Court will adopt the final version of the new Juvenile Court Rules of Procedure and Practice, which provide consistent statewide rules to govern juvenile justice cases.

Senate Bill 133 – Ignition Interlock Devices. The Judicial Branch has also been instrumental in implementing Senate Bill 133. The bill was designed to reduce drunken driving by using ignition interlock devices to prevent a car from starting if the driver’s breath alcohol tests over the limit. “We continue to work with the Transportation Cabinet on ways to improve the ignition interlock
process, which involves multiple contacts among Department of Transportation staff, judges and circuit court clerks.”

House Bill 8 – Dating Violence Protection. The AOC has also helped enact House Bill 8, which went into effect Jan. 1, 2016, and extends civil protection to victims of dating violence, sexual assault and stalking. “We revised the legal forms and protective order forms in our domestic violence series and worked with the Kentucky State Police to integrate these changes into their LINK system,” said Chief Justice Minton. “We’re seeing a modest but steady number of filings at roughly 70 cases statewide each month.”

JUDICIAL REDISTRICTING
Chief Justice Minton also gave an update on laying the groundwork to align boundaries for circuit and district jurisdictions based on current judicial caseloads. “We started the process by asking all circuit, family and district judges to take part in what was likely the first Judicial Time Study in Kentucky,” he said. “Judges used an online program to log how they spent their time handling cases and taking care of judicial duties outside of court.”

In February 2016, he presented the results of the time study, site visits with judges and other research to the legislature. That information will be used as the basis for a comprehensive judicial redistricting plan, which he will present to the General Assembly in 2017. “No matter how painful this process and no matter what the end result turns out to be, I can assure you that the redistricting plan we ultimately propose will be solidly rooted in objective research and reflect the input of key stakeholders from throughout the commonwealth.”

NEW COURT TECHNOLOGY
Chief Justice Minton said the Judicial Branch is making impressive progress to adopt technology that will improve customer service and court operations. He thanked the legislators for giving the court system approval in 2013 to issue bonds for new technology. “With the funding issue resolved, we could focus on the policy changes, programming and hardware required for eFiling and an overhaul of our obsolete case management system,” he said.

As of October 2015, Kentucky had made eFiling available in all 120 counties. “eFiling gives Kentucky attorneys the option to file criminal and civil court documents online. This was an enormous step toward our goal of a paperless court system. eFiling is only one component of the larger KYeCourts initiative.”

IMPROVING JUDICIAL SALARIES
He also asked the legislature to keep in sight the need to improve salaries for Kentucky judges, who are among the lowest paid in the country and last among judges in the surrounding states.

“Since 2007, Kentucky judges have received only two years of 1 percent raises and two years of $400 raises,” he said. “It’s been a decade since our judges have received any real boost in compensation and new judges coming on the bench are facing low salaries and recent reductions in pension benefits. Our low salaries provide little incentive for the best and brightest attorneys to leave lucrative law practices to mount expensive campaigns for judicial office. The longer we postpone action, the more difficult it will be to catch up on lost wages and avoid diminishing the quality of the Kentucky judiciary.”

FIGHT AGAINST DRUG EPIDEMIC
And finally, Chief Justice Minton declared the court system’s commitment to partner with the legislature, law enforcement, treatment providers and other agencies who are instrumental in combating the opioid-addiction epidemic and the alarming spread of heroin use across the commonwealth. “The Judicial Branch stands ready and able to help in any way we can to address a crisis that I consider to be ‘code red.’”

He said he attended the Regional Judicial Opioid Initiative in August 2016 as part of judicial and multidisciplinary teams from Kentucky, Ohio, Illinois, Indiana, Michigan, Pennsylvania, Tennessee, Virginia and West Virginia. “The goal of the summit was to create a framework for a year-long process that will bring a coordinated approach to state and federal policymakers who are confronting this problem in our region.”

WATCH MEETING ON KET
To watch Chief Justice Minton give the State of the Judiciary Address and discuss it with legislators, visit www.ket.org/legislature and click on Archived Legislative Coverage on the right side of the page. On the archive page, scroll down to click on the Interim Joint Committee on Judiciary on Sept. 23, 2016.

BACKGROUND
The chief justice is the administrative head of the state court system and is responsible for overseeing its operation. Chief Justice Minton was elected to the Supreme Court in 2006. His fellow justices elected him to serve a third four-year term as chief justice in 2016.

In July 2016, Chief Justice Minton was elected by his fellow chief justices to serve a one-year term as president of the Conference of Chief Justices and chair of the National Center for State Courts Board of Directors. Chief Justice Minton is the first chief justice from Kentucky to hold this post in nearly 25 years. In addition, the White House announced in July 2016 that President Barack Obama had nominated Chief Justice Minton to serve on the board of directors of the State Justice Institute, a federal nonprofit corporation that awards grants to improve the quality of justice in state courts. Chief Justice Minton must next be confirmed by the U.S. Senate.

The AOC is the operations arm for the state court system. The AOC supports the activities of nearly 3,400 Kentucky Court of Justice employees and 404 elected justices, judges and circuit court clerks. The AOC also executes the Judicial Branch budget.
Supreme Court of Kentucky

IN RE:
ORDER AMENDING
RULES OF CRIMINAL PROCEDURE (RCr)
2016-07

The following rule amendment shall become effective October 1, 2016.

RULES OF CRIMINAL PROCEDURE (RCr)

I. RCr 11.06 Restitution

New rule RCr 11.06 shall read:

(1) When ordering restitution pursuant to KRS 532.032, 532.033, 533.020, and 533.030(3), the court shall not order the defendant to pay interest on the restitution.

(2) An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages, including interest, from pursuing a civil action against the defendant.

(3) A civil verdict shall be reduced by the amount paid under the restitution.

All sitting. All concur, except Cunningham, J., dissents.

ENTERED: September 21, 2016.

CHIEF JUSTICE
Supreme Court of Kentucky

IN RE:
ORDER AMENDING
RULES OF CRIMINAL PROCEDURE (RCr)

2016-08

The following rule amendment shall become effective January 1, 2017.

I. RCr 4.43 Appellate review of bail; habeas corpus

Subsection (a) of section (1) to RCr 4.43 shall read:

(1) When a circuit court has granted or denied a motion for a review of a bail bond under RCr 4.38 or 4.40, or has changed a condition of release pursuant to RCr 4.42, a defendant adversely affected may appeal that decision to the Court of Appeals pursuant to the following procedures:

(a) The notice of appeal from the order of the trial court shall be filed within ten (10) days after the date of entry, subject to RCr 12.06, and shall otherwise be in the manner fixed by RCr 12.04.

All sitting. All concur.

ENTERED: October 18, 2016.

CHIEF JUSTICE
NOTICE

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

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

The Joint Local Rules Commission for the Eastern and Western Districts of Kentucky has recommended, and the District Court has authorized for release for a period of public comment through December 30, 2016, the revision of certain Joint Local Rules of Civil Practice and Joint Local Rules of Criminal Practice. Unless otherwise indicated, as seen in this Notice, underlined text is added and struck text is deleted. The proposed revisions are as follows:

A. LR 7.1 – Motions – will be amended as follows in order to modernize the rule, to simplify the procedure for requesting hearings, and to merge motions and memorandum in support:

(a) Generally. All motions must state precisely the relief requested. Except for routine motions – such as motions for an extension of time – each motion must be accompanied by a supporting memorandum. Failure to file a supporting memorandum may be grounds for denying the motion. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(b) Motions for an Extension of Time. Subject to any deadlines established by the Court, parties may extend time limits by agreed order. Absent an agreed order, the party seeking the extension must file a motion setting forth the reasons for the extension and tender a proposed order and whether other parties consent. A memorandum opposing the motion must be filed within seven (7) days of service of the motion.

(c) Time for Filing Memoranda in Responses and Replies. Unless otherwise ordered by the Court, a party opposing a motion must file a response memorandum within twenty-one (21) days of service of the motion. Failure to timely respond to a motion may be grounds for granting the motion. A party may file a reply memorandum within fourteen (14) days of service of the response. When a party requests an extension of time to file a memorandum, please do so by agreed order or state whether other parties consent.

(d) Page Limitations on Memoranda. Supporting and opposing memorandum motions and responses may not exceed forty (40) pages without leave of Court. Replies memorandum may not exceed fifteen (15) pages without leave of Court.

(e) Proposed Order. A party filing a motion must also file a separate proposed order. Any proposed order imposing sanctions must be provided separately from a proposed order pertaining to any other matter.

(f) Hearing or Oral Arguments on Motions. A party may request a hearing or oral argument by in a motion, response, or reply.

(g) Submission to the Court. A motion is submitted to the Court for decision after completion of the hearing or oral argument – or if none – after the reply memorandum is filed, or the time for filing the response or reply memorandum has expired.

(h) Copies of Cited Authority. If a motion, or memoranda response, or reply contains a citation to any authority not available electronically, you must attach a copy of the authority must be attached. Upon request, a party must provide a copy of any cited unpublished or non-Kentucky state case or statute to the opposing party.

B. LR 41.1 – Dismissal for Failure to Prosecute – will be amended as follows to reduce the period of inactivity from one year to nine months before the court may issue a show cause order, in order to encourage speedier resolution of civil cases:

If no action has been taken on a case for nine months one year, the Clerk may issue an order requiring the plaintiff to show cause why the case should not be dismissed for lack of prosecution.

C. LR 83.2(b) – Permission to Practice in a Particular Case – will be amended as follows in order to clarify the existing practice of waiving the pro hac vice admission procedures for attorneys appointed pursuant to the Criminal Justice Act, including any such attorney appointed by an appellate court:

(b) The Attorney General or any other bar member of the Department of Justice, or of any federal agency, including federal public defenders or panel attorneys that cross district lines, or any attorney appointed pursuant to the Criminal Justice Act, need not seek admission pro hac vice under this rule.

D. LCrR 12.1 – Motions – will be amended as follows in order to modernize the rule, to simplify the procedure for requesting hearings, and to merge motions and memorandum in support:

(a) Generally. All motions must state precisely the relief requested. Except for routine motions – such as motions for an extension of time – each motion must be accompanied by a supporting memorandum. Failure to file a supporting memorandum may be
grounds for denying the motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(b) Motions for an Extension of Time. Extensions of time in criminal actions will be granted only if the party seeking the extension files a motion demonstrating good cause. Extensions of time by agreement of the parties are not valid in criminal cases. A memorandum response opposing a motion for an extension of time must be filed within seven (7) days of service of the motion.

(c) Time for Filing Motions. Unless a different time is fixed by statute or the Federal Rules of Criminal Procedure, motions must be filed within the time period ordered by the Court.

(d) Time for Filing Memoranda in Responses and Replies. Unless otherwise ordered by the Court, a party opposing a motion must file a response memorandum within fourteen (14) days of service of the motion. Failure to timely respond to a motion may be grounds for granting the motion. A party may file a reply memorandum within fourteen (14) days of service of the response.

(e) Page Limitations on Memoranda. Supporting and opposing memoranda, motions and responses may not exceed twenty-five (25) pages without leave of Court. Replies may not exceed ten (10) pages without leave of Court.

(f) Proposed Order. A party filing a motion must also file a separate proposed order. Any proposed order imposing sanctions must be provided separately from a proposed order pertaining to any other matter.

(g) Hearings or Oral Arguments on Motions. A party may request a hearing or oral argument by in a motion, response, or reply.

(h) Submission to the Court. A motion is submitted to the Court for decision after the completion of the hearing or oral argument – or if none – after the reply memorandum is filed, or the time for filing the response or reply has expired.

(i) Copies of Cited Authority. If a motion, or memorandum, response, or reply contains a citation to any authority not available electronically, you must attach a copy of the authority to the opposing party.

E. LCrR 57.2(b) – Permission to Practice in a Particular Case – will be amended as follows in order to clarify the existing practice of waiving the pro hac vice admission procedures for attorneys appointed pursuant to the Criminal Justice Act, including any such attorney appointed by an appellate court:

(b) The Attorney General or any other bar member of the Department of Justice, or of any federal agency, including federal public defenders or panel attorneys that cross district lines, or any attorney appointed pursuant to the Criminal Justice Act, need not seek admission pro hac vice under this rule.

* * * * *

Comments concerning the proposed rule amendments are welcome. Comments must be submitted in writing or via email on or before December 30, 2016 and should be sent to:

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

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E. LCrR 57.2(b) – Permission to Practice in a Particular Case – will be amended as follows in order to clarify the existing practice of waiving the pro hac vice admission procedures for attorneys appointed pursuant to the Criminal Justice Act, including any such attorney appointed by an appellate court:

(b) The Attorney General or any other bar member of the Department of Justice, or of any federal agency, including federal public defenders or panel attorneys that cross district lines, or any attorney appointed pursuant to the Criminal Justice Act, need not seek admission pro hac vice under this rule.

* * * * *

Comments concerning the proposed rule amendments are welcome. Comments must be submitted in writing or via email on or before December 30, 2016 and should be sent to:

Brian F. Haara
Chair, Joint Local Rules Commission
Tachau Meek PLC
101 South Fifth Street, Suite 3600
Louisville, Kentucky 40202
bhaara@tachaulaw.com
New attorneys received their oaths of office on Monday, October 10, in the chamber of the Supreme Court of Kentucky in the state Capitol in Frankfort. The 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 229 new attorneys were recommended for admittance to the practice of law following the July 2016 bar examination.

Thomas Wall of Lexington proudly displays his admission certificate after participating in district five’s swearing-in ceremony.

Linda Dixon of Radcliffe, left, enjoys her first day as a new attorney with her family. From left to right: Linda Dixon, Breanna Byrd, Latrice Dixon, Brailynn Rogers, Linda and Marcus Dixon.

KBA New Lawyer Program Coordinator (NLP) Sonja Blackburn welcomes the new members and provides them with information on their NLP requirement.
New attorney, Olivia Snider of Louisville, poses on the front steps of the Kentucky Bar Center, while enjoying the reception sponsored by the Kentucky Bar Association.

Former Kentucky Bar Association Continuing Legal Education Intern Brian Wood of Louisville stopped by the Bar Center to celebrate after being sworn in at the Capitol.

KBA President Mike Sullivan introduced each new member during the swearing-in ceremony at the Capitol.

Stephen Salerno of Louisville enjoys his new lawyer status at the Bar Center Reception with his parents and wife. From left to right Ed and Beverly Salerno with Stephen and Sarah.

CONGRATS TO ALL NEW MEMBERS
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h. Total: 18,700
i. Percent Paid: 99%

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Publication of Statement of Ownership

If the publication is a general publication, publication of this statement is required. Will be printed in the December 5, 2016 issue of this publication.

I certify that all information furnished on this form 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 27, 2016
FORMER KENTUCKY LAWYER ASSISTANCE PROGRAM DIRECTOR PASSES AWAY

Carl Houston “Hoot” Ebert, age 76, passed away Oct. 14, 2016, in Florida. He was born Nov. 25, 1939, in Newport, Ky., to the late Carl Henry and Ruth Elizabeth Ebert. He was a graduate of Newport High School and the University of Kentucky where he was a member of the UK tennis team and Sigma Alpha Epsilon Fraternity. He was also a graduate of Chase College of Law. He is survived by his wife, Janie; daughters, Elizabeth Ebert and Melissa Dean (David); grandsons, Robert and Parker Dean; stepdaughters, Ashley Daub and Melissa Daub; step granddaughter, Aniston Daub; nephew, Guy Daines (Renee); great nephews, Guy and Logan Daines; niece, Stephanie Guzman; great nieces, Evy and Maddie Guzman. He was predeceased by his sister, Penelope Daines. In lieu of flowers the family requests memorial donations to the Franklin County Animal Shelter or a charity of the donor’s choice.

Ebert served as the first director of the Kentucky Lawyer Assistance Program (KYLAP). KYLAP is a program of the Kentucky Bar Association that offers help to lawyers, law students, and judges who are struggling with mental health issues, such as depression, alcohol and drug abuse, stress, compulsive gambling or any other condition that may adversely impact the individual’s personal or professional life. In 2002 the rules were presented to and adopted by the Kentucky Supreme Court, establishing the Kentucky Lawyer Assistance Program. See S.Ct.R. 3.900, et. seq. The Supreme Court rules creating KYLAP, became effective on July 1, 2003, providing the framework for the program including the designation of a director and an assistant; the creation of the Commission; and the provision for agency referrals (including the office of bar admissions, the office of bar counsel, and the Supreme Court). Ebert served as the director of the program from 2002 to 2008.


KYLAP HOSTS LAWYERS IN RECOVERY MEETINGS IN NORTHERN KENTUCKY AND LEXINGTON

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

All meetings are open to law students, lawyers and judges who are already involved or who are interested in a 12-step program of recovery, including but not limited to Alcoholics Anonymous, Narcotics Anonymous, Overeaters Anonymous and Al-Anon. Come meet other attorneys and network. All meetings and contacts are confidential. SCR 3.990. For additional information, please visit www.kylap.org, call (502) 564-3795, ext. 266, or email abeitz@kylap.org.

KENTUCKY LAWYER ASSISTANCE PROGRAM FOUNDATION, INC., FORGIVABLE LOAN PROGRAM

The KYLAP Foundation is a 501 (c)(3) non-profit Kentucky Corporation created and approved pursuant to Supreme Court Rule 3.910(8) to promote the mission of the Kentucky Lawyer Assistance Program (KYLAP). KYLAP’s mission is to assist Kentucky’s lawyers, law students and judges who suffer from impairments including drug, alcohol, or other addictions, depression, and other mental health disorders.

The Foundation helps Kentucky’s lawyers, law students and judges seek medical and professional treatment for impairment issues when no other financial resources for treatment exist. The Foundation is premised on the same principle as the Kentucky Lawyer Assistance Program—Lawyers Helping Lawyers.

Your tax-deductible contribution provides direct help for suffering lawyers through the extension of (forgivable) loans for treatment (paid directly to the medical providers). All money given by lawyers goes directly to the treatment of lawyers. For more information on the Kentucky Lawyer Assistance Program Foundation, Inc., please contact KYLAP Director Yvette Hourigan at (502) 564-3795 or at yhourigan@kylap.org.
The beginning of required/mandatory Continuing Legal Education (“MCLE”) in Kentucky was a time consuming and (sometimes) complicated process. In the late 1970s, Kentucky, like many other states, did not have any requirement that the practicing bar maintain a level of Continuing Legal Education credits.

As a law student, in the early 1970s, I had the opportunity to attend what I would describe as a “precursor” to the inevitable establishment of MCLE. Those sessions attended, were voluntary “meetings”, which were conducted, as I recall, by one of the then malpractice insurance coverage providers in Kentucky, Nahm Turner Insurance, and moderated by an individual named Robert Alexander. I was fortunate to have the opportunity to attend these sessions, as my employer, at the time O’Hara, Ruberg, Cetrulo and Osborne, encouraged my participation. Basically, the message was that RCLE was coming and the importance of that concept to the practicing bar, the courts and the judicial system in Kentucky. Very few states had RCLE at that point.1

Kentucky (as with other states) encountered organizational reluctance to move ahead and there was the natural fight against change by older (and sometimes younger) members of the bar. As observed by one writer, relative to another state’s efforts along these lines, the task of exposing the obvious need for continuing education to the older and more experienced practicing members of the bar was not easy, for several reasons. These practicing lawyers envisioned the possibility or likelihood they would be called upon to donate their time to teaching at seminars. Since an attorney’s advice and time are valuable commodities, that anticipated obligation was one thing that was not welcome. It became apparent during that period of time, things were changing.

Many decades earlier, continuing legal education after law school was a product of on-the-job-training. Newly graduated and licensed attorneys joined a law firm, where they would become an apprentice and learn from an experienced partner. Grunt work, laborious study and attention to detail were the rules in order to avoid dangerous, sharp and hazardous twists, turns and occurrences in the practice that were not mentioned in law school. There was also the comfort of support from the firm and an approving nod, or a frown indicating the need to do more work and do it over. As well, sitting judges did not have calendars as heavy as was evolving and were eager to indulge younger lawyers who lacked experience and provide them the benefit of the Judges’ wisdom and sage in moving into the practice, covering the things that needed to be addressed, etc. Also, older lawyers (maybe not in the same firm) stood ready, willing and able, and usually delighted, to display their experience and knowledge of the law to younger, less experienced attorneys, who had chosen not to associate with a firm.

But, as noted above, the landscape began to change and become different. Obtaining information and answers in the law became more urgent and immediate. Legislation began to increase, making changes on a daily basis, as well as the introduction of more administrative bodies and regulations. The practice of law was changing.

For Kentucky’s part, MCLE was moving into reality. Then, as of November 1978, the Supreme Court of Kentucky (which was the recent high court established by the Judicial Amendment of 1976) had decreed, as provided in the new set of Supreme Court Rules (“SCR”) 3.600-3.695, a continuing legal education program for the members of the Kentucky Bar Association (“KBA”) of the Commonwealth of Kentucky was to be established. Therefore, according to the organizational minutes of the Continuing Legal Education Commission of the KBA dated Nov. 10-11, 1978, the Continuing Legal Education program was put into operation. There was much to be done, however, to become a functional and productive entity.

The first meeting of the KBA Continuing Legal Education Commission was called to order by its Chairman, Henry D. Stratton, Pikeville, on Nov. 10, 1978, at 1:30 p.m. Those in attendance at this inaugural meeting, and the members of the first Continuing
Legal Education Commission were:
Hon. William Donald Overbey, Murray
Hon. Reford H. Coleman, Elizabethtown
Hon. Walter Patrick, Lawrenceburg
Hon. William P. Mulloy, Louisville
Hon. W. R. Patterson, Lexington
Hon. Arnold S. Taylor, Covington
Hon. Henry D. Stratton, Pikeville

Also, in attendance was Mr. Leslie G. Whitmer, director of the
KBA and Ms. Anne Pierce, Continuing Legal Education admin-
istrative secretary

A review of these initial minutes establishes that the chair, Mr.
Stratton, polled the new committee members as to their various
qualifications relative to Continuing Legal Education. These ex-
periences varied, from membership on the KBA Board of Gov-
ernors when CLE was first discussed, to having attended Con-
tinuing Legal Education programs at other locations, seminar
participation, etc.

Over the next few months, according to record of early meetings,
how MCLE in Kentucky, according to the initial set of SCR,
above referenced, would be put in place was the subject of rather
intense debate.

An obvious point to address was “how the Commission can func-
tion concerning the sponsorship of programs,” as noted by Chair-
man Stratton.

The initial suggestion was that the law schools be called upon to
participate and actively provide the MCLE. There was debate on
that subject, and the opinions were divided. The comment was
made, however, that the KBA should not be responsible for pro-
viding the programs and was not financially situated to undertake
that obligation. It was stated the KBA “… does not have money,
manpower or the know-how to put on all Continuing Legal Edu-
cation programs.” The thought of some of the Commission mem-
ers at this initial gathering and thereafter, according to minutes
reviewed, indicated a position that Continuing Legal Education
should remain voluntary. Of course, history tells us that did not
carry the day.

These organizational minutes, likewise, discussed the employment
of an assistant director to oversee the Continuing Legal Edu-
cation Commission. The salary to be paid was $12,000 per year.
Discussion and debate continued. It was suggested by Chairman
Stratton that taking the Continuing Legal Education programs
“to the areas of Kentucky where the people (lawyers) are (located)
would be helpful.” The suggestion was good and part of the foun-
dation of today’s Kentucky Law Updates, which travel to all seven
Supreme Court Districts on a yearly basis to provide Continuing
Legal Education to our membership in the districts where they
reside and practice.

Further, on the issue of cost and who pays, the debate, based upon
my information and recollection, moved to the Supreme Court and
the issue as to whether or not Continuing Legal Education would
be required of our membership, was part of intense discussions
among members of the Court. The outcome was that, if Continu-
ing Legal Education was to become a requirement, then it must
be provided to our membership at no cost. It is the undersigned’s
understanding that at least one (if not more) member of the Ken-
tucky Supreme Court took the position that unless the Continuing
Legal Education was provided by the KBA to the membership free
of charge, then there would be no Supreme Court Rule making it
mandatory. The outcome, as history establishes (and to this day),
was the KBA, from the inception of MCLE, has provided this ser-
tice to our membership at no cost to the member.

This service is rare among other state bar associations. Obviously,
over the past 38 years, the Continuing Legal Education programs,
Kentucky Law Updates and the CLE Commission have undergone
various (and I might add, in my opinion) constructive changes. We
have been the beneficiary of excellent leadership from the KBA,
board of governors, our executive directors, as well as the directors of
the Continuing Legal Education Commission. The Kentucky Law
Updates presented on a yearly basis are exceptional, well done and
informative. These provide the opportunity to our membership to
maintain their Continuing Legal Education requirements, as well
as gain beneficial knowledge relative to their practice, at no cost.

Abraham Lincoln once wrote that “the best mode of obtaining a
thorough knowledge of the law’ … is very simple, though labori-
ous, and tedious. It is only to get the books, read, and study them
carefully … Work, work, work, is the main thing.”2 Continuing
education of Kentucky lawyers, through the now-existent SCR
3.600–3.695, in cooperation with the KBA and the Continuing Legal
Education Commission help in that process and provide an
avenue to our membership to meet requirements and be the best
they can be. All this is now in place, in part, because of the efforts,
talents, knowledge, commitments and leadership of the original
Continuing Legal Education Commission—almost 40 years ago.

ABOUT THE AUTHOR
DAVID SLOAN is a partner with O’Hara, Ruberg, Taylor, Sloan
&Sargent. He earned his B.A. from Berea College and his J.D.
from the Salmon P. Chase College of Law at Northern Kentucky
University. Sloan maintains a general practice, including the areas
of litigation, insurance defense, criminal law, and workers com-
ensation. He has served as president of the Northern Kentucky
Bar Association, president of the Kentucky Bar Association and
as a member of the KBA Board of Governors.

ENDNOTES
1. See ABA Center for Continuing Legal Education, Summary of MCLE
State Requirements, http://www.abanet.org/cle/mcleview.html (last visited
2. Abraham Lincoln, Letter to John M. Brockman, in COLLECTED WORKS
OF ABRAHAM LINCOLN, (Roy P. Basle ed., 1953), reprinted in OX-
FORD DICTIONARY OF AMERICAN LEGAL QUOTATIONS 283
2016-2017 CLE COMMISSION MEMBERS

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Seventh District Representative
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INTERESTED IN ASSISTING WITH A CLE?
HAVE IDEAS FOR A PROGRAM?

Contact Mary Beth Cutter, KBA Director for CLE at mcutter@kybar.org, or any member of the Continuing Legal Education Commission.

LOOKING FOR UPCOMING KBA ACCREDITED CLE EVENTS?

LOOK NO FURTHER...CHECK OUT HTTP://WEB.KYBAR.ORG/CLE SEARCH/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.

2017 NEW LAWYER PROGRAM
SAVE THE DATE

The KBA’s next New Lawyer Program — scheduled for Jan. 18 & 19, 2017 — will be held at the Lexington Convention Center in downtown Lexington.

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 2017 calendar year. The program is offered free of charge for attorneys seeking to fulfill their New Lawyer Program requirements, pursuant to SCR 3.640.

Details on the January New Lawyer Program are posted on the KBA website under CLE — New Lawyer Program (http://www.kybar.org/page/nlp1). For questions about the program or your completion deadline, contact Sonja Blackburn at (502) 564-3795, ext. 226 or sblackburn@kybar.org.
Find a Mentor and Take Charge of Your Future!

The KBA Find a Mentor program is designed to connect experienced attorneys with new attorneys who are seeking advice and guidance in balancing the personal and professional demands of the practice of law.

How it works:
Qualified mentors sign up and volunteer to participate in the GPS mentor program. New attorneys looking for assistance (mentees) may locate a mentor through the GPS website by the mentor’s location or area of practice. The mentee can view detailed information about potential mentors and then initiate first contact. This self-initiated contact may involve a single issue, or entail a more lasting, formal mentor relationship. The limits of the relationship are determined by the preferences of the participants.

This service is available to new attorneys admitted to practice in Kentucky for five years or less. For more detailed information visit www.kbagps.org and see what the program has to offer.
Kentucky attorneys have a long history of being good partners to our communities. Inside the office, they help their clients navigate some of the most difficult times in their lives, serving as true “counselors” at law. Outside the office, they give their time and their talents to serve on nonprofit boards, coach youth sports teams, and support causes that they believe in. As members of the Kentucky Bar Association, this is not news to you. You already know that our profession does these things as part of a commitment to being good neighbors. But, did you know that Kentucky attorneys also help transform lives by providing access to justice to clients they will never even meet? By supporting the Kentucky IOLTA Fund, Kentucky attorneys do just that.

WHAT IS IOLTA?
The Kentucky Interest on Lawyers’ Trust Accounts (IOLTA) Fund was established by Kentucky Supreme Court Rule (SCR) 3.830 in 1986, and it became mandatory for Kentucky attorneys to participate in IOLTA in 2010. IOLTA is a unique and innovative way to increase access to justice for individuals and families living in poverty and to improve our justice system. Interest from Kentucky lawyers’ trust accounts is pooled in the IOLTA Fund and awarded annually as grants to nonprofit agencies that provide legal aid and legal education to Kentuckians in all 120 counties.

WHO MANAGES IOLTA?
Pursuant to SCR 3.830, the IOLTA Fund is maintained as a fund of the Kentucky Bar Foundation, which is a nonprofit organization under 26 U.S.C § 501(c)(3). The Fund is managed by an 11-member Board of Trustees comprised of nine attorneys from every region of Kentucky, a Justice of the Supreme Court of Kentucky, and a representative of the Kentucky banking industry. In addition to monitoring the IOLTA Fund’s finances, the Trustees evaluate each grant application and make recommendations to the Supreme Court for its ultimate approval.

WHO DOES IOLTA HELP?
“Thousands of people in Kentucky have legal problems but they can’t afford a private attorney,” said Scott Crocker, Executive Director of Kentucky Legal Aid. “Without a lawyer, these individuals are unable to obtain access to the court system to address their problems. With the support of IOLTA and participating banks, Legal Aid is able to help low-income people and victims of domestic violence and financial abuse to resolve serious legal issues and to improve their lives.”

Since 1988, the Kentucky IOLTA Fund has awarded more than $15 million in total grants. IOLTA grants help Kentuckians like Vicki and her dog Pluto. Vicki is a smart, funny, and strong-willed woman. She was active her entire life, having worked as a librarian and an employee of the Federal government, but things changed for Vicki when her identity was stolen. She lost everything—her home, her car, and the retirement she worked so hard to save. Since then, Vicki has been living on a fixed income and relying on government support to help pay for her housing.

Slowly, Vicki began to rebuild her life. She enjoyed her new home at a local independent living facility and began making new friends. She even adopted a dog, Pluto, who brought new light to her life. Pluto became her pride and joy. When she began noticing abuses occurring in the facility where she lived, Vicki spoke up. In retaliation, the facility attempted to evict her under the pretense that her dog, Pluto, was “too loud.”

Despite the fact that Vicki had paid a pet deposit and had followed the terms of her lease, the facility threatened to evict Vicki if she did not get rid of Pluto in 30 days. Pluto is Vicki’s constant companion, and she would do anything to save her dog and the roof over both their heads. That is when Vicki approached the Legal Aid Society. Legal Aid was able to defend against the unlawful eviction, saving Pluto and the home they shared together. “I don’t know what I would have done without Legal Aid and my attorney Laura,” Vicki said. “When I felt powerless, with no recourse and no one to listen to me, and when I felt like it was just never going to get better, Legal Aid was there.”

The Legal Aid Society serves Jefferson and 14 neighboring counties, Kentucky Legal Aid serves 35 western Kentucky counties, the Appalachian Research and Defense Fund serves 37 eastern Kentucky counties, and Legal Aid of the Bluegrass serves 33 northern and central Kentucky counties. Stories like Vicki’s are the reason that Kentucky’s four regional civil legal aid organizations do what they do. “There is a real human dimension to the work that our attorneys do day in and day out,” explained Neva-Marie Polley, Executive Director of the Legal Aid Society. “Our clients are not just numbers in a database, they have real stories. We intersect with
them often in a moment of crisis or tragedy. It is an honor to be there to help restore hope and to transform their lives through the civil legal system."

The Kentucky IOLTA Fund and the Legal Aid Society could not have helped Vicki without the support of Kentucky attorneys who participate in the IOLTA program. “Not only does funding from IOLTA allow us to help a high volume of clients, but it also ensures that staffing levels are adequate to provide the kind of long-term, in-depth level of service that our clients not only need but deserve,” Polley commented. “Support from IOLTA demonstrates that ‘equal justice’ is not just a philosophical idea, but an essential component to the practice of law.”

Like clients helped by legal aid, IOLTA grants also transform the lives of Kentucky law students who receive IOLTA public service fellowships. Through those fellowships, students at each of Kentucky’s three law schools gain firsthand experience with the practice of law. IOLTA fellows and law clerks have worked at all of Kentucky’s regional civil legal aid organizations, assisted public defenders, and worked with niche legal clinics providing low-to-no-cost services for vulnerable populations like the Children’s Law Center in northern Kentucky and Kentucky Refugee Ministries in Louisville.

“IOLTA Fellow Aaron Riggs, UofL Brandeis School of Law

“Because of my experience as an IOLTA law clerk, I was ready to practice law when I graduated from law school,” commented Tiffany Smith, a 2014 graduate of NKU Salmon P. Chase College of Law and a practicing attorney. “For me, law school wasn’t just about passing the Bar; I needed to feel confident that I could go out and successfully represent clients. My IOLTA clerkship helped give me that confidence. It also provided much needed assistance to [the Children’s Law Center] and their clients.”

Experiences like Tiffany’s would not have been possible without the assistance of the IOLTA Fund and the Kentucky attorneys who support it. “The grant quite literally pays my bills during the summer, and receiving it provides relief to a huge financial burden,” explained Amy Robertson, a third-year student at the University of Kentucky College of Law. “Several of my classmates have been forced to choose between a job that pays and a job that furthers their public interest passions. I’m extremely grateful that I am able to pursue my passions of criminal defense, while also furthering my education in trial work.”

HOW DO ATTORNEYS PARTICIPATE IN IOLTA?
Kentucky attorneys participate in IOLTA in two easy ways: by completing an annual compliance certification and by completing a one-time enrollment of their client escrow account.

Annual Compliance Certification. SCR 3.830(13) governs IOLTA and requires every lawyer admitted in Kentucky to certify their compliance with or exemption from the rule on or before September 1st of each year. Attorneys are reminded of this annual requirement on their KBA dues statement, and certification is submitted by completing a short online Annual Compliance Certification Form through the KBA’s secure website. The form first requires all attorneys to provide their bar number and contact information. Attorneys then finish the form by either providing their IOLTA account information or certifying their exemption from participating in the IOLTA program. Exemptions are allowed only for those attorneys who fall within the specific categories enumerated in SCR 3.830(14). Firms with multiple attorneys are encouraged to submit a single form on behalf of all of their attorneys.

One-Time IOLTA Account Enrollment. Unless they qualify for an exemption under SCR 3.830(14), all attorneys are required to enroll any new client escrow or trust accounts in IOLTA. The process only takes a short time, and it only has to be completed once for each account. To establish an IOLTA account, an attorney first opens a non-interest-bearing escrow account at a participating financial institution of his or her choice. The attorney then submits an Account Authorization Form to the IOLTA office requesting that the account be enrolled in IOLTA and authorizing IOLTA to receive interest earned on the account. IOLTA then enrolls the account in the program and notifies the bank to convert the account into an interest-bearing IOLTA account. The bank then pays all interest earned on the account to the IOLTA Fund on either a monthly or quarterly basis, and no further action by the attorney is required unless and until something changes with the account.

Attorneys can find answers to many of their compliance and enrollment questions online at www.kybarfoundation.org/iolta, which provides links to both the Annual Compliance Certification Form and the Account Authorization Form, as well as answers to several frequently asked questions.

HOW CAN YOUR FINANCIAL INSTITUTION PARTICIPATE IN IOLTA?
To become a participating IOLTA bank or credit union, a financial institution simply completes, signs, and returns a one-page Agreement to Participate specifying its initial interest rate on IOLTA accounts, whether it prefers to transfer earned interest to IOLTA monthly or quarterly, and whether it will charge fees on IOLTA accounts. When a completed Agreement is received by the IOLTA office, the financial institution is enrolled as a participating institution in the IOLTA program. As of the date of this article, 158 financial institutions participate in IOLTA.

THANK YOU!
Thank you to Kentucky’s legal community for your many years of support for the Kentucky IOLTA Fund. Every cent contributed makes a difference in the lives of Kentuckians in all corners of the Commonwealth, and the IOLTA Fund hopes that every attorney sees the tremendous return generated by their participation in the IOLTA program. For more information about the Kentucky IOLTA Fund, visit www.kybarfoundation.org/iolta or contact the IOLTA office at (800) 874-6582.
At its heart, the Kentucky Bar Foundation is about attorneys and judges helping others. To celebrate the longstanding tradition of service among members of the Kentucky Bar, the Kentucky Bar Foundation is proud to spotlight these attorneys “doing good” in their communities! For more information about the Foundation and its charitable work on behalf of Kentucky’s legal community or to submit pictures of your recent volunteer project for a chance to be featured in a future issue, visit www.kybarfoundation.org.

GLEANING TO PROVIDE FOOD FOR KENTUCKY FAMILIES

GleanKY is a nonprofit organization that collects excess produce from groceries, orchards, and farmers’ markets and delivers it to food pantries, meal programs, and neighborhoods in food deserts. Since its founding in 2010, more than 961,196 pounds of produce has been gleaned and distributed. Attorney Erica Horn of Stoll Keenon Ogden PLLC helped to found GleanKY and serves as its board president. She recently volunteered at the agency’s annual Burgers & Beats fundraiser, which helps raise 20 percent of its annual budget. SKO served as the event’s presenting sponsor, and firm attorneys provide additional support by giving their time as volunteers to collect produce and deliver it to the approximately 60 agencies that distribute it, at no charge to recipients. Erica is pictured with GleanKY Executive Director Stephanie Wooten at Burgers & Beats.

MAKING A BEAUTIFUL SPACE FOR AT-RISK YOUTH

Arbor Youth Services (AYS) is a nonprofit organization that provides emergency shelter and other safe alternatives for homeless, runaway, and at-risk children and youth. Attorneys and staff from the Lexington office of Dinsmore & Shohl LLP and their families dedicated a day to volunteering at AYS, working to beautify the outside of the shelter and drop-in center by pulling weeds, mowing, mulching, and generally brightening things up. Attorneys who participated included Julie Greenlee, Barbara Edelman, Lauren Weiner, Drew Millar (and his wife, Ashlee, and their children, Mac, Gray, Annie and Walt), Megan Niespodziany, Kyle Melloan, Kristeena Johnson, and Adrianne Strong.
BEGINNING LAW SCHOOL BY GIVING BACK

Students at the University of Louisville Brandeis School of Law kicked off their law school careers getting to know the community and taking time to serve others. More than 70 first-year Brandeis law students participated in a day of service in August that benefitted 11 organizations across Louisville. Among other things, students baked treats at the Ronald McDonald House, sorted donated items at Kentucky Refugee Ministries, and prepared food at the St. Vincent de Paul Open Hand Kitchen. Commitment to public service is a longstanding value of the Brandeis School of Law, and all students are required to complete at least 30 hours of law-related public service. “It’s always important to give back to the community in whatever way you can and, . . . when you become a lawyer, doing pro bono work and . . . using any skill you have to help others that maybe didn’t have some leg up that you had that helped you get to where you were or faced some hardship that they just need help,” first-year student Kathryn Waller explained to UofL News. Pictured from left are law students John Sida, Andrew Skomorowsky, Elizabeth Irish, John Benochi, and Tammy Fraley at St. Vincent de Paul.

SUPPORTING THE LAW ENFORCEMENT COMMUNITY

Estate and financial planning attorneys at Gersch Law Offices, P.S.C., are supporting their local law enforcement community by volunteering to provide free estate plans to all Jeffersontown Police Department officers and staff. Attorneys Wesley Gersch and Falin McKenzie are leading the effort on behalf of the firm, which takes great pride in serving its community and speaks regularly to community and nonprofit organizations about estate planning matters. Falin is pictured with a Jeffersontown police officer.

ATTORNEYS WALKING TO END ALZHEIMER’S

The Alzheimer’s Association works to eliminate Alzheimer’s disease through research, to provide and enhance care and support for all affected, and to reduce the risk of dementia through the promotion of brain health. Inspired by their own interactions with Alzheimer’s and dementia, Kentucky attorneys are doing their part to help find a cure by participating in the Association’s Walks to End Alzheimer’s.

Attorneys Chris Emison and Jane Schmidt of Pitt & Emison participated in Louisville’s Walk at Waterfront Park with family and friends. They wanted to support the Association’s largest fundraiser because they have many friends and clients dealing with the devastating effects of dementia, and Ms. Emison’s father suffered from Alzheimer’s.

Attorneys Carolyn Kenton, Amy Dougherty, and Mary Ellis Patton of Bluegrass Elderlaw, PLLC, participated in Lexington’s Walk through downtown with their families and legal assistants. As relatives of those who suffered from dementia and as attorneys who watch their clients struggle through the long goodbye, they participated because they are hopeful that there will be an end to this heartbreaking disease. They also support the cause by partnering with the Association to provide free seminars regarding legal and financial planning for those diagnosed with Alzheimer’s or dementia.
As a final tribute, the *Bench & Bar* publishes brief memorials recognizing KBA members in good standing as space permits and at the discretion of the editors. Please submit either written information or a copy of an obituary that has been published in a newspaper. Submissions may be edited for space. Memorials should be sent to sroberts@kybar.org.

**IN MEMORIAM**

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<thead>
<tr>
<th>NAME</th>
<th>CITY</th>
<th>STATE</th>
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<tr>
<td>Andrew Klemens Banks</td>
<td>Villa Hills KY</td>
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<td>September 2, 2016</td>
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<td>Jack C. Burkett</td>
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<td>Priscilla Seiderman Diamond</td>
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<td>Patrick Carlin Hickey</td>
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<td>Henry E. Hughes</td>
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<td>James Levin</td>
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<td>Martin Levy</td>
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<td>David Scott Weinstein</td>
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**JAMES LEVIN** died peacefully on Sept. 22, 2016, after fighting pancreatic cancer. He was the son of Louis and Zelda Levin and grew up in Williamsburg Ky. He had many life-long friends from his days at Williamsburg High School from which he graduated in 1946 and where in 2000 he was inducted into the school’s Hall of Fame.

Levin received his undergraduate degree from the University of Kentucky in 1950. After beginning law school he was called to serve his country during the Korean War and did so in the Army as a First Lieutenant. He then returned to the University of Kentucky, where he married Deborah Rosenbaum and obtained his law degree, with honors.

Beginning in 1956 he served as Assistant Solicitor for the U.S. Department of Labor in Washington D.C. The Levins moved to Louisville in 1958 where he began his private law practice. Perhaps his greatest honor was serving as a Special Justice on the Kentucky Supreme Court when his friend, Justice Charles Leibson, was unable to serve. He authored opinions for the Court, as well as in dissent of the majority. Levin was a member of the American, Kentucky and Louisville Bar associations, as well as the Kentucky Justice Association.

He married Dr. Linda Lucas in 1998. He was predeceased by Debbie in 1993 and by his brother, Isadore Levin. He is survived by his wife, Linda, and his children and step-children, ZoeAnn Yussman (Jeff), Dr. Neil Levin (Traci), Gary Levin (Laura), Karen Butler, Dr. Robert Lucas (Heather) and Dr. Scott Lucas (Julie); as well as 16 grandchildren; his sisters, Esther Yussman and Betty Spivak (Al); and his legal assistant, office manager and friend of 33 years, Brenda Royalty.

Phillips Parker Orberson & Arnett, PLC, announces that John C. (Jack) Phillips has joined the firm as an associate. Phillips received his Bachelor of Arts in English from the University of Kentucky in 2012 and his J.D. from University of Kentucky College of Law in 2015. Following graduation, he spent one year as a law clerk to the Honorable Michelle M. Keller on the Supreme Court of Kentucky. His practice focuses primarily on civil litigation defense.

Embry Merritt Shaffar Womack, PLLC, announces that Seth Bryan Pinson has joined the firm as an associate attorney. Pinson graduated from Abilene Christian University in 2008 and Texas Tech University School of Law in 2012. He was licensed in Tennessee in 2012, and operated his own practice for several years, focusing on criminal defense, family law, and landlord/tenant disputes. Pinson was licensed in Kentucky in 2016, and will continue to focus his practice in criminal and family law.

Grossman & Moore, PLLC, a Louisville boutique law firm exclusively representing injured victims in the areas of personal injury, mass torts, medical negligence, and nursing home abuse and neglect, announces that Abigale “Abby” Rhodes Green has joined the firm as an associate attorney. Green graduated magna cum laude from the University of Georgia Honor’s College and received her law degree, magna cum laude, from the University of Kentucky College of Law in 2012. Green will concentrate her practice representing individuals and families who have been injured as a result of harmful products, medical negligence, nursing home abuse and neglect, automobile and truck wrecks.

The McBrayer law firm announces the addition of two attorneys John Michael Carter and Courtney Hampton. Hampton previously worked as Assistant Fayette County Attorney in the Division of Child Support and before that in a small practice where she focused on family law and bankruptcy. Hampton achieved her J.D. at the Thomas M. Cooley School of Law in Lansing, Mich. Carter received his J.D. from the University of Kentucky College of Law. He worked previously for Judge Gregory A. Lay of the 27th Circuit and completed internships with Judge Eddie Lovelace of the 40th Circuit and the Appellate Division of the U.S. Attorney’s Office for the Eastern District of Kentucky. Most recently, he practiced civil litigation at Tooms & Dunaway, PLLC, in London, Ky.

Adams, Stepner, Woltermann & Dusing, PLLC, announces that Paul J. Wischer has joined the firm as an associate attorney. Wischer will practice business, municipal and financial transaction law as part of the firm’s business representation, government practice and commercial litigation practice groups. Admitted to the Kentucky Bar in 2012, he received his undergraduate degree from the University of Kentucky (B.A. cum laude) in 2009. He graduated cum laude from the Salmon P. Chase College of Law (J.D.) in 2012.

Stites & Harbison, PLLC, welcomes attorney Jennifer Cave to the Louisville office. She joins the environmental, natural resources & energy service group as a member (partner) of the firm. Cave works with businesses and utilities to ensure compliance with state and federal environmental laws and regulations. Her experience includes advising clients on the Clean Air Act and assisting them with Clean Air Act permitting and compliance. Cave earned her J.D., magna cum laude, from Seattle University School of Law. She earned her B.S., cum laude, in Biology from the University of Kentucky.

The law firm of McMurry & Livingston, PLLC, announces that Hillary Chambers has joined the firm as an associate attorney. Chambers is a native of Paducah, Ky. She earned her Bachelor of Business Administration degree, summa cum laude, with a major in business management and a minor in International Business, from the University of Kentucky in 2013. She earned her law degree, cum laude, from the University of Kentucky College of Law in May of 2016. Chambers is now the newest associate at McMurry & Livingston. She serves on the community service committee of the Paducah Young Professionals organization through the Paducah Chamber of Commerce, and she volunteers through the United Way of Paducah’s Reading PALS program.
Kenneth P. O’Brien announces the formation of Kenneth O’Brien Law, PLLC, d/b/a River City Elder Law. O’Brien is a 1992 graduate of the University of Louisville Brandeis School of Law. River City Elder Law focuses on helping people and families plan for the future by offering personalized legal service in the areas of wills, trusts, financial and medical power of attorney documents, long-term care and special needs planning, and probate/estate administration. O’Brien is a member of ElderCounsel, LLC, and the National Academy of Elder Law Attorneys.

Thompson Miller & Simpson announces that Whitney Graham has joined the firm as an associate. Graham received her B.S. from the University of Louisville and her J.D. in 2016 from the University of Louisville Louis D. Brandeis School of Law. Graham will practice in the fields of appellate law, commercial and healthcare litigation.

Jennifer T. Leonard announces the establishment of Leonard Law, P.S.C., located at 2131 Chamber Center Drive, Ft. Mitchell, KY 41017. The firm focuses on the areas of practice in estate planning, estate and trust administration, wealth transfer, business formation and operation, business succession planning, and non-profits. Leonard is a graduate of Chase College of Law and the University of Kentucky. She can be reached at (859) 647-7777 ext. 105 or jtl@jennifertleonard.com.

Morgan & Pottinger, P.S.C., announces that Jacob Michul joined the firm. Michul will focus primarily on real estate law, business law and litigation, and regulatory law. Michul advises clients on a wide range of real estate transactions involving acquisitions, sales, title insurance, land use, disputes and more. He also provides general counsel on business issues and works closely with companies to help them better understand the laws and regulations that affect daily operations. He graduated magna cum laude from the University of Kentucky and earned his J.D. from the University of Kentucky College of Law. He will be based in their Lexington office.

The law firm of O’Bryan, Brown & Toner, PLLC, announces that Scott Burroughs and Rachel Dalton have joined their Louisville office as associate attorneys. Burroughs attended college at The Ohio State University from 2004 to 2008, graduating magna cum laude, with a B.A. in History. He earned his J.D. in 2011 from the University of Kentucky College of Law. Burroughs began his legal career with a judicial clerkship with the Honorable Judge Gregory A. Lay of Kentucky’s 27th Judicial Circuit. Following his clerkship, he practiced for four years with a Louisville insurance defense firm. He joined O’Bryan, Brown & Toner in August 2016. His primary area of practice is insurance defense litigation with a particular focus in medical malpractice defense. Dalton graduated summa cum laude, with a B.A. from the University of Kentucky. She obtained her law degree from the University of Louisville Louis D. Brandeis School of Law, where she graduated magna cum laude. Dalton joined O’Bryan Brown & Toner, PLLC, as an associate in the summer of 2016. Her primary areas of practice include insurance defense litigation with a focus on medical and legal malpractice and defense of general civil liability claims.

Seiler Waterman announces that William P. Harbison has become an associate with the firm. Harbison received his J.D. from Indiana University Maurer School of Law, cum laude, and is licensed to practice law in Kentucky and Indiana. He has experience litigating under the Bankruptcy Code, representing clients in claims disputes and winning precedential decisions on issues concerning the confirmation of plans of reorganization. Harbison served as a deputy prosecuting attorney in Clark County, Ind., and as law clerk to the Honorable Basil H. Lorch III of the United States Bankruptcy Court for the Southern District of Indiana.

Steve Kriegshaber has joined Goldberg Simp- son as of-counsel. His primary practice area is family law. He is a former chair of the Family Law Section of the Louisville Bar Association and is a fellow and former president of the Kentucky Chapter of the American Academy of Matrimonial Lawyers (AAML). He is also a certified AAML family law arbitrator. He has served as a member of the Jefferson Family Court Advisory Committee and the Attorney General’s Task Force on Sexual Abuse of Children. The Louisville Bar Association elected him Family Law Practitioner of the Year for 2000. He is past president of the Kentucky Collaborative Family Network and is a member of the International Academy of Collaborative Professionals. He received his undergraduate degree from Indiana University and his law degree from the University of Louisville Louis D. Brandeis School of Law.

Mauritia G. Kamer has joined the law firm of Steptoe & Johnson PLLC. Kamer will focus her practice in the area of labor and employment law in the firm’s Kentucky offices. She will be based their Lexington office. Kamer defends employers in state and federal litigation and before administrative agencies including the Equal Employment Opportunity Commission. She also counsels them in a broad range of day-to-day labor and employment matters like employment policies, wage and hour, medical leave, and disability accommodation. Kamer earned her J.D. from University of Kentucky School of Law and her Bachelor’s degree from Virginia Tech.

Frost Brown Todd (FBT) announces the addition of associate Jennifer L. Bame to the firm’s labor and employment practice group. Bame joins FBT after having served as law clerk to the Honorable Thomas H. Fulton, Chief Judge of the United States Bankruptcy Court for the Western District of Kentucky. Bame
previously worked as an assistant public defender in Miami-Dade County. Bame earned her J.D. at the Washington University School of Law in St. Louis. She earned an undergraduate degree at the University of Florida and a Master of Fine Arts degree at Columbia University.

Weber Rose, P.S.C., has enjoyed a substantial amount of growth and change in the past two years. The firm made a slight name change from Weber and Rose to Weber Rose, adopted a new logo, and launched a brand new website. The number of associates has also grown from one to five, one of whom serves as the firm’s first marketing director. Most recently, the firm welcomed a new of Counsel, John Evans. Evans joined Weber Rose in October and also serves as the Mayor of Prospect. Evans is a former City Attorney and City Councilman. Named Senior Counselor by the Kentucky Bar Association, Evans brings over 50 years of legal experience to the firm and will be practicing in the areas of wills, trusts and estates. Brittany Griffin Smith joined Weber Rose in the fall of 2014 after gaining valuable experience at a Lexington based litigation firm. Smith graduated from the University of Kentucky School of Law in 2012, where she was an editor and contributing author of the Kentucky Law Journal and member of the trial team. Smith has a Masters in Communications with an emphasis on media and policy and is currently practicing in the areas of litigation and media law. Rachel Dickey joined Weber Rose in the spring of 2015 and in addition to practicing law, serves as marketing director. Dickey, who previously served as staff attorney to the Honorable Chief Judge Glenn Acree of the Kentucky Court of Appeals, joined the firm after helping launch an energy startup in New York. Dickey graduated from Pepperdine University School of Law. Dickey currently serves on the board of directors for the Kentucky State Park’s Foundation and Project Warm, and practices business and employment law. Beau Baustien joined Weber Rose in the summer of 2015. Baustien graduated from the University of Kentucky School of Law in 2012, where he was a staff editor of the Kentucky Law Journal, a member of the trial advocacy board, and was attorney general of the student government association. Baustien now practices in the area of real estate law. Darnell McCoy joined Weber Rose in spring of 2016. McCoy graduated from the University of Kentucky School of Law in 2012, where he received an award for excellence in administrative law and the Ashland Scholars Award. McCoy began his legal career in Jefferson County Probate Court. From there, he joined the Jefferson County Attorney’s Office’s Civil Division where he represented and advised all levels of Jefferson County agencies and officials. McCoy’s practice focuses on real estate law. Brittany Bailey McKenna joined Weber Rose in the spring of 2016. McKenna graduated from the University of Louisville School of Law where she was editor-in-chief of the Journal of Animal and Environmental Law and a member of the moot court team. After law school, McKenna served as staff attorney to Justice Lizabeth T. Hughes. McKenna is also an active member of the community and serves on the board of directors for YouthBuild Louisville. McKenna practices business law and civil litigation.

IN THE NEWS

Middleton Reutlinger announces that the following five attorneys have been elected to become directors of the firm: Jennifer Barbour, Amy Berge, Joe Dages, Dan Redding and Scott Stinebruner. Jennifer M. Barbour is a member of the health care practice group. Her health care litigation practice includes medical malpractice defense and long term care malpractice defense. Amy B. Berge serves as an advisor and litigator, providing strategic counseling and business advice to both small and large companies regarding intellectual property, technology, advertising, online privacy, and licensing. Joseph R. Dages helps companies and individuals protect their brands domestically and internationally, as well as assists artists, authors, and entrepreneurs safeguard and leverage the value of their creative works. He concentrates his practice in the areas of trademark, copyright, and Internet law. Daniel W. Redding is a member of the litigation and intellectual property litigation practice groups. He represents clients in a broad range of business disputes, with a particular focus on patent infringement litigation. Scott A. Stinebruner is a registered patent attorney and member of the intellectual property practice group. He focuses his practice in patent, trademark, and copyright counseling, procurement, licensing and protection.

The American Heart Association recently named Stites & Harbison, PLLC, attorney Reggie Bentley to serve on its Kentuckiana Metro Board of Directors for a three-year term. The board guides the many local activities that support the organization’s mission of building healthier lives, free of cardiovascular diseases and stroke. Bentley is an attorney with Stites & Harbison based in the Louisville, Ky., office. He is a member of the business litigation service group.

George Miller, a partner in the Lexington office of Wyatt, Tarrant & Combs, has authored a chapter on Responsive Pleadings in the latest edition of the Kentucky Civil Practice before Trial Handbook (4th ed. 2016) for the University of Kentucky Office of Continuing Legal Edu-
ciation. Miller has authored the chapter in all four editions of the book. The chapter provides an up-to-date source which practicing attorneys may consult when they must respond to a complaint filed in state court. It also offers an analysis of Kentucky’s Civil Rules on responsive pleadings and motions, together with references to some of the numerous appellate court opinions on the subject. Miller concentrates his practice in the areas of labor and employment law and eminent domain law. Miller is a Fellow in the College of Labor and Employment Lawyers, and serves as a coordinator for the American Bar Association Labor & Employment Section Law Student Outreach Program at the University of Kentucky College of Law. Miller received his B.A. from Bloomsburg University of Pennsylvania, and his J.D. from the University of Kentucky College of Law.

Kentucky Bar Association Senior Counselor Michael Brawley was awarded the 2015 Army Career Claims Award during a ceremony held this past August at Fort Knox. Colonel Randolph Swansiger, Commander of the Army Claims Service presented the award on behalf of the Judge Advocate General. Brawley worked 21 years in the claims arena after retiring off active duty. The award is given each year to a person with 20 years or more of outstanding service in the claims arena. After retiring from 26 years of uniformed service as a Colonel, Brawley worked as the supervisory claims attorney in the Army Claims Office at Fort Knox for 23 years. The office was cited for 17 consecutive years as one of the Army’s best.

Palmer Gene Vance II continues his service to the American Bar Association (ABA) as vice chair of the Section of Litigation for 2016–17. Vance’s involvement in the ABA includes serving in the House of Delegates since 2001 where he has chaired four different committees. His service in the Section of Litigation includes serving as managing director in 2010–11, co-chairing the Membership and Marketing Committee in 2011–12, co-chairing the 2009 Section Annual Conference, and most recently serving as revenue officer from 2012–16. He also is a past president of the Fayette County Bar Association. Since 1995, Vance has been with Stoll Keenon Ogden PLLC and he is a member in the firm’s Lexington office. He is a member of the business litigation practice, the tort, trial & insurance services practice, and the intellectual property practice.

Dinsmore & Shohl LLP’s Brady W. Dunnigan has been elected to serve on the Board of Directors of the Kentucky Mansions Preservation Foundation (KMPF). Dunnigan will serve a three-year term. Founded in 1968, KMPF is a private non-profit organization dedicated to protecting and promoting historic properties. Dunnigan is a partner practicing in Dinsmore’s Corporate Department. He devotes his time to commercial lending and real estate matters in addition to general mergers and acquisitions, and routinely serves as outside general counsel to clients for purposes of coordinating transaction support, litigation strategy and dispute resolution.

Benchmark Litigation recently released their inaugural Under 40 Hot List for 2016. The five Stites & Harbison, PLLC, attorneys recognized include: Chad McTighe, David Owsley II, Bruce Paul, Cassidy Rosenthal and Angela Stephens. Each attorney is a member (partner) of the firm. McTighe, Owsley and Stephens are based in the Louisville office; Rosenthal is based in the Lexington office; and Paul is based in both the Jeffersonville, Ind., and Louisville offices. The Under 40 Hot List honors exceptional law firm partners in the U.S. who are 40 years of age or younger. Benchmark Litigation’s research team utilized a system of peer review and case examination to select the final honorees.

Dinsmore & Shohl LLP’s Clifford H. Ashburner has been appointed as co-chair of the Louisville’s Comprehensive Plan Advisory Committee by Mayor Greg Fischer. Known as Cornerstone 2020, the Comprehensive Plan is a document that governs zoning decisions in the city. Ashburner is a member of Dinsmore’s Corporate Department where he focuses his practice on advising and representing developers and others in appearances before planning commissions, boards of zoning adjustment, city councils and courts.

The National Conference of Bar Presidents (NCBP) recently selected Stites & Harbison, PLLC, attorney Doug Farnsley to serve on the Executive Council as a member-at-large for 2016–17.
The Executive Council, which serves as NCBP’s governing board, is composed of five officers and 15 at-large members, all of whom have been recent bar presidents who have attended NCBP conferences while leading their local bar associations. NCBP was founded in 1950 to provide state and local bar association leaders with information and training on best practices and current legal topics. Farnsley is a member (partner) of Stites & Harbison based in the Louisville office. He focuses on civil trial work. He is the immediate past president of the Kentucky Bar Association.

Wyatt, Tarrant & Combs, LLP, announces that Sharon Gold has been selected by Commerce Lexington for its Leadership Lexington Class of 2017. Leadership Lexington is a development program directed toward individuals who demonstrate leadership qualities. Gold is a partner in the firm and leader of its employment litigation (EPLI) team. She concentrates her practice in the areas of labor and employment and commercial litigation, including the defense of employers in a variety of lawsuits, both at the administrative and civil complaint level. Gold earned her J.D., magna cum laude, from the University of Kentucky College of Law and her B.A., cum laude, from the University of Kentucky.

English Lucas Priest and Owsley (ELPO) attorney, Sarah Jarboe, served on the organizing committee for the 24th fall conference of the Section of the Environment, Energy and Resources of the American Bar Association (ABA), which was held October 5-8 in Denver. She coordinated the panel discussion called Rising Superstars: Navigating Complex Environmental Transactions. ELPO Attorney LaJuana Wilcher, a nationally known speaker on environmental law, served as moderator on the panel. In addition to her position with the ABA, Jarboe is serving as chair of the environment, energy & resources law section of the Kentucky Bar Association.

Lewis Diaz, a partner at Dinsmore & Shohl LLP, was appointed to the Eastern Kentucky University Board of Regents by Kentucky Governor Matt Bevin for a term ending in 2022. A member of in Dinsmore’s Public Finance group, Diaz concentrates his practice on affordable housing and traditional governmental finance. His practice is dedicated to the goal of ensuring good, safe, accessible, affordable housing for communities across the nation. Diaz serves as a board member of the Northern KY Community Action Commission and is the vice chair of the Board of the Northern Kentucky Area Development District. Diaz earned his J.D. from the Northern Kentucky University, Chase College of Law and received both his B.A. and M.P.A. from Eastern Kentucky University.

Sam Rock, attorney, was elected the president of the Mid-South Chapter of the American Immigration Lawyers Association (AILA). The Mid-South Chapter includes AILA members from the states of Kentucky, Tennessee, Louisiana, Arkansas and Mississippi. As the Chapter President, Rock will also sit on the Board of Governors for the national membership of AILA.

Chris Brooker and Lisa DeJaco, partners in the Louisville office of Wyatt, Tarrant & Combs, have been selected for the 2016 edition of the first ever “Under 40 Hot List” of Benchmark Litigation. The “Under 40 Hot List” is a new accolade of Benchmark Litigation to honor the achievements of the nation’s most accomplished legal partners under the age of 40. Brooker serves as a member of the firm’s litigation & dispute resolution service team. He is lead counsel in a wide array of cases at the trial level, including contract, health care, fiduciary, constitutional, and product liability cases. Brooker serves as a board member of Junior Achievement of Kentuckiana, and is a graduate of both Leadership Kentucky and Leadership Louisville’s Ignite programs. Brooker received his B.A., magna cum laude, from the University of North Carolina at Asheville, and his J.D., with honors, from the University of North Carolina School of Law. DeJaco is a trial litigator with a broad practice, ranging from real estate and zoning to contract issues to wrongful death and toxic exposures. She has experience in intellectual property litigation, including trade secret and unfair competition disputes as well as infringement actions over copyrights, trademarks and patents. She is a graduate of the Leadership Kentucky, Leadership Louisville, and Bingham Fellows programs. She received her B.A., summa cum laude, from Furman University, and her J.D. from the University of Virginia School of Law.

Women Leading Kentucky recently elected Stites & Harbison, PLLC, attorney Chrisandrea Turner as chair of the organization. She has been a member of Women Leading Kentucky since 2012 and previously served as vice chair. Turner is a member (partner) of Stites & Harbison based in the firm’s Lexington office. She is a bankruptcy and creditors’ rights litigator focusing on corporate bankruptcy and restructuring and adversary proceeding defense. A member of the firm’s manufacturing industry team, Turner advises the firm’s manufacturing clients on bankruptcy and creditor-oriented matters. Turner also serves on the Board of Directors of Leadership Kentucky. Women Leading Kentucky is a non-membership organization, creating business and leadership networking opportunities for women at all stages of their careers, enabling them to lead, learn, achieve and give back.

John M. Rosenberg, of Prestonsburg and Director Emeritus of AppalReD received the 2016 Kentucky Humanitarian Award from the
Muhammad Ali Center on Sept. 17, 2016, at its annual fundraising event at the Marriott Hotel in Louisville. The award, along with several others given that evening, honors people who are making significant contributions toward securing peace, social justice, human rights, and/or social capital in their communities and on a global basis. Rosenberg is vice chair of the Kentucky Public Advocacy Commission and presently serves as civil advisor to American Bar Association Standing Committee on Legal Aid and Indigent defendants. He is of counsel to the Prestonsburg firm of Pillersdorf, Derossett and Lane.

English Lucas Priest and Owsley (ELPO) attorney, Rebecca Simpson, was recently named chair-elect of the Alternative Dispute Resolution section and vice-chair of the Family Law Section of the Kentucky Bar Association. Simpson is a senior attorney at ELPO. She joined the firm in April 2016. She has practiced family law for 16 years with firms in Louisville and Bowling Green. Simpson practices in estate law, family law and offers mediation services. Simpson can be reached at (270) 781-6500 or rsimpson@elpolaw.com.
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