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Several inside graphics by ©istockphoto.com/ShannonHRoberts
I am writing this article two days before Thanksgiving. I am thinking of all the things for which I am grateful. I am blessed to live in a country where I am able to worship as I please, speak my mind without fear of persecution and be able to travel to destinations without approval from anyone. I am most grateful for the rule of law in our country. It is not perfect, but it is so much better than the systems in other countries.

The opportunity of being a lawyer has given to me great pleasure and comfort. My road of life has carried me from a tobacco field in Pendleton County to Frankfort, the state capital, where I have been able to engage in a labor of love, the practice of law.

Along with the opportunities, however, there are responsibilities. I, as a lawyer, have a responsibility to serve my clients to the best of my ability. I also have the responsibility of serving the profession which includes helping those who need my help but cannot afford my services. The poor, downtrodden and neglected cannot be ignored.

A project worthy of consideration is the Clemency Project 2014. This is a working group of lawyers collaborating with the National Association of Criminal Defense Attorneys to provide pro bono assistance to federal prisoners who would likely receive shorter sentences if they were sentenced today. The specific criteria focuses on federal inmates who have served at least 10 years, have a minimal, non-violent criminal history, and have demonstrated good conduct in prison. For more information, please visit www.clemencyproject2014.org.

There are many other worthwhile pro bono projects where a lawyer may serve his or her fellow man and show the thankfulness of this wonderful profession.

DEAR EDITOR:

After reading Justice Bill Cunningham’s recent letter about the ABA and its losing ground with Kentucky lawyers, I would like to make this response.

While the issues of law students being paid while they participate in externships is a worthwhile issue and deserves discussion; it is not a reason for Kentucky lawyers to dismiss membership in the ABA as meaningless.

First, Justice Cunningham states that he only knows a handful of lawyers who belong to the American Bar Association. I believe there are more than a handful, and I am one of them. I belong to the Family Law Section and the Alternative Dispute Resolution Section. The wealth of information I receive in the form of e-mails, publications such as the Family Law Advocate, the Family Law Quarterly and the Dispute Resolution Magazine, are well worth the membership fee.

In addition, reading the ABA Journal is an excellent way for Kentucky lawyers to know and understand a myriad of legal issues that exist not only in Kentucky, but in the United States and the world. It also provides lawyers with a window into other practices, as well as giving us the opportunity to converse with other practitioners and learn from them.

The bottom line is, as a practicing lawyer, I believe we should seek out all avenues of continuing education, including learning from those nationally and internationally. To insinuate that the ABA provides little service for Kentucky lawyers is shortsighted. Justice Cunningham does call the ABA “a distinguished organization with a long record of commendable public service,” but then goes on to say that it cannot be all things to all people. Of course not, but Kentucky lawyers do a disservice to themselves, their clients and their communities if their disagreement with any one or several issues that the ABA is discussing, prevents them from membership in a terrific legal organization. I am proud to be an ABA member.

Sincerely,

Delores “Dee” Pregliasco
Have You Taken Care of Your “Old Dog” Case?

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Attorneys often confuse the ethical concept of the duty of confidentiality and the evidence concept of the attorney-client privilege. It is not at all unusual to hear attorneys talk of information being “privileged” when the information might be protected by the duty of confidentiality but is in no way protected by the attorney-client privilege. Sometimes lawyers are simply misusing the word “privileged,” but understand the difference between the two concepts. Other times, however, attorneys are, as one of my students recently phrased her own understanding, “a little fuzzy on that.” So let’s clear up some of that fuzziness!

As a general matter, both the duty of confidentiality and the attorney-client privilege encourage clients to trust their lawyers. The attorney-client privilege, especially, encourages clients to tell their lawyers everything, though the duty of confidentiality does this as well. With complete information, lawyers can provide the best and most appropriate advice.

The duty of confidentiality places ethical restrictions on a lawyer’s disclosure of information relating to the representation of the client. Supreme Court Rule (SCR) 3.130(1.6) sets forth the parameters of the duty.

In contrast, the evidentiary principle of the attorney-client privilege is a creature of Rule 503 of the Kentucky Rules of Evidence (KRE). That rule generally states that the privilege applies to confidential communications between an attorney and a client, or their respective representatives, made for the purpose of obtaining or rendering legal services and not in furtherance of a crime or fraud. Rule 503 states that if the privilege applies to a communication, disclosure of that communication cannot be compelled.

While the attorney-client privilege is a creature of Rule 503, in other jurisdictions and as a matter of federal law, it is often a creature of the common law, defined by judicial opinion without the benefit of a rule.¹

While the concepts are similar, they are not the same. A lawyer may have a duty of confidentiality with regard to information about his or her representation of a client, but because the information is not a part of a confidential communication, it does not benefit from the protection of the privilege. A court could compel the client or the lawyer to disclose that information.

THE DUTY OF CONFIDENTIALITY

The Basic Rule: SCR 3.130(1.6)

Rule 3.130 contains the Rules of Professional Conduct that govern the conduct of lawyers practicing law in Kentucky. Rule 3.130(1.6) deals with a lawyer’s duty of confidentiality. The rule’s basic statement regarding confidentiality is as follows:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

This duty has broad application. A lawyer who represents a client in a divorce matter and who discovers information about the client’s relationship with the client’s wife while talking to the client’s neighbor has a duty to keep that information confidential. This general confidentiality principal continues after the representation ends and applies to information received about prospective clients as well.²

The duty of confidentiality not only forbids revealing information, but also prescribes a lawyer’s use of confidential information about a client to the disadvantage of that client.³ With regard to former or prospective clients, a lawyer may not use confidential information to the disadvantage of a former or prospective client unless that information has become “generally known.”⁴

Disclosure “Impliedly Authorized” or with Informed Consent

Of course, a client may give informed consent to a disclosure of otherwise confidential information. Informed consent requires that the lawyer explain to the client the risks that accompany such a disclosure as well as the alternative to such a disclosure.⁵ In addition, the rule allows disclosures that are “impliedly authorized in order to carry out the representation.” A client who is represented by a lawyer who practices in a firm with other lawyers, absent contrary indication, impliedly authorizes the lawyer to share confidential information with other lawyers in the firm.⁶

Other Permitted or Required Disclosures: SCR 3.130(1.6(b))

Rule 3.130(1.6(b)) identifies four situations in which a lawyer may disclose confidential information even though the client does not consent to the disclosure and does not authorize it.

A lawyer may reveal information:

1. to prevent reasonably certain death or substantial bodily harm; 2. to obtain ethics advice; 3. to establish a claim or defense on behalf of the lawyer; and 4. to comply with other law or a court order. With regard to each exception, a lawyer may disclose only the information reasonably necessary to meet the underlying purpose.⁷

- To Prevent Reasonably Certain Death or Substantial Bodily Harm

Rule 3.130(1.6(b)(1)) allows a lawyer to disclose confidential information “to the extent the lawyer reasonably believes necessary” to avoid “reasonably certain death or substantial bodily harm.” If, for example, a lawyer, in the course of representing a client in a child custody matter, learns from a third party that his client has expressed an intent to drown her children in the river, that lawyer may disclose such information to the authorities.

- To Obtain Ethics Advice

In order to encourage lawyers to consult...
with others about the ethically proper path, Rule 3.130(1.6(b)(2)) allows a lawyer to disclose confidential information to obtain “legal advice about the lawyer’s compliance with these Rules.”

- To Establish a Claim or Defense on Behalf of the Lawyer
Rule 3.130(1.6(b)(3)) allows a lawyer to disclose information to defend herself. If a client makes a claim against a lawyer for malpractice, the lawyer can disclose confidential information to defend herself. If the lawyer has been charged criminally or is subject to civil liability or disciplinary action or any other adverse proceeding in relation to the lawyer’s representation of the client, the lawyer may disclose confidential information to defend herself.

In addition, a comment to Rule 3.130(1.6) clarifies that an attorney may disclose information to establish entitlement to a fee in a collection action.8

- To Comply with Other Law or Court Order
Rule 3.130(1.6(b)(4)) allows a lawyer to disclose confidential information if a court orders the disclosure or if other law demands such disclosure. For example, a state might have a statute that requires reporting of child abuse and specifically states that it applies to lawyers. A lawyer could abide by the statute without violating the duty of confidentiality.

- Other Permitted or Required Disclosure: Other Rules
Rule 3.130(1.13), which addresses representation of an organization, also contains a provision for a permitted disclosure. Section (c) of Rule 3.130(1.13) permits a lawyer to disclose confidential information outside the organization, but only if (1) the lawyer has followed the internal reporting procedure provided by Rule 3.130(1.13), (2) the lawyer believes the situation to be harmful to the organization and a clear violation of law and (3) the “highest authority” in the organization has failed to address the problem in an “appropriate manner.” Even so, the lawyer may disclose confidential information only if the lawyer reasonably believes the situation “is reasonably certain to result in substantial injury to the organization.”

Rule 3.130(3.3), which deals with candor to the tribunal, is a bit different in that it mandates disclosure of otherwise confidential information as part of the lawyer’s duty to be absolutely candid with the court. For example, if a lawyer, the lawyer’s client, or a witness called by the lawyer, offers evidence that the lawyer later learns is false, that lawyer has a duty to “take reasonable remedial measures, including, if necessary, disclosure to the tribunal.”9 Likewise, “[a] lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging in or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.”10 Part (c) of Rule 3.130(3.3) clarifies that the duties under Rule 3.130(3.3) apply “even if compliance requires disclosure of information otherwise protected by Rule 1.6.” Several other rules require disclosure of information but state that a lawyer need not disclose unless Rule 3.130(1.6) permits the disclosure. For example, Rule 3.130(8.3) requires a lawyer to report misconduct of another lawyer unless the information is protected by Rule 3.130(1.6) or other law.11

THE ATTORNEY-CLIENT PRIVILEGE

The Basic Rule
In contrast to the duty of confidentiality, the attorney-client privilege, contained in KRE 503, is the evidentiary principle that confidential communications between attorneys and their representatives and clients and their representatives and even prospective clients that are made for the purpose of obtaining or rendering legal service, and not in furtherance of a crime or fraud, cannot be compelled.12 The privilege is the client’s, though the client’s lawyer, acting as the client’s agent, can waive the privilege or assert it.

A “representative of the lawyer” is “a person employed by the lawyer to assist the lawyer in rendering professional legal services.”13 The “representative of the client” is a more complex concept because clients who are organizations must act through individuals but yet not all individuals involved with an organization should be seen as having the power to engage with the lawyer so as to invoke the privilege. Rule 503 defines a “representative of the client” as a person who has the “authority to obtain professional legal services” or to act on legal advice given to the client. In addition, a “representative of the client” is anyone who is a party to a confidential communication: “(i) [i]n the course and scope of his or her employment; (ii) [c]oncerning the subject matter of his or her employment; and (iii) [t]o effectuate legal representation for the client.”14

Absolute Protection
While a court may order disclosure of information clearly within the bounds of a lawyer’s duty of confidentiality, if a court determines that the attorney-client privilege applies to a communication, the communication cannot be compelled; in other words, the protection is absolute.15

This absolute protection is also in contrast to the application of the work product doctrine set forth in Kentucky Rules of Civil Procedure Rule 26.02(3), which protects from disclosure material prepared in anticipation of litigation. Even if a court determines that material is work product, a court can compel the production of work product if the opposing party proves substantial need for the material and undue hardship in accessing the virtual equivalent of the materials through other means.16

Narrow Interpretation
The United States Supreme Court in Upjohn Company v. United States stated that the privilege’s “purpose is to encourage full and frank communication
between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.”17 Though this rationale of the privilege is laudable, because the privilege keeps relevant information out of the hands of the truth-finder, courts apply it narrowly.18

**Protects Confidential Communications**

The attorney-client privilege applies only to communications; it does not apply to the underlying information. So, for example, a lawyer might ask a deponent, “What did you tell your lawyer about what you did that day?” Opposing counsel should object on the basis that the answer to the question would require disclosure of a privileged communication. The questioning lawyer could ask a query aimed to elicit the underlying information as follows: “What did you do that day?” The deponent could answer this question without disclosing an attorney-client privileged communication.

If a lawyer is asked to produce the lawyer’s notes about a conversation with the client’s neighbor in which the lawyer and the neighbor discussed the subject of the representation, the notes may be work product and protected by that doctrine. The duty of confidentiality also protects the information relating to the conversation with the neighbor about the client, but those notes are not protected by the attorney-client privilege and can be compelled by a court. Recall that the duty of confidentiality allows a lawyer to disclose confidential information to comply with a court order. That provision of the duty of confidentiality would apply in this situation.19

In addition, the communication must be intended to be confidential. A communication between lawyer and client with other, unnecessary third parties present is not privileged because the presence of the unnecessary third parties implies a lack of intent to have a confidential communication.20 Rule 503 specifically states that the privilege applies to communications that involve not only the lawyer and the client but also “representatives” of each.21 So the presence of “representatives” does not destroy the privilege.

If the lawyer represents several clients jointly, the privilege applies to conversations among the clients and the lawyer.22 Since only attorneys and clients and their representatives are included in the communication, there are no unnecessary third parties present and thus no negative implication for confidentiality.

A corollary to that principle is that one joint client cannot assert privilege in a matter in which the joint client is adverse to the other joint client relating to the common representation.23

Rule 503 also provides that the privilege applies in the “common interest” setting, thus making clear that parties who do not share counsel but who have a “common interest” may communicate with each other without losing the protection of the privilege.24 What exactly suffices as a “common interest” is not clear in Kentucky or elsewhere.25

Likewise, a client who discloses to others an attorney-client communication that was confidential when it occurred may be held to have waived the privilege by the disclosure to others. The disclosure indicates that the client no longer desires that the communication remain confidential.26

**Communication Made for the Purpose of Facilitating the Rendition of Professional Legal Services to the Client**

For the privilege to apply, Rule 503(b) requires that the communication be “made for the purpose of facilitating the rendition of professional legal services to the client.” Occasionally, a client consults with a lawyer about more than legal issues and matters. A client might value the judgment of the lawyer on business issues as well as legal issues. The attorney-client privilege, however, does not apply to communications that do not relate to legal advice.

**Exception for a Communication In Furtherance of a Crime or Fraud**

If a client consults with a lawyer and then uses the lawyer’s advice to commit a crime or fraud, the communication is not privileged. This is true whether or not the lawyer knew of the client’s purpose at the time of the communication. Of course, a lawyer who knowingly assists a crime or fraud has violated Rule 3.130(1.2(d)), which forbids such misconduct.27

**Other Exceptions**

Rule 503 also provides that the privilege does not apply in a few other situations. The privilege does not apply to communications relevant to an issue between parties who make claims through the same deceased client, “to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness,” and to a communication related to an issue of breach of duty by the lawyer to the client or vice-versa.28

**Waiver**

Generally, a client’s disclosure of otherwise privileged communications to someone outside the attorney and client circle of confidentiality destroys the privilege. A client also can waive the privilege by putting a communication at issue. For example, a client cannot claim an advice of counsel defense and then maintain that the communications containing the advice are privileged.

A lawyer can waive the privilege on behalf of the client if the lawyer is acting in the role of client’s agent. So, for example, a lawyer who fails to object in a timely manner to disclosure can be held to have waived the client’s privilege.

Inadvertent disclosures, such as when a document production includes a privileged document that mistakenly was left in the collection of materials to be produced, may or may not waive the privilege. Kentucky has not yet spoken on the issue as to whether an inadvertent disclosure is a waiver of privilege. Federal Rule of Evidence 502 provides that when the inadvertent disclosure occurs in a federal setting, the disclosure does not waive the privilege if: “the holder of the privilege or protection took reasonable steps to prevent disclosure; and . . . the holder promptly took reasonable steps to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26(b)(5)(B).”29

**CONCLUSION**

While both the ethical duty of confidentiality and the evidentiary principle of the attorney-client privilege relate to information held by a lawyer, they are distinct concepts with separate parameters. Because of the duty of confidentiality, a lawyer has an obligation not to disclose information relating to the representation of the client, though, as discussed above, the rules are rife with exceptions. The attorney-client privilege protects only confidential communications between attorney and client that are made to facilitate the rendition of legal services. While the duty of confidentiality allows disclosure in certain situations, such as when disclosure is necessary to abide by a court order, the privilege, if it applies to a communication, prevents court compulsion. Each doctrine has its exceptions and nuances different from those of the other doctrine.

It is easy to conflate these doctrines. A careful lawyer will give proper attention to his or her ethical duty of confidentiality as well as be mindful of the application of the attorney-client privilege.
Professor Grace M. Giesel is the Bernard Flexner Professor and Distinguished Teaching Professor at the University of Louisville Louis D. Brandeis School of Law. She teaches contract law, professional responsibility, and contract drafting. Professor Giesel holds a B.A. in economics from Yale University and a J.D. from Emory University School of Law, where she graduated with distinction and as a member of the Order of the Coif. Professor Giesel is the chair of the KBA Ethics Committee and is the author of many articles on professional responsibility and contracts topics. She is a member of the Louisville, Kentucky, and American Bar associations.

1 For example, the court in United States v. United Shoe Mach. Corp., 89 F. Supp. 357, 358-59 (D. Mass. 1950), defined the privilege as follows: The privilege applies only if (1) the asserted holder of the privilege is or sought to become a client, (2) the person to whom the communication was made is a member of the bar of a court, or his subordinate or (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client.

2 See SCR 3.130(1)(c)(d)(duty to keep confidential information about former clients); SCR 3.130(1.18)(a)(duty to keep confidential information about a prospective client). A prospective client is "[a] person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter." SCR 3.130(1.18)(a).

3 See SCR 3.130(1)(b).

4 See SCR 3.130(1)(c) and SCR 3.130(1.18)(a).

5 See SCR 3.130(1)(e).

6 See SCR 3.130(1.6) cmt. 5; see also SCR 3.130(1.14)(c) (a lawyer is impliedly authorized to make a disclosure of otherwise confidential information to the extent reasonably necessary to protect the interests of a client with diminished capacity).

7 Other jurisdictions generally recognize the exceptions to the duty of confidentiality that Kentucky recognizes as well as a few others. Commonly-recognized exceptions allow an attorney to disclose confidential information to prevent a client's crime or fraud that likely will cause substantial financial injury to a third party if the attorney's service is being or was used in furtherance, and also allow an attorney to disclose confidential information to prevent, mitigate, or rectify substantial financial injury to a third party resulting from a client's crime or fraud if the attorney's service was used in furtherance. See, e.g., Indiana Rules of Professional Conduct Rule 1.15(b)(1); Ohio Rules of Professional Conduct Rule 1.6(b)(3).

8 SCR 3.130(1)(c) cmt. 9.

9 SCR 3.130(3)(b).

10 Id.

11 See also SCR 3.130(4.1) (truthfulness to others); SCR 3.130(8) (disclosures regarding bar applicants and disciplinary matters).

12 See KRE 503(b). The rule's definition of "client" includes not only a person in what would be regarded as a lawyer-client relationship but also a "person who consults with a lawyer with a view to obtaining professional legal services from the lawyer." KRE 503(a)(1). Thus, there can be attorney-client privilege in communications with a prospective client.

13 KRE 503(a)(4); see also Wal-Mart Stores, Inc. v. Dickinson, 29 S.W.3d 796, 804 (Ky. 2000) (privilege applies to paralegals).

14 KRE 503(a)(2).

15 See Collins v. Braden, 384 S.W.3d 154, 159 (Ky. 2012) ("Unlike other, qualified privileges, such as the work-product privilege, great need and hardship cannot even begin to obviate the absolute attorney-client privilege."); St. Luke Hosp., Inc. v. Kopowski, 160 S.W.3d 771, 777 (Ky. 2005) (privilege is absolute).

16 CR 26.02(1)(a).


18 See Collins, 384 S.W.3d at 159 ("The analysis in any privilege case begins with the almost universally accepted rule that testimonial privileges are generally disfavored and should be strictly construed.").

19 The Collins court provided the following example: "If a physician employee had admitted fault to the attorney investigator, the communication of the fact (and any recording of it, written or oral) would be protected. The privilege, however, would not prevent plaintiff’s counsel from obtaining the physician's employee and asking whether he was at fault." Collins, 384 S.W.3d at 159.

20 See In re Teleglobe Commc’ns Corp., 493 F.3d 345, 361 (3d Cir. 2007) ("If persons other than the client, its attorney, or their agents are present, the communication is not made in confidence, and the privilege does not attach").

21 KRE 503(b).

22 See Rice v. Rice, 53 Ky. (18 B. Mon.) 335, 336 (1854); see also Magnetar Techs. Corp. v. Six Flags Theme Park Inc., 886 F. Supp. 2d 466, 478 (D. Del. 2012) ("The rules governing attorney-client privilege have evolved to cover the representation of two or more people by a single lawyer, a joint representation. In a joint representation, the joint privilege applies when multiple clients hire the same counsel to represent them on a matter of common interest.").

23 KRE 503(a)(5).

24 KRE 503(b)(3) provides that the privilege applies to communications "by the client or a representative of the client or the client's lawyer or a representative of the lawyer to a lawyer or representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein."

25 For a discussion of the common interest exception, see Grace M. Giesel, End the Experiment: The Attorney-Client Privilege Should Not Protect Communications in the Allied Lawyer Setting, 95 Marq. L. Rev. 475 (2011-2012).

26 See In re Pac. Ports Omnibus., 679 F.3d 1121, 1126-27 (9th Cir. 2012) ("voluntarily disclosing privileged documents to third parties will generally destroy the privilege"); In re Grand Jury Proceedings, Oct. 12, 1995, 78 F.3d 251, 254 (6th Cir. 1996) ("By voluntarily disclosing her attorney's advice to a third party, … a client is held to have waived the privilege because the disclosure runs counter to the notion of confidentiality.").
A little more than a year ago, the Supreme Court rendered the attorney disciplinary case of KBA v. Unnamed Attorney, interpreting SCR 3.130-3.4(a) and -3.4(g) for the first time. The case focuses on Unnamed Attorney’s representation of a fellow lawyer charged by a former client, Jane Doe, with overcharging for legal services. Unnamed Attorney, through Doe’s attorney, “negotiated a settlement between his client and the complaining party [that] required the complaining party to refuse to cooperate voluntarily with the Kentucky Bar Association in any investigation into the matter.”4

Unnamed Attorney kept the KBA apprised of the negotiations and provided Bar Counsel a copy of the settlement agreement. Perhaps to Unnamed Attorney’s surprise, the Inquiry Commission charged Unnamed Attorney separately with professional misconduct based on the negotiated non-cooperation provision.5

The Trial Commissioner found Unnamed Attorney guilty of professional misconduct under both Rule 3.4(a) and Rule 3.4(g), but the KBA Board of Governors overturned that decision.6 Neither party asked the Supreme Court to review the Board of Governors’ ruling, but the Court exercised its authority under SCR 3.370(8) and undertook an independent review.7

There were three issues before the Supreme Court:

(1) Did the Trial Commissioner abuse his discretion when he ruled in admissible the expert testimony about the meaning of applicable disciplinary provisions?
(2) Did Unnamed Attorney violate SCR 3.130-3.4(a)?
(3) Did Unnamed Attorney violate SCR 3.130-3.4(g)?

The Trial Commissioner did not err in excluding Professor Fortune’s “expert” testimony.8

This first issue has an underlying history touched upon in Justice Scott’s dissent. Though not essential to the majority opinion, that history does provide some context to both the majority and the dissent.

In modern times, ethics rules have evolved at least as much in their structure and administration as in their prohibitions. A watershed event was the ABAs’ adoption of the Model Code of Professional Responsibility which “Kentucky . . . adopted in total . . . shortly after its promulgation on August 12, 1969.”10 Unfortunately, the Model Code “did not provide a convenient way for lawyers to determine their obligations in specific circumstances.”11 In fact, some referred to the Model Code’s “nine canons, 129 ethical considerations and forty-three disciplinary rules as a three-dimensional chess game that lawyers played at their own peril.”12

In 1983, after five years of drafts and amendments, and another year of debate and fine-tuning, the ABA adopted the Model Rules of Professional Conduct (MRPC).13 Six years later, Kentucky replaced its version of the Model Code with a modified version of the MRPC which included one of the rules Unnamed Attorney was accused of violating — SCR 3.130-3.4(a).14

As late as 1997, the ABA continued to entertain proposals for ad hoc amendments to the MRPC until the association formed the Ethics 2000 Commission to review the rules comprehensively. In 2002, the ABA “finalized debate on the recommendations of the Ethics 2000 Commission, adopting changes to a significant number of Rules and Comments.”15

The changes were so comprehensive that University of Kentucky College of Law Professor William Fortune was recruited to “consider[. . .] the voluminous ‘Ethics 2000’ rule changes” and to “head[.] up the KBA Rules Hearing for the [Kentucky Supreme] Court and [to] explain[.] the meaning of the ‘Ethics 2000’ rules . . . to the Kentucky Bar during the Kentucky Law Updates[,]”16 Following Professor Fortune’s efforts, Kentucky re-adopted many rules, including SCR 3.130-3.4(a), and adopted several new rules, including what became SCR 3.130-3.4(g).17

Professor Fortune’s role was so significant that when Unnamed Attorney found himself charged with violating this new version of the rules, and specifically Rule 3.4(g), he sought the professor’s expertise and offered his testimony into evidence at the disciplinary hearing. The Trial Commissioner determined that he “needed no expert help in reading and applying the applicable disciplinary rule[s],”18 and excluded the testimony. Unnamed Attorney preserved Professor Fortune’s testimony in the record by an offer of proof.

The Unnamed Attorney majority opinion acknowledged Professor Fortune’s role in Kentucky’s adoption of Rule 3.4(g) and, further, stated he “is a highly respected authority in the field of legal ethics [with] singular expertise on our Rules of Professional Conduct.”19 But the Court likened the proffered testimony to the unnecessary assistance that might be provided a judge by “a grammar expert in the interpretation of a statute[,]”20 The standard of review for evidentiary rulings is, after all, abuse of discretion.21 Applying that standard, the Court “failed, by sound legal principles.”22 Justice Scott did not agree. Joined by Justice Cunningham, Scott believed this was a “rare and unique instance”23 making Professor Fortune’s testimony vital. There was no question that the Supreme “Court relied heavily on Professor Fortune in the formulation of these...
rules – and even relied on him to ‘sell’ the changes to the bar.”

Fortune’s testimony before the Trial Commissioner would “give the context surrounding the adoption of this rule” but it did even more. It made clear that “the meaning of -3.4(g), [as argued by Bar Counsel], is not the one we thought it was.” The interpretation argued by Bar Counsel and accepted by the Trial Commissioner without benefit of Professor Fortune’s testimony was, in the majority’s words, a “novel application” for which Justice Scott noted “there’s been no notices [sic] to the Bar that that is the position of Bar Counsel.”

Further consideration of the so-called novel nature of this application of the rule will be discussed later. For now, the lesson to be drawn from the dissent is that the Bar is now aware of this application of SCR 3.130-3.4(g). Therefore, lack of notice of the rule’s interpretation will likely be unsuccessful as a defense.

Before proceeding to Rule 3.4(g), the Court addressed the charge under Rule 3.4(a).

**UNNAMED ATTORNEY DID NOT VIOLATE SCR 3.130-3.4(a).**

SCR 3.130-3.4(a) reads, “A lawyer shall not: (a) unlawfully obstruct another party’s access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act.” The Supreme Court found the crucial term in this rule to be the adjective “unlawfully” and concluded that nothing Unnamed Attorney did was unlawful. Specifically, the Court rejected the Trial Commissioner’s conclusion that Unnamed Attorney’s conduct was fraudulent. There was no false representation, and Doe suffered no injury. Rather, Unnamed Attorney obtained Doe’s signature on the release agreement by successfully negotiating a settlement in which Doe received everything she asked for. Doe was represented by counsel who advised her to accept the settlement and to sign the release agreement.

The holding re-focuses the offense back on the attorney disciplinary process by stating that the Court could not “place our imprimatur on settlements that attempt to obstruct the disciplinary process in any way.” Because the rule previously had never been interpreted in Kentucky, it is somewhat puzzling that the Court called this a “seemingly novel application.” Its novelty is first found by contrast with the way it was presented to the bar before adoption. However, novelty also can be found relative to the manner in which other jurisdictions have applied this particular rule.

**THE PLAIN LANGUAGE OF SCR 3.130-3.4(g) PROVES UNNAMED ATTORNEY’S GUILT.**

Rule 3.4(g) states:

A lawyer shall not . . .

(g) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or agent who supervises, directs or regularly consults with the client concerning the matter or has authority to obligate the client with respect to the matter;

(2) the lawyer reasonably believes that the person’s interests will not be adversely affected by refraining from giving such information.

As noted, this rule was just adopted in 2009. It was introduced to Kentucky lawyers in a 2010 Bench & Bar article as “the prohibition against requesting that certain non-clients refrain from voluntarily communicating with an opposing party, including that opposing party’s counsel.” Unnamed Attorney was the first, and so far only, opportunity for the Kentucky Supreme Court to apply it to specific conduct.

It may be important that the Supreme Court described the sanctionable conduct rather narrowly as “negotiat[ing] a settlement between his client and the complaining party that [required] the complaining party to refuse to cooperate voluntarily with the Kentucky Bar Association in any investigation into the matter.”

However, the charge was less specific. The “Charge [was that] Unnamed Attorney violated . . . SCR 3.130-3.4(g) by requesting that a person, . . . who was not [his] client, refrain from voluntarily giving relevant information to another party as evidenced by paragraph 4 of the Release Agreement.”

The holding re-focuses the offense back on the attorney disciplinary process by stating that the Court could not “place our imprimatur on settlements that attempt to obstruct the disciplinary process in any way.”

Because the rule previously had never been interpreted in Kentucky, it is somewhat puzzling that the Court called this a “seemingly novel application.” Its novelty is first found by contrast with the way it was presented to the bar before adoption. However, novelty also can be found relative to the manner in which other jurisdictions have applied this particular rule.

**WAS THE APPLICATION PARTICULARLY NOVEL?**

Beginning as early as 1984, most states had already adopted their versions of SCR 3.130-3.4(g), along with the rest of the Model Rules, when Kentucky got on board. A Westlaw search yields judicial interpretations of the rule in at least 24 other jurisdictions beginning in 1990. In keeping with its title – “Fairness to opposing party and counsel” – and its placement in the section of the Model Rules defining a lawyer’s duties while advocating for a client, it often comes up in a litigation setting. Typical of how the rule has been applied in those jurisdictions is a Georgia case rendered one month before Unnamed Attorney – WellStar Health Systems, Inc. v. Kemp.

WellStar applies the rule in the context of isolated direct litigation involving the specific kinds of individuals named in the rule: a lawyer, his client, another party to the same proceeding, and a non-party witness – i.e., a “person other than a client.” In WellStar the court said “[WellStar’s] Lawyers had a duty to refrain from pressuring Stinnette [a non-party witness] directly or indirectly when they discovered that he intended to testify . . . for Kemp, the plaintiff suing WellStar.”

With this template in mind, it is a bit easier to understand why the Kentucky Supreme Court considered Unnamed Attorney’s conduct sanctionable, even while implicitly acknowledging that Unnamed Attorney justifiably did not consider his conduct wrong at the time. In hindsight, we can see, to paraphrase WellStar, that Unnamed Attorney was representing a client in a disciplinary proceeding and had a duty to refrain from pressuring Jane Doe directly, or indirectly by a settlement offer, when he discovered she intended to testify for the KBA. However, although Unnamed Attorney seems to mirror WellStar, there is a subtle but important distinction – in WellStar, Stinnette was a disinterested non-party; in Unnamed Attorney, Jane Doe was not. She had damages claim against Unnamed Attorney’s client.

Unnamed Attorney sets out limited facts, partly because of the confidential nature of the opinion and proceeding, and partly because they are unnecessary to determine the violation and the sanction. However, attorneys with any experience in such circumstances will be inclined to presume certain facts, correctly or not, that are practically inherent in them.
One factor affecting Unnamed Attorney’s perspective on his conduct would have been the scope of his employment. That scope very likely included resolving potential or existing civil litigation, i.e., a professional malpractice claim. Unnamed Attorney’s lawyer-client was required to carry malpractice insurance; that insurance contract would have required the lawyer-client to notify his carrier of a potential claim. The carrier’s obligation under the contract of insurance would have been to engage an attorney to defend its insured, Unnamed Attorney’s lawyer-client. Whether engaged directly or by a liability insurer, Unnamed Attorney almost certainly had more to do than resolve the bar complaint.47

What else can we surmise about Unnamed Attorney’s perspective? We know he was not charged under Rule 8.4(a)48 with assisting his client in securing a settlement with Jane Doe in violation of Rule 1.8(h)(2).49 He was not charged with communicating with Jane Doe, knowing her to be represented by her own legal counsel, in violation of Rule 4.2.50 He abided by his client’s decision to settle the matter in accordance with his duty under Rule 1.2(a).51

In fact, as the Supreme Court agreed, his perspective? We know he was not charged under Rule 8.4(a)48 with assisting his client in securing a settlement with Jane Doe in violation of Rule 1.8(h)(2).49 He was not charged with communicating with Jane Doe, knowing her to be represented by her own legal counsel, in violation of Rule 4.2.50 He abided by his client’s decision to settle the matter in accordance with his duty under Rule 1.2(a).51

What Unnamed Attorney failed to appreciate was how the KBA’s perspective differed from his own. Yes, Jane Doe had filed a complaint against Unnamed Attorney’s client, but she was not the plaintiff – that is, she was not another party to the disciplinary matter. No matter how great the potential for a transfer of economic fortune from Unnamed Attorney’s client to Jane Doe, there was nothing unlawful in the non-cooperation provision of the settlement agreement, it nevertheless “obstruct[ed] the disciplinary process[,]” something the Court could not permit.

QUESTIONS RAISED

Unnamed Attorney has raised questions for practitioners. Some questions can be readily answered.

For example, why did Kentucky not follow the majority of jurisdictions and sanction this conduct by applying Model Rule 8.4(d), which says “[i]t is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice[,]”57 Kentucky did embrace that rule’s predecessor from the Model Code, Disciplinary Rule 1-102(A)(5), but declined to keep the rule when the Model Rules replaced the Model Code in 1990.58 Nearly 20 years later, the KBA’s Ethics 2000 Committee recommended adopting the rule,59 but only Chief Justice Minton and Justice Abramson voted in favor.60 The Supreme Court could not use the rule because Kentucky had not adopted it.

There has long been concern that, without Rule 8.4(d), “misconduct that could be considered prejudicial to the administration of justice but that is not covered by a specific rule, does not involve dishonesty or deceit, and is not criminal” might not be sanctionable.61 The only recourse, it seems, was a novel application of Rule 3.4(g).

Other questions can only be answered by the Supreme Court. How broadly will the Court define “another party”? Although the majority determined the language of the rule to be unambiguous, “another party” is nowhere defined. Justice Abramson’s concurrence admits of at least two possible non-ambiguous interpretations.62 “At adoption of this rule,” she understood “another party” to mean “another party to the proceeding for which the request was made” but now she sees “that it can and does have broader application . . . .”63

Will future application be as broad as some academics urge? In 2008, Professor Jon Bauer of the University of Connecticut School of Law “ma[n]e[d]e the case that attorneys who negotiate non-cooperation settlements [in any context] act in violation of their ethical responsibilities under . . . Rule 3.4(f) of the Model Rules of Professional Conduct [SCR 3.130-3.4(g)].”64 Professor Bauer urged that “the word ‘party’ [as used in the rule] should be construed broadly, to encompass anyone with a current or future claim against the defendant.”65

Even without going as far as this, would a lawyer representing a professional other than an attorney be prohibited ethically from including a confidentiality or non-cooperation provision in a settlement agreement if charges could be made, or were already pending, before the applicable professional-licensure board? Would the unambiguous language of the rule, which does not limit “another party” to the KBA, require sanction?

Perhaps the opinion itself gives a hint that it is intended to limit application to attorney discipline cases. After all, the Court described the sanctionable conduct as “negotiating a settlement . . . [that] required the complaining party to refuse to cooperate voluntarily with the Kentucky Bar Association” and concluded with a focus on “settlements that attempt to obstruct the disciplinary process in any way.”

The Court also implied a distinction when such provisions are negotiated “outside the disciplinary context.”

Furthermore, when adopting the Preamble to the Model Rules, the Supreme Court indicated a uniqueness in the legal profession, which, unlike any other, is intimately connected with the administration of justice. That passage reads:

Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

Furthermore, the Court recently expressed a faith in the licensure boards of other professions to discipline their own licensees. If such licensure boards do not find non-cooperation and confidentiality provisions obstructive of their disciplinary process, how can it be unethical for a lawyer to zealously advocate, by any and all lawful means, to protect his client from sanction?

If the Court has intended to ethically prohibit non-cooperation and confidentiality provisions in settlement agreements in any forum other than the attorney disciplinary tribunal, it has not directly said so. For now, we should join in Justice Abramson’s call “for further evaluation of the rule by the Supreme Court.”

After serving in the United States Army, Judge Acree earned his bachelor's degree in his-
tory from the University of Kentucky in 1980. He also earned a master's degree in American His-
tory, specializing in the History of Science and Medicine from the Uni-
versity of Maryland before obtaining his J.D.

Courts of Appeal at the National Center for
Justice Thomas B. Spain Award for Outstanding
reach. He was the 2014 recipient of the Jus-
mestone designated as a Fellow of the Ad-
founded the Kentucky Bar Association's Appel-

d of states, and federal judges na-
tively as a Fellow of the Av-

t of the Inquiry Commission from the model for rule 3.4(g).

The Model Rules were adopted first in Arizona in 1984 and since then by every state (and the Dis-

t of the rule as a "catch-all" provision to
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the Court may have reacted to criticism that it
was utilizing the rule as a "catch-all" provision to
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The Supreme Court is the last to do so.

SCR 3.130-8.1(a) provides, "It is professional mis-
conduct for a lawyer to: (a) violate or attempt to
violate the Rules of Professional Conduct, know-
ningly assist or induce another to do so, or do so
through the acts of another."

SCR 3.130-8.4(a) provides that a lawyer shall not . . . settle a claim or potential claim for (legal
practise) with an unrepresented client or for-
mer client unless that person is advised in writing
of the desirability of seeking and is given a rea-
sonable opportunity to seek the advice of inde-
pendent legal counsel in connection therewith."

SCR 3.130-4.2 states, "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the

lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order."
Imagine this scenario: you are on the eve of a big trial. Voir dire has just taken place and you and your colleagues are hurriedly discussing which individuals would make the best jurors. The group has singled out the ones who raise concerns, but no consensus has been reached as to whom should be struck. “Let’s take a look at their Facebook profiles and see what information we can glean,” suggests the young associate. Sounds like a way to make some progress, but is it permissible? Is it ethical? For a long time, lawyers have needed guidance about jurors (and potential jurors), social media, and their own professional responsibility. Noting that need for direction, the American Bar Association’s Standing Committee on Ethics and Professional Responsibility (“the committee”) recently issued Formal Opinion 466, entitled “Lawyer Reviewing Jurors’ Internet Presence.”

The gist of the formal opinion is that a lawyer may review a juror’s website or ESM, so long as the review comports with Model Rule 3.5, which governs lawyers’ communications with jurors before, during, and after trial. Before diving into the details, the formal opinion first distinguishes between “websites,” which it defines as “publicly accessible Internet media” and “electronic social media” ("ESM"), which it defines as any "internet-based social media [site] that readily allow[s] account-owner restriction on access.” The Formal Opinion includes Facebook, LinkedIn, and Twitter as examples of commonly-used ESM.

### FINDING A JUROR ONLINE: THREE SITUATIONS

With the websites/ESM distinction in mind, the formal opinion addresses three distinct situations that a lawyer may encounter: (1) looking at information available to everyone on a juror’s social media accounts or website when the juror does not know it is being done; (2) asking a juror for access to his or her social media accounts; and (3) a juror finding out, through a notification feature of the social media platform or website, that the lawyer reviewed publicly available information.

In the first instance, where the attorney merely reviews a juror or potential juror’s website or ESM without submitting a request to access such information, no violation of Model Rule 3.5 occurs. According to the committee, “the mere act of observing that which is open to the public” is not ex parte contact. The committee uses helpful “drive-by” analogies to compare each online situation to the real world: “In the world outside of the Internet, a lawyer or another, acting on the lawyer’s behalf, would not be engaging in an improper ex parte contact with a prospective juror by driving down the street where the prospective juror lives to observe the environs in order to glean publicly available information that could inform the lawyer’s jury selection decisions.”

In situations where a lawyer must submit a request to view otherwise private information, the committee determined that such a review is in violation of Model Rule 3.5. For example, a juror may have privacy settings set so that very little information is publicly available. To see his or her full profile (which may include status updates and photos), a lawyer would need to send a friend request to that Facebook user. Sending such a request, in the committee’s view, is like an attorney asking a juror for permission to look inside a juror’s house – and is considered an ex parte communication.

The third circumstance, wherein the juror becomes aware through a notification feature of the website or ESM that the lawyer has conducted a passive review of the juror’s publicly available information, does not constitute ex parte communication. To date, LinkedIn is the only form of social media that automatically notifies users when someone has viewed their profile. Of course, that could change in a moment’s notice, with the constant proliferation of new
The third kind of occurrence is the most troublesome from an ethics perspective. The committee believes that in this situation “[t]he lawyer is not communicating with the juror; the ESM service is communicating with the juror based on a technical feature of the site.” In other words, sticking with the drive-by analogy, it is like a neighbor telling a juror the lawyer just drove down the street. But, note that not everyone agrees with the committee. In 2012, the Association of the Bar of the City of New York Committee on Professional Ethics (“ABCNY”) concluded that a network-generated notice informing a juror that the lawyer has reviewed his or her social media page was a prohibited communication. The New York County Lawyers’ Association Committee on Professional Ethics reinforced ABCNY’s conclusion, holding that even an inadvertent contact with a prospective or sitting juror in the form of an automatic notification could be an ethical violation. Both associations stopped short of saying that such inadvertent contact with jurors would lead to discipline. The committee mentioned these precedents in the formal opinion, but rejected their conclusions.

CHASING A JUROR DOWN THE RABBIT HOLE

What happens when a lawyer finds more than he or she bargained for on a juror’s ESM? The formal opinion addresses, but does not conclusively answer, what a lawyer is to do when he or she becomes aware of juror misconduct online. “Model Rule 3.3 and its legislative history make it clear that a lawyer has an obligation to take remedial measures including, if necessary, informing the tribunal when the lawyer discovers that juror has engaged in criminal or fraudulent conduct related to the proceeding.” (emphasis added). When a juror engages in improper conduct that falls short of being criminal or fraudulent, a lawyer’s affirmative obligation is less clear. According to the formal report, in certain instances, applicable law might treat improper jury activity (such as violating a court ordered ban on ESM during trial) as conduct that triggers a lawyer’s duty to take remedial action.3

Given the lack of a hard-and-fast rule when it comes to improper conduct, some lawyers might think it is better to ignore jurors’ social media in order to avoid potentially problematic ethical issues. Indeed, there are some lawyers who shun social media altogether because they believe it is fraught with hazards. How many problems is social media use really causing in the courts, though? According to a Federal Judicial Center Survey (“survey”) from May 2014, fewer than one might think.4

In November 2013, the Federal Judicial Center sent a questionnaire to all active and senior federal district judges to gauge the effect of social media in the courtroom. Only 33 of the 494 judges (7 percent) who responded reported any instances of jurors using social media during trial – and even then, in only one or two of their cases. Lawyers may be wary of jurors’ use of social media during trial, but those concerns, according to the survey, are largely unsubstantiated.

The survey was not only interested in jurors’ use of social media, but also lawyers’ use. Of the 348 judges who responded to the question about attorney usage, 73 percent, or 255 judges, indicated they did not know the number of trials, if any, in which attorneys have used social media during voir dire. The looming question, at least from an attorney perspective, after reviewing the survey is not the concerning prevalence of jurors’ social media misuse, but whether lawyers use it to find jurors in the first place. If they do, this effort is going largely unnoticed by judges.

BEST PRACTICES

The formal opinion “strongly encourages” judges and lawyers to discuss the court’s expectations concerning lawyers reviewing jurors’ Internet presence. Based on the information revealed in the survey, there is a lot of room for improvement in this area. Only 31 percent of the 466 responding judges reported addressing the issue of attorneys’ use of social media to research prospective jurors during voir dire, with 120 judges forbidding it and only 23 judges directly allowing it. Of equal importance, according to the committee, is the judges’ notice to jurors that their backgrounds will be of interest to the litigants and that the lawyers in the case may investigate their ESM and websites.

With ethical guidance from the American Bar Association now in place, it is time that conversations about jurors’ social media use – and attorneys’ review of that social media use – start taking place more frequently. Lawyers should draft their own internal policies about reviewing jurors’ online presence and judges should address the issue early and often in the courtroom.

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1 The Formal Opinion refers to jurors as including both potential and prospective jurors who have been empaneled as members of a jury, unless there is reason to make a distinction. The same is done for purposes of this article.

2 Specifically, ABA Model Rule 3.5 states: “A lawyer shall not: (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law; (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order; (c) communicate with a juror or prospective juror after discharge of the jury if: (1) the communication is prohibited by law or court order; (2) the juror has made known to the lawyer a desire not to communicate; or (3) the communication involves misrepresentation, coercion, duress or harassment; or (d) engage in conduct intended to disrupt a tribunal.”

3 Though the Kentucky Supreme Court has not directly addressed the nature of a lawyer’s duties with respect to juror social media activity during trial, the Court has made it clear that jurors must be truthful in voir dire about social media use if asked, and trial courts must afford lawyers sufficient opportunity to explore the nature of juror social media relationships with litigants during voir dire. For example, in Sluss v. Commonwealth, 381 S.W.3d 215 (Ky. 2012), the Court remanded a criminal case for a post-conviction hearing into the nature of two jurors’ relationships with the family of the victim where (1) those two jurors were not truthful during voir dire about those relationships; and (2) the court did not afford defendant’s counsel a sufficient opportunity to explore those relationships during voir dire.

A MONTH IN THE LIFE OF AN ETHICS PARTNER

By: Richard H.C. Clay

Every law firm needs a designated ethics partner. If you are in solo practice, this means you, assisted by trusted lawyers/mentors in your community or out in the state. On the other hand, in a mid-sized firm, this work is centered on one partner generally consulting with other members of his/her firm, perhaps with an associate back up. A large multi-office firm might have an expanded committee as a resource when the ethics partner(s) needs additional help. Several of the members of the expanded committee might be particularly adroit at running physical and electronic ethical screens when circumstances call for one. One partner, generally based in the firm’s home office, might serve as the firm’s general counsel and take on the direct dealings with the firm’s malpractice carrier and the firm’s management. For all of us, it means getting those annual ethics credits, paying attention to the Kentucky Rules of Professional Conduct and the comments to them, seeking guidance from KBA Ethics opinions, and obtaining rulings from the KBA Ethics Hotline when still in doubt.

What follows are issues fielded over the course of a recent one-month period by a typical ethics partner (the author). This will give you an idea of ethical issues that confront all of us regardless of whether one practices in a large, mid-sized, or small firm as a solo practitioner. There is no rhyme or reason to the issues covered below. It is a scattershot rendition, and yet a realistic one.

CONFLICTS

The bulk of questions arise from conflict issues for current clients and involve whether the conflict is indeed a conflict, and if so, whether it can be waived by both sides. Here is where we look to Rule 1.7, “Conflict of Interest: Current Clients.” Is the conflict a concurrent one involving representation of one client directly adverse to another? Is there a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person, or the lawyer’s personal interest? These are gray areas of concern. They are factually intensive. And yes, to a large extent, the cross examination of one’s partners in the degree of relationship and the amount of control exercised by one client over the other within the corporate umbrella.

JOINT REPRESENTATIONS AND WAIVERS

Over the years of a lawyer’s practice, he or she may be called upon to represent more than one client in the same litigation. Conflicts can easily arise, many foreseeable and some not so. This can cause problems for the unwary. For example, a litigator represents a corporate client and during the course of the litigation is asked to defend an employee whose negligence contributed to the claim. A settlement conference looms on the horizon. The corporation makes it clear that it wants to settle, but the employee says she will not. This places the litigator in an insuperable position, especially if settling for the corporation will leave the employee dangling like a participle. A carefully crafted joint representation letter should make it clear in advance that if the corporation takes one position and the individual client another, the lawyer has the right to withdraw from representing the individual but continue with the representation of the corporation. Absent such an agreed upon right to withdraw, the lawyer may find himself in the uncomfortable position of having to withdraw for both clients.

This problem is also particularly acute in representation of aggregate or class plaintiffs, as addressed in KRPC 1.7, Comments 29-33 “Special Considerations in Common Representation.”

JOINT DEFENSE AGREEMENTS

Joint defense agreements are used among plaintiffs in a multi-plaintiff case, among co-defendants in business or tort litigation, or among defendants in securities or white collar crime cases. They can be very useful in helping develop a case by way of exchanging information, building facts, sharing discovery responses, or strategizing a trial. They also should include waiver/non-disqualification provisions so that if a defendant leaves the litigation through settlement, or simply wants to opt out of the joint defense agreement, the other parties to the agreement will not be prejudiced. For example, a group of defendants in a trust dispute enter into a joint defense agreement in order to discuss litigation strategy, share documents, and divide up the labor on briefing. For one reason or another, one of the defendants opts out of the agreement. His counsel learned things in the meetings that were
subject to the attorney client privilege and the work product doctrines. His client wants to use them at trial against the other defendants in order to prevail on an apportionment instruction. Fortunately for those remaining in the joint defense arrangement, the client leaving the joint defense agreed to the privilege as part of the joint defense agreement and won’t be able to use the documents. The other defendants remaining in the agreement consider moving to disqualify the departing counsel from representing his client because they claim he is conflicted based on what he learned while under the tent. In the absence of a provision in the agreement waiving such a future conflict, they may be on solid ground. These are simply examples of why joint defense agreements, while sometimes useful, need to be carefully considered and written with the future twists and turns of litigation in mind.

DUTIES TO PROSPECTIVE CLIENT
KRCP 1.18 “Duties to Prospective Client” can be a trap for the unwary. A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client, regardless of whether a relationship ensues. Consequently, the confidentiality provisions of KRCP 1.6 “Confidentiality of Information” apply, and must be adhered to scrupulously. Additionally, subsections (c) and (d) deal with the issue of whether if the attorney-client relationship is not consummated, another lawyer in the firm can represent a client with interests which are clearly adverse. The answer distills down to whether the lawyer being interviewed by the prospective client received disqualifying information, as defined in the rule. To protect himself and his firm, the lawyer should first run a conflicts check before interviewing the prospective client or even obtaining any information in the initial call other than what is necessary to run the conflicts check. The last thing in the world that he wants to confront is a disqualification motion of his firm brought by the prospective client because of his representation of an existing client in the same matter. Additionally, in the meeting it is important to set guidelines/parameters and learn only enough to determine whether to represent the potential client. If there is a conflict that prevents him from representing the prospective client, a timely physical and electronic screen is in order. Nor is he permitted to be apportioned any part of the fee in the event the firm takes representation of another client under these circumstances.

DUTIES TO FORMER CLIENTS
First, is the client a former client as defined in KRCP 1.9 “Duties to Former Clients?” This is why a disengagement letter is frequently as important as an engagement letter. While an engagement letter sets forth the parameters of the engagement, the disengagement letter frees the lawyer from a continuing obligation once the matter is completed. For example, a will is written containing a generation skipping trust. No disengagement letter is sent to the elderly client. Over the years, Congress changes the GST exemption in such a manner that the testator’s intent may suddenly have been wiped out by the increased exemption, so that suddenly one group of beneficiaries is cut out in favor of a younger generation. While this example is extreme, it could happen. In the absence of a disengagement letter, does the lawyer have a continuing obligation to contact the elderly client and advise him of the effect of the changes? More than likely, the answer is yes.

Second, in the event a conflict arises for a new client with reference to something that was handled for a former client by another member of the firm, two issues arise. Is the matter “the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client?” If so, will the former client sign a written waiver? Under those circumstances a waiver is mandatory. The more difficult issue is whether it is a substantially related representation. The determination is factually intensive. If it is not substantially related, then no waiver letter is necessary. Under all circumstances, of course, the duty of confidentiality enunciated in KRCP 1.6 applies.

LATERALS, Mergers and Imputation of Conflicts
A significant proportion of an ethics partner’s time is spent reviewing the work of lawyers or groups of lawyers considering joining her firm. She should do very thorough conflicts checks in advance of making a decision; however, very thorough checks can’t be done by computer alone – although it is essential. A great deal of conversation in the form of poking and probing needs to take place – not just for actual or potential client conflicts, but also for the more esoteric issues. For example, has the lawyer or the group represented clients traditionally hostile to a firm’s existing clients, or argued key issues that are antithetical to issues currently being handled by the firm? Under KRCP 1.10 “Imputation of Conflicts of Interest: General Rule,” conflicts are imputed to an entire firm. The avoidance of conflicts is key. Clients hate disqualification motions. So do the lawyers currently handling a matter.

DISQUALIFICATION MOTIONS
The first question that arises when confronting a disqualification motion is whether it is a mere litigation tactic. If that is the case, and if there is a genuine absence of a conflict or even a grey area that weighs against disqualification, trial courts generally are loath to grant such motions on the presumption that a client is entitled to choose and keep its own counsel. Defenses typically include absence of a conflict and waiver. It is common to see disqualification motions filed after discovery in a case that has been well under way, and even while substantive motions are under review. About all one can do is address the issues raised methodically, carefully and calmly and hope that the court understands. There are times when disqualification motions are necessary, but they are not something in which a lawyer striving to be great should specialize.

CONFIDENTIALITY AND ETHICAL SCREENS
Ethical screens should be deployed with a high degree of frequency, and used in areas of doubt, even if the clients have not insisted upon them. The confidentiality of information provided by a client is sacrosanct. There are exceptions outlined in KRCP 1.6 (1)-(4) “Confidentiality of Information” pertaining to the prevention of certain death or substantial bodily harm (see also KRCP 1.14 Clients with Diminished Capacity); to obtain legal advice about a lawyer’s compliance with the Rules of Professional Conduct; to establish a claim or defense to a criminal charge or a civil claim against the lawyer in which the client is involved; or to comply with other law or court order. The comments flesh these exceptions out. Frequently screens are utilized to preserve confidentiality in the event of a conflict that has been waived by both clients, either if circumstances require, if the clients – after being informed – request, or if it simply makes sense as a precaution – regardless of whether the clients request it. Screens are both physical and electronic. The lawyers and staff involved should be instructed in writing not to discuss. Screens are used with both current client conflicts, as well as with past clients where there is a danger that confidential communications in a
The preservation of one’s professional independent judgment is vital to a successful and enjoyable law practice. Our daily professional decisions are quite real and it is through these decisions that we build a lifelong sense of professional integrity. We must never forget, for example, that we have the right to choose our clients. We also have the right and the professional responsibility to tell clients what they need, but may not want, to hear. If necessary we have the right, in certain instances, to withdraw from a case if our counsel has not been followed – or even risk being fired by the client in question in the event our advice is unpopular.

These thoughts still ring true. Every time an ethics partner receives a request for guidance on an ethical dilemma, or through simply serving as a sounding board from lawyers inside his or her firm or outside of it, the seriousness of what we do as lawyers is evident. These questions reflect an underlying sense that all lawyers are trying, quite simply, to get it right. We
NIX THE ACRONYMS

By: Judith D. Fischer

Not long ago, the Ninth Circuit sardonically listed a string of acronyms that lawyers had used in a case. Then the court said it would ignore most of them and write its opinion “in plain English.” Other courts have also expressed displeasure with acronyms. One dismissed a complaint partly in English. Other courts have also found that lawyers make communication more difficult. Why do courts dislike acronyms? As one lawyer who wants to communicate effectively put it, “It's daunting alphabet soup into understandable English.”

Acronyms, including “SOP,” “OPM,” “NCLC,” “NRCLA,” “CCM,” and “CCR,” are not form a word but are pronounced letter by letter, as with NASA. An acronym is composed of the initial letters or parts of a name that can be spoken as a single word. An example is the acronym for the National Aeronautics and Space Administration, which is pronounced as a single word, NASA. An initialism is composed of initials that do not form a word but are pronounced letter by letter, as with FBI for the Federal Bureau of Investigation. Some writers refer to both kinds of abbreviations collectively as acronyms, which I will do here.

Why do courts dislike acronyms? As one court stated, although parties may use them among themselves, the shortened forms “are not an effective means of communicating with the Court.” Instead, they make communication more difficult. Particularly where many acronyms appear in a short space, the writing becomes dense and impenetrable. And in a longer document, acronyms require the court to memorize new terms or page through the document to figure out what the sets of letters mean. The D.C. Circuit has even codified a provision against them: “In briefs, the use of acronyms other than those that are widely known should be avoided.”

This example illustrates how acronyms can impede communication:

The parents alleged that their child was denied a free and appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA) because the Department of Education (DOE) had provided an inadequate individualized learning plan (ILP). The State Review Officer (SRO) found that the DOE’s plan complied with IDEA, and the parents appealed. The court held for the DOE, agreeing with the SRO’s finding that the DOE’s ILP provided the student with a FAPE.

Even though some of these acronyms are common in student disability cases, generalist judges may not be familiar with them. And a lawyer who packs so many of them into a short space creates awkward and frustrating prose. The example’s final sentence degenerates into near incomprehensibility.

Why do some lawyers write like this? Perhaps they want to seem like insiders who know a special language. Or they may think acronyms are more convenient. But that’s short-sighted. Lawyers who are trying to convince a court should consider the court’s convenience, not their own. It may be mildly easier to type “SRO” than “State Review Officer,” but the acronym is harder, not easier, for the court to read and understand.

Here are some guidelines for acronyms.

• Instead of using an acronym, consider whether a term can be shortened into one understandable word. In the example above, it would be clear to call the Individualized Learning Plan “the plan” and the Department of Education “the department.”

• Consider using the full term. While FAPE is a common acronym in student disability cases, using the full phrase would make the above passage more readable.

• Avoid using an acronym if you need not repeat the term at all. The above example can be edited to use “State Review Officer” only once, eliminating the need for yet another cumbersome set of initials.

• Carefully choose one or two terms that can profitably be shortened. IDEA might be that term in the above example, because the full phrase is unwieldy and the acronym is commonly used in student disability cases.

The prior referenced passage might be edited to read like this:

The parents alleged that their child was denied a free and appropriate public education under the Individuals with Disabilities Education Act (IDEA) because the Department of Education had provided an inadequate individualized learning plan. The State Review Officer found that the department’s plan complied with IDEA, and the parents appealed. The court held for the department, agreeing that the plan provided the student with a free and appropriate public education.

In urging lawyers to limit the use of acronyms, the D.C. Circuit recently quoted George Orwell: “Written English is full of bad habits which spread by imitation and which can be avoided if one is willing to take the necessary trouble.” A lawyer who wants to communicate effectively should take the necessary trouble to edit a daunting alphabet soup into understandable English.

1 Judith D. Fischer is a professor at the University of Louisville’s Brandeis School of Law. She teaches Legal Writing and Women and the Law.
2 N. Cheyenne Tribe v. Norton, 503 F.3d 836, 839 n.1 (9th Cir. 2007).
8 Nat’l Ass’n of Regulatory Utility Comm’rs v. U.S. Dep’t of Energy, 680 F.3d at 820 n.1 (D.C. Cir. 2012) (quoting George Orwell, Politics and the English Language, 13 Horizon 76 (1946)).
I know exactly, to the tenth of an hour, how much time I have spent providing legal services to paying clients in 2014. For completely different reasons, I also know how many hours of pro bono work I have performed in 2014...ZERO. I have a readily available set of excuses: I was too busy this year; I volunteered my time in other ways; I provided some discounted services; I moved; so much stuff with the kids; I had to make dinner some nights, and so on. I could pick one or all of them, but they don’t excuse my failure to spend at least 50 hours of my time providing free legal services to those who could not otherwise afford it.

Under Kentucky’s Rules of Professional Conduct, we are encouraged to voluntarily render at least 50 hours of legal service per calendar year at no fee or a reduced fee to persons of limited means or financially support organizations that provide such services.1 While I have worked for firms that generously provide financial support to legal aid organizations, this requirement is an individual one. Our Supreme Court has said as much in its commentary to the rule, “The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer[].”2 In failing to meet my requirement, I’ve not only missed out on an opportunity to help others, I’ve missed out on an opportunity to help myself.

Young lawyers have the most to benefit from donating their time. The ABA has identified a set of skills that all successful lawyers must acquire.3 Some of these skills can only be truly acquired and honed by direct client interaction such as: interviewing, client relations, client counseling, case management, diagnosing the client’s problem, and dealing with difficult clients.4 The opportunity to exercise these skills independently is not always available to attorneys in their first years of practice. As young attorneys, we have the opportunity to reap more than the reward of helping others and to create a habit of doing more good that will likely stick into our later years of practice. Others have found that, “lawyers who get involved in pro bono work early in their careers often view this work as some of the most beneficial experience they have in developing their practice.”5 Given the educational value of pro bono work, we should do more to incentivize it, such as providing CLE credit for time spent rendering pro bono services.6

To assist in encouraging young lawyers to participate in pro bono activities, the Young Lawyers Division partnered with legal aid organizations around the Commonwealth to hold a day long program titled “Legal Aid University.”7 The topics covered include social security, divorce, protective orders, expungement, wills and trusts. Anyone, including non-YLD members, can attend the program for free by agreeing to accept two cases assigned by the legal aid organizations. Legal Aid University programs will be held in Louisville, Lexington and Covington during the first quarter of 2015, with the first program in Louisville on February 27.

Fifty hours is a busy week of work, but over a year, it amounts to less than an hour a week. Fifty hours is the minimum and I now have a 50 hour deficit to make up. So I’ll make a New Year’s resolution here: At the end of 2015, I’ll still know my pro bono hours, not because they are zero, but because I have made the effort necessary and have provided more than the minimum 50 hours and I will ask that all young lawyers do the same.

1 SRC § 3.130 (6.1).
2 Id., Commentary [3].
4 Id.; see also ABA e-news, “Young Lawyers: Pro bono can aid career advancement” (November 2011) (“A young lawyer can also improve her communication skills, learn to manage client expectations, and become better adept at scheduling and running meetings with various stakeholders.”).
6 Currently, 11 states (AZ, CO, DE, MN, NY, ND, OH, TN, VT, and WA) provide some CLE credit for pro bono work. See ABA “Continuing Legal Education (CLE)/Pro Bono State Rules” available at: apps.americanbar.org/legal-services/probono/cleru les.html.
7 Kentucky has 4 legal aid organizations that each cover regions across the 120 counties in Kentucky (Kentucky Legal Aid, Legal Aid Society, Legal Aid of the Bluegrass and Appalachian Research & Defense Fund). I am grateful for the assistance in writing this column provided by these organizations, specifically Loree Stark and Jackie Duncan.

Nonprofit Organization Law Can Be Complex
My Practice Is Limited to Advising Nonprofits and The Professionals Working With Them

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

Conley Salyer, Attorney, J.D., LL.M.; Examiner, Malcolm Baldridge National Quality Award (MBNQA). csalyer@nonprofitattorney.net, (859) 281-1171, 710 E. Main Street, Lexington, KY 40502. www.nonprofitattorney.net
This is an advertisement.
YOUNG LAWYERS DIVISION SEEKS NOMINEES FOR ANNUAL AWARDS

The Young Lawyers Division seeks nominees for four awards given annually for exceptional contributions to the legal profession and the public. Nominations are due Friday, April 10. For more information on submitting a nomination, please visit www.kbayld.org/home or contact Young Lawyers Division Vice Chair Rebecca R. Schafer at RSchafer@reminger.com.

The Outstanding Young Lawyer Award honors a Kentucky attorney who has excelled in the practice of law, civic engagement/bar service, and community service. Any Kentucky young lawyer is eligible for nomination. “Young lawyer” is defined as one who, as of July 1, 2014, has been engaged in the practice of law for 10 or fewer years or who is 40 years old or younger.

The Nathaniel R. Harper Award honors a person or organization that has demonstrated a commitment to changing the face of the Bar by encouraging the inclusion of women, minorities, persons with disabilities, LGBT individuals, as well as promoting full and equal participation in the legal profession by all unrepresented or underrepresented groups.

The Young Lawyer Service to Community Award honors a member of the Young Lawyers Division for exemplary service to his or her community through volunteerism, service to non-profit organizations, and/or pro bono legal representation.

The Service to Young Lawyers Award honors a lawyer, non-lawyer, or organization for exception contributions to the professional and personal advancement and mentorship of young lawyers.

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314 7th Street - Carrollton, KY 41008
Trey Grayson, former Kentucky Secretary of State and 1998 UK Law graduate, spoke to UK law professor Josh Douglas’ election law class on Monday, Nov. 17, 2014. The Northern Kentucky Chamber of Commerce CEO spoke about his service on the Presidential Commission on Election Administration (the BauerGinsburg Commission).

Former Secretary of State Trey Grayson discusses election law with UK Professor Josh Douglas’ Election Law class.

Freedom From Fear: On Black Childhood and Other Dangers

On Nov. 21, 2014, the UK College of Law hosted more than 100 people for the James and Mary Lassiter Distinguished Visiting Professor Conference, “Freedom From Fear: On Black Childhood and Other Dangers.” Visiting Lassiter Professor, Anthony Paul Farley, brought in 16 panelists for the one-day conference. Panelists represented various law schools across the U.S., a public speaker, a community organizer, a reporter, and a recent law school graduate. They discussed black childhood and education, black childhood and fear, black childhood and other dangers, black childhood and philosophy. Personal narratives, historic references, and theoretic questions dotted this conference. Those in attendance walked away with a new perspective on the ever-present challenges that black youth face today.

Election Law Society Analysis Blog

Approximately 30 members of the UK College of Law Election Law Society spent Election Day 2014 covering potential voting and poll issues throughout the Commonwealth and beyond, and posted stories in real time about these issues on their analysis blog.

Members of the UK College of Law Election Law Society take a moment from blogging to pose!

The blog received traffic from 45 of the 50 states and visitors from at least four foreign countries including Japan and Australia. In a five-day period, more than 3,000 visitors landed on the blog.

On the day of the blog launch, The New York Times website published an op-ed piece by Professor Douglas: “The Vote You Have to Choose Between Running for the Senate and the Presidency?” Her article was linked in a Washington Examiner article on November 8, in which UK College of Law Professors Scott Bauery and Josh Douglas were also quoted.

Judicial Conversation Series

UK College of Law hosted Chief Judge Tracey Wise from the Eastern District of Kentucky United States Bankruptcy Court on October 22 as part of the College of Law’s 2014-2015 Judicial Conversation Series. Judge Wise met with members of the Women’s Law Caucus for breakfast and discussed challenges she faces in her judiciary role as a female in a predominantly male position.

Following her breakfast, Judge Wise joined retired Chief Judge Jennifer B. Coffman in the courtroom for an open forum. Judge Wise shared how she went from graduating law school into practice, then deciding to open her own practice with another female, focusing primarily on bankruptcy.

She explained her appointment as chief judge in the Eastern District of Kentucky’s Bankruptcy Court and gave students a day-in-the-life perspective. Judge Wise answered questions from students before the event concluded.

Judge Wise’s visit is part of the UK College of Law’s Judicial Conversation Series. The purpose of this series is to provide thoughtful and engaging interactions between distinguished members of the judiciary and law students. Previous speakers have included Kentucky Supreme Court Justices Minton (Chief), Abramson, Cunningham, Noble, Scott, and Venters, and U.S. Tax Court Judge Joseph Goekte. Judge Coffman serves as facilitator for the series.

Chief Judge Roger L. Gregory with the United States Court of Appeals for the Fourth Circuit will continue the 2014-2015 Judicial Conversation Series on February 18.

Kentucky Law Journal Data Privacy Symposium

On October 10, the Kentucky Law Journal hosted a symposium in which seven data privacy experts shared on topics including the right to be forgotten, the collection of personal data, the use of personal data to discriminate, and even the use of personal data in the fight against Ebola. Jeff Kaplan, co-organizer of the event and a UK College of Law third year student, said this topic is extremely timely. “U.S. citizens are asking the question: ‘Where do my privacy rights begin and end?’ Questions like this spur conversations, and conversations spur change,” said Kaplan. The Kentucky Law Journal will publish the articles presented at this symposium in their special features issue. Retired Chief Judge Jennifer B. Coffman moderated.
Law School Central High School Partnership Co-Sponsors ACLU Exhibit on 60 Faces of Liberty

The "60 Faces of Liberty" exhibit is now on display through the end of March at the Ekstrom Library. The exhibit celebrates the 60th anniversary of the Kentucky American Civil Liberties Union (ACLU) and will use portraits, oral histories, narratives, and artifacts to tell the story of the local ACLU affiliate. This exhibit is part of a series of public events that will occur during the spring semester that will focus on the civil rights and first amendment issues that the ACLU defends. The University of Louisville is sponsoring this event through several departments and programs. These include the Brandeis School of Law Partnership with the Central High School Law and Government Magnet program. The connection of the partnership with the Kentucky ACLU began in 2007, when the program adopted the Marshall-Brennan Civil Liberties curriculum to be taught by law students to law magnet seniors. The ACLU has provided contributions and other support to the law school's partnership since that time.

April 8, 2015 The Brandeis Medal Dinner and Presentation

6 p.m., The Seelbach Hotel, 500 S. 4th Street, Louisville

To register go to: http://www.law.louisville.edu/

Professor Arthur Miller will receive the 2015 Brandeis Medal from the University of Louisville Louis D. Brandeis School of Law. Professor Miller's work in many ways is consistent with the values of Justice Brandeis. For example, Miller's 1971 book, Assault on Privacy, Data Banks, and Dossiers, pursued Justice Brandeis's early concerns about privacy and foreshadowed many of the issues still being debated. Because 2015 is the 50th anniversary of Griswold v. Connecticut, another type of privacy decision, it is especially appropriate to recognize Professor Miller for his early awareness of the issues raised by developing technologies. In addition, Professor Miller's work on PBS and elsewhere as a "teacher of the law to the general public" reflects Brandeis' beliefs in educating the public about legal matters. Like Justice Brandeis, Professor Miller also has had an extraordinary influence on his former students and research assistants, many of whom have become judges and law school faculty members, including Chief Justice John Roberts.

ATTENTION KENTUCKY HIGH SCHOOL & COLLEGE STUDENTS!

Do you want to be a Lawyer? Are you interested in Law?
Could you be a judge?

NOW accepting Applications for the 2015 Kentucky Bar Association Diversity Pipeline Program

WHAT Why Choose Law: Diversity Matters is a 1-Day Program aimed at encouraging students of diverse backgrounds to become lawyers and practice in Kentucky by exposing them to practitioners, law school professors and judges before entering college.

WHO The program is for rising Kentucky high school juniors or seniors or college students who are from groups typically underrepresented in law school classes, to include racial and ethnic minorities, people with disabilities, varied religious affiliations, geographic, socio-economic backgrounds and sexual orientation groups.

WHERE Louis D. Brandeis School of Law at the University of Louisville

WHEN Thursday, April 9, 2015 – a 1-Day Program

The program is FREE to all accepted participants! You must provide your own transportation to and from Louisville.

Please note: Admission for this program is on a space-available basis. The applicant pool is competitive and admission into this program is not guaranteed. To apply, please contact Mark Flores at (859) 244-7529 or mflores@fbt-law.com. Applications must be complete and submitted with all required signatures by January 31, 2015.

Also please save the dates for:

Estate Planning Institute: May 15

Warns-Render Labor & Employment Law Institute: June 11 & 12
February 27, 2015
Law + Informatics Symposium on Digital Evidence

The Northern Kentucky Law Review and NKU Chase College of Law will host the fourth annual Law + Informatics Symposium on February 27. The conference will provide an interdisciplinary exploration of digital information in the courtroom, including the importance of ensuring that such information is reliable, resilient and uncompromised. EU Directives and other governing bodies have addressed these issues in a myriad of approaches, while lawyers, investigators, and technologists may hold differing expectations regarding appropriate digital evidence.

What does the future hold for drone-obtained evidence, public records requests for metadata, government security, and personal autonomy?

Notably, this year’s symposium will include a student scholarship showcase of law review students presenting their student notes on digital evidence issues during a luncheon.

The symposium is sponsored by The Northern Kentucky Law Review, the NKU Chase Law + Informatics Institute, and the Center for Excellence in Advocacy.

Four to five general CLE credits will be requested in Kentucky, Ohio, and Indiana for the symposium. Registration is complimentary and includes the anticipated CLE credits, breakfast, lunch, reception, and all published materials.

For more information visit symposium2015.lawandinformatics.com.
The Board of Governors met on Friday, September 19, 2014. Officers and bar governors in attendance were, President W. Johnson; President-Elect D. Farnsley; Vice President M. Sullivan; Immediate Past President T. Rouse and Young Lawyers Division Chair B. Sayles. Bar Governors 1st District – M. Pitman, F. Schrock; Bar Governors 2nd District – T. Kerrick, J. Meyer; 3rd District – M. Dalton, H. Mann; 4th District – A. Cubbage, B. Simpson; 5th District – W. Garmer, E. O’Brien; 6th District – S. Smith, G. Sergent; and 7th District – M. McGuire, J. Vincent.

In executive session, the board considered nine (9) default disciplinary cases, involving five attorneys. Brenda Hart of Louisville, Roger Rolfes of Florence, and Dottye Moore of Elizabethtown, non-lawyer members serving on the board pursuant to SCR 3.375, participated in the deliberations.

In regular session, the board of governors conducted the following business:

- Young Lawyers Division ("Division") Chair Brad Sayles reported on the following activities of the Division: KLU social events, newsletter, on-line CLE and law student outreach.
- President William E. Johnson gave an update on the receptions during the KLU programs to continue the efforts of the KBA's local bar outreach program in seeking input on how the association can better serve the attorneys in Kentucky.
- President Johnson reported that the 2015 Annual Convention Planning Committee has scheduled its organizational meeting on Sept. 29, 2014. He stated that the theme will be “Justice For All: Securing Access in a Diverse Society.”
- President Johnson reported that he has appointed James D. Harris, Jr., of Bowling Green to serve as chair of the Military Law committee. He advised that the Committee will work to provide service to active duty military and their families as well as veterans.
- Approved the appointment of Sarah Hay Knight of Somerset to the Kentucky Bar Association’s Board to fill the vacancy created by the resignation of Willis Coffey and whose term expires on June 30, 2016.
- Approved the appointment of Eileen O’Brien of Lexington as the Board of Governors appointment to the KYLAP Commission for a three-year term ending on June 30, 2017.
- Approved the total reserve/surplus carry forward of 25 sections and the Young Lawyers Division funds for fiscal year ending on June 30, 2014.
- Approved allocation of the total reserve/surplus carry forward for computer funds ending on June 30, 2014 to cover the IT conversion expenditures.
- Approved the creation of a LGBT Section.
- Executive Director John D. Meyers reported that the appeal of KBA Ethics Opinion E-435 by the Eastern and Western District U.S. Attorneys, regarding plea agreements waiving the right to pursue an ineffective assistance of counsel claim, was argued and an opinion was issued affirming the ethics opinion, and KBA E-435 is now posted on the KBA’s website. Meyers reported that this opinion did draw national notoriety.

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To KBA Members
Do you have a matter to discuss with the KBA’s Board of Governors? Board meetings are scheduled on
March 20-21, 2015
May 15-16, 2015
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.

- Meyers reported that the IT conversion was moving forward. The website is approximately 80 percent ready and the database is in good shape and is in the testing process.
- A copy of the CLE Commission Annual Report that is filed with the Supreme Court of Kentucky was distributed to the board for their information and review.
- Attorneys’ Advertising Commission Chair Lisa Huber presented the commission’s annual report.
- Clients’ Security Fund Chair William Crabtree presented the annual report of the fund.
Bar News

February 2015 Kentucky Bar Applicants

Following is a list of applicants who have applied to take the February 24 & 25, 2015 Kentucky Bar Examination.

NOTE: This list is current as of December 2, 2014. Any applications filed after this date will not be included on this list.

Amber Alegria
Steven Thomas Badar
Megan Lynn Basham
Josef M. Batule
Kyle Patrick Beatty
Robert Warren Beck
Travis Wayne Bell
Ann Elizabeth Bishop
Nathan Lee Bishop
Stephanie Marshall Bridges
Spencer John Brooks
Taylor Austin Brown
Walter Luke Bubenzer
George Alexander Budd V
Andrew David Burcham
Blaine Franklin Burgess
Juan Carlos Burgos
Allyson Michelle Burkit
Travis Taylor Burton
Aneela Bux
Michael Patrick Callan
Courtney Elizabeth Carr
Aaron Evans Caskey
Robert B. Chafin
Adam Gabriel Clark
Thomas Davitt Clines IV
Kristina M. Coen
Charles Jason Collins
Scott Edward Collins
Lauren Bailey Coltrane
Erin Leigh Combs
Landon Thomas Cox
Jason Paul Curriden
Neal Bradley Curtis
Jennifer Danielle Dalenberg
Travis Michael Dalhoff
Levi James Daly
Andrew H. Damota
Brian Wilson Davidson
Edon Summar Davis
Jacob Ethan Davis
Derek Joseph De Franco
Sarah Brooke Deitz
Kaitlin Allery Dierking
Amber Ella Chenea Dillon
Brandon Collins Dixon
Laura Cecelia Downer
Alice Dansker Doyle
Allison R. Due
Lee S. Durham
Sidney Ritchie Durham
Cody Watkins Duvall
Nathan Ronald Duvelius
William Louis Earle

Dana Michelle Eberle-Peay
Kevin Michael Edelman
David Alan Ehsan
Crystal Lee Eldridge McAllister
Jonathan Walczak Fischer
Jay Alan Fleenor
James Richard Follower
Logan Lee Forsythe
Stephanie Regina Fox
Traci Leeann Gaddie
Ryan Edwin Galloway
Katherine Ann George
Eric William Gile
Lauren Rose Givhan
Victor James Glasper
Errick Lamarr Golden
Andrew Michael Grabhorn
Trisha Marie Green
Denise Ann Greer
Robert John Gubser
Matthew Ellis Hager
Ryan Christopher Hampton
William T. Hannah
Kara Michele Harg
Andrew Delbert Hawes
Kristen Michelle Head
Dusti Welch Hebert
Erica Jade Taylor Helmle
Kyle Thomas Herren
Hunter Mitchell Hickman
Lucrencia Diaz Hudson
Meredith Ann Hughes
Nathan Andrew Hunter
Stephany Burlene Hunter
dallas Westly Hurley
Adam Spencer Ira
Nathanial Jackson
Michelle Elizabeth James
Zachary Jerome Janning
Robert Thomas Jenkins
Adam Edward Kammer
Gregory Alan Kendall
Katherine Estelle Kimsey
Allison Sarah King
Maria Dolores Jimenez Lagdameo
Seneka Squire Land
Cole William Lanigan
Michael Timothy Leigh
Ted Shuya Petrovic Li
Austin Currie Llewellyn
Daniel Paul Lonnemann
Enrique Lopez
Bruna Margit Lozano
Kandyce Kay Lykins
Juliana N. Madaki

Bradley Scott Madden
Nadz Mamedova
Addie Dannahlie Mannon
Mark Alden Mantooth
Patrick E. Markey
James Austin Martin
Jaclyn Danielle Mason
Grant Louis Mathey III
Nika Raye Mathis
Joseph Allen Mayhorn
Andrew McCauley
Lawren Shane McCoy
William Scott McDorman
Falin M. McKenzie
Anthony Wayne McKinney
Aaren Elizabeth Meehan
Connor Hentze Meeks
Spencer Tyler Merk
Eric John Metzger
Michele Nicole Metzler
Amy Elizabeth Miller
Keaton J. Miller
Setareh Lara Millerille
Jacob Thomas Moak
Jessie Jean Moberg
Aaron Michael Monk
Laura Ashley Mouser
Matthew Joseph Murtland
Corey Michael Nichols
Jessica Dawn Norris
Monteira Dennine Mundy Owenby
Katherine Noel Paschall
Daya J. Patibandla
William Phillips
Delmas Philpot III
Brandon James Allen Powell
Brian George Powell
Michael Lee Profumo
Benjamin Scott Ramsey
Steven Lawrence Rayburn
Rachel Virginia Reside Rea
Britney Westerfield Reed
Stephen Andrew Reed
Kyle Fred Reeder
Africa R. Reed-Smith
Kathleen Hunter Richard
Elizabeth Anne Richardson
Andre Ramon Rickman
Joseph Paul Rion
Kenneth Matthew Roan
Leigh Ann Roberts
Danielle Leah Rodriguez
Karen Ann Rose
Joshua C. Roselli
Katlin Elizabeth Rust
Brandy Nicole Sartin
Jenny Maria Schaffer
Andrea Lynn Schild
Maria Catherine Schletker
Benjamin Fennell Schlosser
Christine Kay Schwartz
Tamara Eileen Scull
Richard B. Sharp
Kathleen Shannon Shields
Tracy Annette Shofman
Dana L. Simmons
Jacob Bennett Sims
Andrew Eugene Skinner
Steven Brad Skinner
Nathan Drew Skjoldal
Joshua Kent Smith
Lauren Elizabeth Smith
Christopher Daniel Snead
Nathan Bradford Spencer
Richard Christian Spoor
Courtney Risk Straw
Stephen Lane Stricklin
Adam Ketner Strider
Terrance Alphonso Sullivan
Martin Sebastian Summe
William Frederick Summe
Kathryn Leigh Swany
Ndngomo Fortehe Takougang
Patrick Clayton Thomas
Chelsea Thompson
Melissa Leigh Thompson
Kelly Ann Todd
Olivia Brooke Toller
Michael Lee Tudor
Michael Tyrioks
Megan Jo Vandylke
Justin C. Vine
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KBA ANNUAL STUDENT WRITING COMPETITION

Call for Entries - Deadline June 1, 2015

The Kentucky Bar Association invites and encourages students currently enrolled at the University of Kentucky College of Law, the University of Louisville Louis D. Brandeis School of Law, and the Northern Kentucky University Salmon P. Chase College of Law to enter the KBA Annual Student Writing Competition. This competition offers these Kentucky legal scholars the opportunity to earn recognition and a cash award. First, second, and third place awards will be given. Entries must be received by June 1, 2015.

1st Place - $1,000 *
2nd Place - $300
3rd Place - $200

Students may enter their previously unpublished articles. Articles entered should be of interest to Kentucky practitioners and follow the suggested guidelines and requirements found in the “General Format” section of the Bench & Bar Editorial Guidelines at www.kybar.org/103. For inquiries concerning the KBA Annual Student Writing Competition, contact Shannon H. Roberts at sroberts@kybar.org or call (502) 564-3795 ext. 224.

Submit entries with contact information to:
Shannon H. Roberts
Communications Department
Kentucky Bar Association
514 West Main Street
Frankfort, KY 40601-1812

*Also includes possible publication in the Bench & Bar.

LAW DAY 2015 PLANNING GUIDES COMING SOON

Presidents of local bar associations across the Commonwealth should be on the lookout in February for their Law Day 2015 Celebration planning guides. This year’s theme is “Magna Carta: Symbol of Freedom Under Law.”

Law Day 2015 falls on Friday, May 1. For more information on Law Day, visit www.lawday.org or contact Shannon Roberts in the KBA Communications Department at (502) 564-3795, ext. 224.

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KENTUCKY PENAL CODE: DEGRADATION AND REFORM

By: Luke M. Milligan

In the beginning, the criminal law “resided in the restless ocean of common law, some of it floating near the surface for everyday observation, and therefore quite familiar, and some of it virtually indefinite in the obscurity of the deep.”¹ Justice Palmore said it well. But by the second half of the 20th century there’d been . . . well . . . a sea change. Codification movements swelled across the nation. Kentucky being no exception, the General Assembly adopted the Kentucky Penal Code in 1974.²

In contrast to that “restless ocean of common law,” the Kentucky Penal Code was without question a model of clarity. The penal code eliminated common law offenses, created elements for all crimes, enveloped specific offenses within general offenses, eliminated redundancies, and synchronized terminologies.³ In addition to its clarity, the penal code was notable for incorporating (then-) modern thought on criminal punishment: the value of rehabilitation over retribution; of context over fixed sentences.⁴

At the time it was enacted, some warned the penal code’s values and clarity could not be preserved without close, ongoing attention from the legislature. Of particular concern was how future penal laws would be smartly integrated into the existing code. Professor Kathleen Brickey made this point forcefully:

The purposes of the Penal Code will be subverted if the Legislature persists in continuing the current trend toward proliferation of statutory law. This will cause undue complexity and substantially impair the functional approach contained in the Code. New criminal legislation must be carefully considered lest it conflict with rather than complement Code provisions. New legislative techniques and analytical skills must be developed with a view toward perceiving the structural relationships implicit in any true code.⁵

To mark the 40-year anniversary of the penal code, the KBA Criminal Law Section dedicated its 3rd Annual Forum on Criminal Law Reform to issues surrounding Kentucky’s experience with codification.⁶ Held on November 7 in the Allen Courtroom at the University of Louisville School of Law, this year’s program centered on four issues: the general benefits of codification; codification in Kentucky; the degradation of Kentucky’s code; and practical opportunities for future codification reform in Kentucky.

The forum’s keynote address was delivered by Professor Paul Robinson of the University of Pennsylvania Law School. A former federal prosecutor, Robinson is one of the world’s leading experts on penal codes. Professor Robinson served as Reporter during Kentucky’s most recent attempt at codification reform.⁷ He has also led codification projects in Illinois, Ireland, Ukraine, and Belarus.

Professor Robinson began his address by discussing the various benefits of comprehensive codification. Codification “gives better notice to citizens, cuts down on disparity in application of the law, and also performs an interesting political function: it shifts the criminalization power from the judges to the legislatures, which is more democratic.”⁸

Robinson described how the benefits of codification erode over time due to haphazard, ad hoc criminal law legislation. Referring to this as the “degradation problem,” he explained how new criminal laws are too often enacted as “stand-alone crimes” rather than integrated into the existing body of criminal law. These new crimes frequently overlap and conflict with existing offenses. Decades of accelerating criminal law legislation have left original codes unrecognizable — “lost under a mountain of often unnecessary, often contradictory, often overlapping, often unprincipled additions to the original comprehensive code.”

For Robinson, the causes of degradation lie in the inherent nature of the legislative process. He emphasized the phenomenon of “crime du jour”— bad actions that captivate the public for a short period of time and lead to the creation of new, special crimes (e.g., assault on a referee; library theft). Professor Robinson also highlighted “punishment inflation.”⁹ In order to express sufficient outrage for “today’s new crime,” legislators feel compelled to establish sentences that exceed the baseline of punishment set by “yesterday’s new crimes.”

The harms caused by degradation, said Robinson, ultimately affect the way individuals perceive (and relate to) the legal system. Degradation gives the legal system a reputation for “being unpredictable, more discretionary, and therefore less uniform and more disparate in its treatment of defendants.” Robinson explained that this, in turn, causes the criminal law to “lose its moral credibility with the community and . . . its power to gain deference, compliance, and the power to induce internalization of its norms.”

In conclusion Professor Robinson offered a couple of potential solutions. The best approach, said Robinson, would be a comprehensive revision of the penal code. While comprehensive reform is generally expensive and time-consuming, Robinson pointed out that the 2003 proposed revision (which was never adopted by the Kentucky General Assembly) could serve as an effective drafting template. Robinson then went on to discuss some “second-best” solutions (short of comprehensive reform). He explained that a legislative group could be charged to screen crime bills and provide recommendations on how such bills could be integrated into the existing code. Another “band-aid,” said Robinson, would be requiring those who introduce crime bills to attach an “impact statement” explaining how the bills mitigate degradation harms.

Following Professor Robinson’s keynote was a panel discussion on Kentucky’s experience with codification. University of Louisville law professor Les Abramson got it started by reading through a laundry list of “stand-alone” crimes that should have been integrated into the general offenses of the penal code (e.g., the occupying of a shanty boat landing on private premises; the wounding or killing of a pet deer; stealing fruits and vegetables and

Paul H. Robinson, Colin S. Diver Professor of Law at the University of Pennsylvania Law School, discusses the “Rise and Fall and Resurrection of American Criminal Codes” at the Third Annual Forum on Criminal Law Reform in Kentucky at the University of Louisville Louis D. Brandeis School of Law on Nov. 7, 2014.
defrauding a vendor; and the defacing or carrying away of a formation in a cave).

Following Abramson, Chase law professor Mark Stavsky focused the audience on a specific instance of degradation in Kentucky — persistent felony offender (PFO) crimes. Stavsky described how the code’s original PFO framework was far less onerous than its predecessor (the pre-code “habitual offender” statutes). This “essential part of the penal code” would not, however, last long. Within two years it was replaced by a new PFO statute which effectively restored the harshness of the pre-code “habitual offender” laws. Stavsky explained that “substantially altering the original PFO provision, and adding another one — PFO in the 2nd degree — served to undermine the inherent nature and goals of the new code very soon after its adoption.”

Stavsky explained that, as a practical matter, major reforms are unlikely to be achieved in the next year or two. On this point he referenced “legislative fatigue” following House Bill 463 (drug-crime laws) and Senate Bill 200 (juvenile justice legislation). Stavsky explained that degradation is a problem and that some form of codification reform is needed, but like Tilley, expressed concern about the immediate feasibility of a large revision effort. Both legislators suggested that something short of comprehensive reform could be tackled in the interim. Possible short-term solutions include requiring authors of crime bills to attach an “impact statement” concerning degradation. They also discussed the possibility of charging the Legislative Research Commission to screen crime bills with degradation in mind.

Next, UK law professor Bill Fortune and Faith Augustine, public protection coordinator at the Louisville Metro Criminal Justice Commission, provided the audience a detailed history of Kentucky’s 1999-2003 effort to revise the penal code. (A revised code was completed and proposed but never enacted into law.) Augustine emphasized that one of the points of contention within the working group was whether to propose piece-meal solutions or comprehensive reform (they chose the latter). UK law professor Bill Fortune, a primary drafter of the 2003 proposed revision, noted his view that the working group failed to invite enough legislative input throughout the drafting process.

The forum concluded with a panel discussion on the opportunities for future codification reform in Kentucky. The panel featured the chairs of the state Senate and the House Judiciary Committees — state Sen. Whitney Westerfield and Rep. John Tilley. Rep. Tilley began by stating that he understands the need for comprehensive penal code reform. “It’s certainly a problem,” he said, “that new crimes have not been integrated into the penal code.”

Tilley explained that, as a practical matter, major reforms are unlikely to be achieved in the next year or two. On this point he referenced “legislative fatigue” following House Bill 463 (drug-crime laws) and Senate Bill 200 (juvenile justice legislation). Sen. Westerfield agreed that degradation is a problem and that some form of codification reform is needed, but like Tilley, expressed concern about the immediate feasibility of a large revision effort. Both legislators suggested that something short of comprehensive reform could be tackled in the interim. Possible short-term solutions include requiring authors of crime bills to attach an “impact statement” concerning degradation. They also discussed the possibility of charging the Legislative Research Commission to screen crime bills with degradation in mind.

I had the pleasure of moderating this year’s forum. My hope is that the General Assembly will, in the near future, establish a working group to provide recommendations for comprehensive codification reform. The consensus of the forum speakers was that any such working group must be able to gain and hold the trust of the legislature, the judiciary, criminal defense lawyers, and prosecutors. It seems the natural leader for such a project would be a retired member of the judiciary who understands the need for codification reform. The presenters were also in agreement that any such working group must remain in close contact with legislative leaders throughout the drafting process.


Luke Milligan is a lawyer and law professor based in Louisville. Milligan focuses his practice, teaching, and writings on criminal law matters. At the University of Louisville he teaches criminal law, criminal procedure, and jurisprudence. Before joining the law faculty he was a criminal defense lawyer at the Washington, D.C. firm of Williams & Connolly. A graduate of Emory Law School, Milligan is a former law clerk to Judge Martin L.C. Feldman of the U.S. District Court in New Orleans and Judge Edith Brown Clement of the U.S. Court of Appeals for the Fifth Circuit.

3 Id. at 639, Dan Goyette & Ernie Lewis, The Kentucky Penal Code: Forty Years of Unresolved Tension and Conflict Between Sentencing Philosophies, The Advocate (Oct. 2014).
4 See Gregory Bartlett, Authorized Dispositions of Offenders Under the New Kentucky Penal Code, 61 Ky. L. J. 708 (1972); Frank E. Haddad, Jr., The Kentucky Penal Code: A Time for Reexamination, The Advocate (Apr. 1991) (“A major policy underlying this unified system of classification and sentencing was flexibility in sentencing.”).
5 Brickey, supra note 2, at 639-40.
6 Sponsored by the Criminal Law Section of the KBA, the forum is an annual event which rotates among Kentucky’s three law schools.
7 Final Report of the Kentucky Penal Code Revision Project (July 2003). The proposed revised code of 2003 was completed but not adopted by the General Assembly.
9 See generally Clarence Darrow, The Story of My Life 122 (1933) (complaining about those who “constantly cudge[’] their brains to think of new things to punish, and severer penalties to inflict on others”).
10 For detailed discussions of changes to Kentucky’s PFO laws, see Robert Lawson, Difficult Times in Kentucky Corrections—Aftershocks of a “Tough on Crime” Philosophy, 93 Ky. L.J. 305 (2004-05); Goyette & Lewis, supra note 3, at *3 (“In many ways the harshness of the pre-Code habitual criminal statute was restored and even enhanced.”).
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 February 28, 2015 the revision of certain Joint Local Rules of Civil Practice and Joint Local Rules of Criminal Practice. Unless otherwise indicated, as indicated in this Notice, underlined text is added and struck text is deleted. The proposed revisions are as follows:

A. LR 4.1 – Service of Process Through the Secretary of State – will be deleted in its entirety and restated as follows:

The Secretary of State’s Office will accept service of a summons and complaint only if it is served by certified mail, return receipt requested, in an envelope bearing the Clerk’s return address. Anyone preparing process for service through the Secretary of State must provide the Clerk with the following:

(a) an envelope to mail the summons and complaint;
(b) sufficient postage;
(c) a return receipt provided by the United States Postal Service;
(d) two copies of the summons;
(e) two attested copies of the complaint;
(f) the statutory fee for each defendant to be served. Checks should be made payable to the Kentucky Secretary of State.

In addition to the filing procedures and fees of this Court, whenever a party intends to serve process through the Kentucky Secretary of State, the party initiating such service must also follow the filing procedures of the Kentucky Secretary of State.

B. Subparagraph (e) of LR 7.1 – Motions – will be amended as follows:

(e) Proposed Order. With each A party filing a motion and response, you must submit also file a separate proposed order granting the relief requested or denying the motion.

Any proposed order imposing sanctions must be provided separately from a proposed order pertaining to any other matter.

C. New LR 72.2 – Objections To Non-Dispositive Ruling of Magistrate Judge – will state as follows:

Objections To Non-Dispositive Ruling of Magistrate Judge

Subject to any deadlines established by the Court, a party objecting to a non-dispositive order of a magistrate judge must file a written objection with fourteen (14) days of service of the non-dispositive order. Unless directed by the Court, no party may file any response to a written objection.

D. Subparagraph (a) of LR 83.2 – Permission to Practice in a Particular Case – will be amended to state as follows:

(a) Procedure. An attorney who has not been admitted to the Bar of the Court – but who is in good standing in the Bar of any state, territory, or the District of Columbia – may represent parties before the Court if the attorney has paid the prescribed pro hac vice admission fee to the Clerk of the Court and been granted leave by the Court to appear pro hac vice in a particular case. A separate motion for each attorney requesting pro hac vice admission must include the following information:

(1) a separate motion for admission pro hac vice for each attorney Admission Status. The motion must identify each Bar in which the attorney is a member and attach a certificate of good standing issued by the highest court of the state, territory, or the District of Columbia in which the attorney is a resident. The certificate of good standing must be issued no more than ninety (90) days before the filing of the motion.

(2) an affidavit identifying the Bar in which the attorney is a member in good standing: Disciplinary History. The motion must disclose whether the attorney is currently or has ever been disbarred, suspended from practice, or subject to other disciplinary action by any court, state, territory, or the District of Columbia.

(3) the prescribed fee, and Consent to Jurisdiction. The motion must include a statement indicating that the attorney consents to be subject to the jurisdiction and rules of the Kentucky Supreme Court governing professional conduct.

(4) a written consent to be subject to the jurisdiction and rules of the Kentucky Supreme Court governing professional conduct, and ECF Training. The motion must identify the method of training completed by the attorney before use of the Court’s electronic filing system.

(5) a statement identifying the method of training completed before use of the Court’s electronic filing system.

E. Subparagraphs (b) and (f) LCrR 12.1 – Motions – will be amended as follows:

(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 and affidavit demonstrating good cause. Extensions of time by agreement of the parties are not valid in criminal cases. A memorandum opposing a motion for an extension of time must be filed within seven (7) days of service of the motion.

(f) Proposed Order. With each A party filing a motion and response, you must submit also file a separate proposed order granting the relief requested or denying the motion. Any proposed order imposing sanctions must be pro-
vided separately from a proposed order pertaining to any other matter.

F. Subparagraph (a) of LCrR 57.2 – Permission to Practice in a Particular Case – will be amended as follows:

(a) Procedure. An attorney who has not been admitted to the Bar of the Court – but who is in good standing in the Bar of any state, territory, or the District of Columbia – may represent parties before the Court if the attorney has paid the prescribed pro hac vice admission fee to the Clerk of the Court and been granted leave by the Court to appear pro hac vice in a particular case. A separate motion for each attorney requesting pro hac vice admission must include the following information:

1. A separate motion for admission pro hac vice for each attorney. Admission Status. The motion must identify each Bar in which the attorney is a member and attach a certificate of good standing issued by the highest court of the state, territory, or the District of Columbia in which the attorney is a resident. The certificate of good standing must be issued no more than ninety (90) days before the filing of the motion.

2. An affidavit identifying the Bar in which the attorney is a member in good standing. Disciplinary History. The motion must disclose whether the attorney is currently or has ever been disbarred, suspended from practice, or subject to other disciplinary action by any court, state, territory, or the District of Columbia.

3. The prescribed fee; and Consent to Jurisdiction. The motion must include a statement indicating that the attorney consents to be subject to the jurisdiction and rules of the Kentucky Supreme Court governing professional conduct.

4. A written consent to be subject to the jurisdiction and rules of the Kentucky Supreme Court governing professional conduct, and ECF Training. The motion must identify the method of training completed by the attorney before use of the Court’s electronic filing system.

5. A statement identifying the method of training completed before use of the Court’s electronic filing system.

* * * * *

Comments concerning the proposed rule amendments are welcome. Comments must be submitted in writing or via email on or before February 28, 2015 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

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, Canons 2D, 4A(1) and 5A(1)(c).

The judge “liked” the Facebook pages of some lawyers and of a candidate for judicial office. By “liking” the Facebook page of the lawyers, the judge violated Canon 2D’s prohibition against conveying the impression that others are in a special position to influence the judge. By “liking” the Facebook page of the candidate, the judge violated Canon 5A(1)(c) which prohibits a judge from publicly endorsing a candidate for public office.

The judge also posted on Facebook offensive comments concerning a lawyer who practiced in the judge’s court. By these public comments, the judge violated 4A(1) by engaging in extra-judicial activities which cast reasonable doubt on the judge’s capacity to act impartially as a judge.

The judge informed the Commission that the public “likes” of the Facebook pages in question were inadvertent because of the judge’s lack of familiarity with Facebook. The judge also informed the Commission that the comments about the lawyer were immediately regretted and removed, and assured the Commission that the judge would recuse from any case involving the lawyer, if requested. However, all judges must be sensitive that when they participate on social media, they violate the Code of Judicial Conduct if their actions are inappropriate for judges. Therefore, for 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 and had no prior infractions.

Date: December 5, 2014
/s/ Stephen D. Wolnitzek, Chair
AVOIDING DISCIPLINE

By: Thomas H. Glover, KBA Chief Bar Counsel

Last year I wrote a short article on year-end discipline statistics for lawyers – the records which the Office of Bar Counsel (OBC) compiles on the number and kinds of ethical trouble which lawyers seem to get themselves into. Those stats are anonymous with no names published. As I said then, most attorneys in Kentucky will never have ethical issues throughout their entire careers. Their personal conduct already fits well with the mandates of the Kentucky Rules of Professional Conduct. Most attorneys easily avoid the kind of behavior the rules proscribe.

The Supreme Court, however, sanctions a small percentage of KBA member attorneys each year for breaches of the rules of professional conduct. About a third of those lawyers who receive a sanction in a given year already have a discipline record or are in the process of building a résumé of misconduct. They are recidivists, multiple offenders and re-offenders. Last year 40 percent of the lawyers charged with ethical violations had multiple charges pending. The improper behavior which comprises the majority of these statistics on attorney discipline comes not from the many lawyers who rarely get into trouble, but from the few who get into trouble a lot. The kind of behavior leading to a license suspension or worse, and which lands those attorneys on the discipline stats often falls into a pattern. Lawyers make the same mistakes again and again. Sometimes the mistakes are intentional; sometimes they’re accidental.

So, what kind of misbehavior gets lawyers into ethical trouble? Is there a common theme? Are there types of misconduct which repeatedly show up in OBC and the Court’s discipline stats? If so, what are they and how can they be avoided? What do lawyers persistently do or fail to do that get them in trouble? Since a lawyer’s personal misconduct may adversely impact his or her profession, livelihood and career, the answers might be of some interest to those who have so much invested in their license. What are the most common mistakes that get lawyers in trouble and what can be done to avoid those errors?

HOW LAWYERS GET INTO TROUBLE – THE BIG THREE

The top three ways lawyers get themselves into trouble are by failing to do the work they’ve agreed to do, failing to maintain open and frequent communication with their clients, and failing to account for money and property which they hold for others and keep it safe. The three primary commandments of the ethics rules are diligence, communication and honesty. The statistics show that lawyers who get into trouble violate these three rules more than all of the other ethical violations combined. Each behavior is covered by a specific rule. Incidentally, the rules of professional conduct only define minimum standards of behavior. In other words, these rules are easy to follow.

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PERFORM THE WORK PROMISED

SCR 3.130(1.3) simply says “A lawyer shall act with reasonable diligence and promptness in representing a client.” As lawyers we are required by ethical rule to timely perform the work we have contracted to do. The rule is tied directly to representing clients and has a double requirement: do the work and do it on time.

The commentary to the rule says “Perhaps no professional shortcoming is more widely resented than procrastination.” More than any inconvenience they suffer, clients hate most having their matters postponed. Not only does failure to perform get us in ethical trouble, but delay erodes client confidence. We already know that client confidence is the lifeblood of law practice and drives business. As I discussed in a prior article, the practice of law is a public calling. The ethics rules are designed to require the practice of law to be a public service profession. Public service means serving the public.

Although public protection drives the Court’s philosophy in regulating the legal profession, the rule does not demand perfection or superhuman effort. Reasonable diligence on behalf of the client is all that is required to avoid ethical difficulties. Lawyers are familiar with the “reasonable man” performance standard. Practically, it means to deliver what you promise and on time. Be realistic about assessing what and when the work you undertake can be accomplished. The best way to keep clients happy and to stay out of ethical trouble is to under-promise and over-deliver.

KEEP COMMUNICATION LINES OPEN


Communication is essential to the attorney-client relationship. It’s the client’s matter; the client’s file; the client’s cause of action. Successful client relations are a part of public protection. Public protection is the primary justification for having the ethical rules. Keeping the client informed means returning that dreaded phone call to that disagreeable client even though you already know how it will go. We all have the same tendency to postpone bad news, dodge stressful situations, and avoid unpleasant people. But when your license is on the line, you don’t want to give a bad client a good reason to file an ethics complaint.

KEEP CLIENT MONEY SEPARATE

SCR 3.130(1.15) requires attorneys to keep client and third persons’ money and property safe and separate from the lawyer’s own. “Other people’s money” is required to be kept in a separate account. Almost all banks operating in Kentucky are familiar with and offer IOLTA accounts for attorneys handling “other people’s money.” See SCR 3.830.

Best practices suggest keeping records of escrowed funds for at least five years after the relationship ends. If the rights to the money being held in an IOLTA account are contested, keep disputed funds separate from your own funds until the dispute is resolved. Then see that the money or property is paid or distributed promptly to the appropriate persons. If you are holding deposits for future work, then keep unearned funds separate from money you have earned, and return unearned funds promptly after the work is done.

WHAT BEHAVIOR WILL AVOID DISCIPLINE?

There are a thousand reasons for not obeying the rules. And a thousand is not an exaggerated number offered simply for dramatic effect. The KBA Office of Bar Counsel opens about a thousand cases a year. Those lawyers whose conduct has not conformed have used many excuses for not living up to their profession’s standards. But there is one good motivator for following the rules without excuse – your license to practice law.

What to do? How to avoid discipline? First, when in doubt, read the rules. The Supreme Court Rules of Professional Conduct are a guide to avoiding discipline. The ethics rules for Kentucky were derived from the ABA Model Rules of Professional Conduct which most states have adopted in some form for their own bar. Ours are codified in SCR 3.130. Look toward the back of that brown paperback rules book that you keep right next to your phone and computer. Look beyond the Kentucky Rules of Civil Procedure, the Kentucky Family Court Rules, the Kentucky Rules of Criminal Practice and the Kentucky Rules of Evidence. For 2014, the Kentucky Rules of Professional Conduct begin at page 209 of WEST’S Kentucky Rules of Court, Volume I – State.

The rules of professional conduct are mostly rules of proscription. That means the rules recite what not to do. They describe conduct which is not permitted rather than stating what activities or actions are proper. For the vast majority of KBA members, ethical compliance is no obstacle to competent practice. The Rules require no special talent or dedication. They are rules of common sense for reasonable behavior.

So the best answers on how to avoid discipline are modest and elementary. Perform the work you undertake and perform it diligently, conscientiously and promptly. Communicate with your clients. Keep the clients informed of the status of their legal matters. Answer questions and comply with clients reasonable requests for information. Keep track of other people’s money. Escrow accounts are not slush funds or emergency accounts to borrow from when the operating account is low, regardless of intent to repay.

No event triggers a bar complaint more than an unhappy client who feels left out and uninformed. So it’s a good idea to establish an office management system or to implement your own standard routine for promptly returning emails, texts and phone calls. For your own sake and sanity keep some record of your phone, letter, emails or in-person communications. Then you will be reasonably assured of staying out of the discipline statistics and avoiding the big three problem areas.
The Kentucky Bar Association, the Louisville Bar Association and the Louis D. Brandeis School of Law at the University of Louisville will host a Diversity and Inclusion Summit on Friday, April 10, 2015, at the Galt House Hotel in Louisville.

The summit will involve attorneys from across the state as well as local and nationally recognized speakers in a program of discussions and education. The summit will provide practical resources and ideas for firms to implement their own diversity and inclusion programs. Additionally, information will be provided to assist management and other administrators with handling diversity issues. The program will also emphasize ways to empower attorneys from diverse backgrounds to work through these same issues to become successful contributors in their places of employment.

“Diversity brings a wider range of viewpoints to any situation, and that’s good for the legal profession, for the pursuit of justice, and for the bottom line in our businesses,” said KBA President-elect Doug Farnsley of Louisville, a major organizer of the event. “The summit will provide an opportunity for members of the bench and bar to explore the full meaning of diversity and its relationship to the rule of law.”

Sharon E. Jones, an attorney who serves as president and founder of the Chicago-based Jones Diversity Group, will serve as speaker for the summit’s opening session. Jones, a graduate of Harvard College and Harvard Law School, specializes in providing diversity/inclusion consulting and training to individuals, law firms, corporations and organizations. Additional summit participants include Judge Bernice B. Donald, the first African-American woman to serve on the U.S. Court of Appeals for the Sixth District in Cincinnati; Judge Amul Thapar of the U.S. District Court for the Eastern District of Kentucky, the first South Asian Article III judge, Kentucky Court of Appeals Judge Denise Clayton, the first African-American woman to serve on the Commonwealth’s Court of Appeals; and Judge C. Derek Reed, district court judge for the 10th District Court in Hart and LaRue counties. Renee Shaw, producer and host of KET’s legislative coverage and host of “Connections with Renee Shaw,” the state’s first statewide minority affairs program, will serve as moderator for two of the summit’s panel discussions.

On Thursday, April 9, in conjunction with the event, 25 attorneys will participate with 25 law students, 25 undergraduate students and 25 high school students in a pipeline service project coordinated by the law school and the Legal Aid Society to rally the involvement of attorneys in mentoring diverse students from the high school level through college and law school. The pipeline project will serve as a continuation of the KBA Young Lawyers Division’s annual “Why Choose Law: Diversity Matters” project.

Farnsley encouraged attorneys from across the Commonwealth to make plans to attend the summit. He also commended current KBA President Bill Johnson for making diversity in the legal profession one of his chief priorities for his term in office. “Throughout this process, he’s provided the planning committee with great support and encouragement,” Farnsley said.

Thanks to the Kentucky Court of Justice, Frost Brown Todd LLC, the Kentucky Bar Foundation, Steptoe & Johnson PLLC, Stites & Harbison PLLC, and Stoll Keenon Ogden PLLC for serving as “Platinum Sponsors” for this event. Sponsorship opportunities are still available; for more information, please contact Mark Flores at (859) 244-7529 or you can e-mail him at mflores@fbtlaw.com.

Please save the date and make plans to attend this important summit. Registration information will be available soon.

Diversity and Inclusion Summit
April 10, 2015
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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 7:30 a.m., on Tuesdays at Lakeside Christian Church, 195 Buttermilk Pike, Lakeside Park, (Erlanger). The church is located off I-75 exit 186 for Kentucky 371/Buttermilk Pike. The facility will open at 7:15 a.m. 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.

CRITICAL NEW CONFIDENTIAL RESEARCH STUDY COMING TO YOU BY EMAIL SOON – KYLAP AND HAZELDEN BETTY FORD TEAM UP FOR PROJECT — WE NEED YOUR HELP

The American Bar Association Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation are pleased to announce their collaboration with Kentucky and other state lawyer assistance programs on a groundbreaking new research project to survey the current rates of substance use, depression and anxiety among licensed attorneys nationwide.

The survey is designed to capture current data on these issues, with results that will impact all sectors of the legal community. "Available estimates peg the addiction rate of attorneys to be roughly twice that of the general population," said Patrick R. Krill, J.D., director of the Hazelden Betty Ford Foundation’s Legal Professionals Program. Those statistics, though, are more than 30 years old, he noted. "It’s time to update the research and in doing so highlight the apparent need to devote more attention and allocate greater resources to this important issue," Krill said.

Expected benefits of this research include:

- Establishing a new baseline understanding of where the legal profession now stands in relation to the challenges presented by substance use and other mental health problems.
- Spotting these issues so as to inspire new and innovative proactive improvement on all of these fronts.
- Creating a persuasive fund of knowledge to initiate, inform, and guide decision making and policy development in the following key areas: funding for lawyer assistance programs; continuing education requirements; bar examination and admission requirements; discipline guidelines and procedures; malpractice; prevention; diversion; monitoring; early intervention, referral to treatment; strategies to reduce stigma; and increased career satisfaction and longevity among members of the bar.
- Identifying solutions to reduce the barriers that legal professionals experience in gaining access to assistance, treatment, and ongoing rehabilitation in order to increase attorney wellness, competence, and ethical behavior.

Having credible current research these issues impacts how Kentucky can better target our resources and provide the best assistance we can to our profession, according to Yvette Hourigan, director of KYLAP, adding that the research will also help inform the work of lawyer discipline, judicial discipline, lawyer admissions, and treatment professionals. Kentucky attorneys will soon receive a confidential email regarding the survey. All responses are confidential and will be submitted blindly to the research institute gathering data from all states.
Every month the Kentucky Bar Association brings you a new series of Live Teleseminars, straight to your office or home phone, providing:

Quality - targeted learning, national speakers, practice-oriented
Convenience - CLE in your office or at home, no travel, no time away

Reliability - as nearby and accessible as your telephone, no hassle, only a toll-free number away

Join in... stay current... get your CLE’s!

Feb. 2 Opinion Letters in Transactions Involving LLCs and S Corps (Live Replay)
Feb. 3 Estate Planning for Digital Assets
Feb. 4 Buying & Selling Partnership/LLC Interests - Economic, Management & Tax Issues
Feb. 5 Ethics, Virtual Law Firms, & The Web
Feb. 6 Picking the Right Trust: Alphabet Soup of Alternatives (Live Replay)
Feb. 9 Warrants, Options & Other Incentives in Business Transactions
Feb. 10 2015 Ethics Update, Part 1
Feb. 11 2015 Ethics Update, Part 2
Feb. 12 Estate & Trust Planning for Educational Expenses
Feb. 13 Management Agreements in Real Estate
Feb. 16 2015 Nonprofit/Exempt Organization Update
Feb. 17 Drafting C and S Corp Stockholder Agreements, Part 1
Feb. 18 Drafting C and S Corp Stockholder Agreements, Part 2
Feb. 19 Duress & Undue Influence in Estate & Trust Planning
Feb. 20 The Ethics of Billing & Collecting Attorneys’ Fees
Feb. 23 Drafting Escrow Agreements in Business and Real Estate (Live Replay)
Feb. 24 Drafting Independent Contractor Agreements
Feb. 25 Drafting Buy/Sell Agreements, Part 1 (Live Replay)
Feb. 26 Drafting Buy/Sell Agreements, Part 2 (Live Replay)
Feb. 27 Ethics and Lateral Transfers of Lawyers Among Law Firms (Live Replay)

To see a complete program listing, visit ky.webcredenza.com.

Find a Mentor and Take Charge of Your Future!

Great Place to Start
Resource Center for New Attorneys in Kentucky

It pays to have a helping hand in the workplace when you’re just starting out in the practice of law. Many of us can benefit from having a mentor at our back to guide, counsel and encourage us. 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.
The 2014-15 CLE Commission: William Mitchell Hall, Jr., of Ashland (7th S.Ct. District); Julie Roberts Gillum of Somerset (3rd S.Ct. District) Carl N. Frazier of Lexington (5th S.Ct. District); Mary Beth Cutter (Director for CLE); Matthew P. Cook of Bowling Green (2nd S.Ct. District); Leona Deleon (CLE Regulatory Coordinator); Shane C. Sidebottom of Covington (6th S.Ct. District); Janet Jakubowicz of Louisville, chair (4th S.Ct. District) and Justice Michelle M. Keller (Supreme Court Liaison). Not pictured Deborah B. Simon, of Paducah (1st S.Ct. District).

THE 2014-15 CLE COMMISSION

Pictured above are the 2014-15 members of the Kentucky Bar Association Continuing Legal Education Commission. The CLE Commission is made up of one attorney representative from each of the seven Supreme Court Districts. Each representative is appointed by the Kentucky Supreme Court and volunteers his or her time in a spirit of public service with the goal of bettering the profession we have chosen. In addition to the seven attorney commissioners, the KBA is fortunate enough to have Justice Michelle Keller serving as the Supreme Court Liaison to the KBA CLE Commission.

The purpose of this commission is to administer and regulate all continuing legal education programs and activities for the KBA. This includes ensuring that the members of the KBA complete high quality, timely CLE programming each year. From developing and implementing rules and policies to ensure high standards in the accreditation of CLE programming, to developing and sponsoring quality programming, to regulating attorney compliance with the mandatory minimum CLE requirements, the CLE Commission is working toward the increased competency of the legal profession in Kentucky.

If you should have questions or comments about continuing legal education, the members of the commission encourage you to contact your district representative.

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.

2014-2015 CLE Commission Members

Deborah B. Simon
First District Representative
dbs@dbsimonlaw.com

Matthew P. Cook
Second District Representative
mcook@coleandmoore.com

Julie Roberts Gillum
Third District Representative
julie@gillumandgillum.com

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Fifth District Representative
carl.frazier@SKOfirm.com

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ssidebottom@zslaw.com

W. Mitchell Hall, Jr.
Seventh District Representative
whall@vmje.com

Justice Michelle M. Keller
Supreme Court Liaison
Looking for Upcoming KBA Accredited CLE Events?

Look no further...

Check out www.kybar.org/580

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

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

Programs are approved and added in the order in which they are received. It may take up to two weeks for processing of accreditation applications. If an upcoming or past event is not listed in the database, check with the program sponsor regarding the status of the accreditation application.
Each year, many individuals and organizations help make it possible for the Kentucky Bar Association to bring CLE to your area at no cost to members. Through the contributions of time, expertise, talent and funding of the following individuals and organizations, the 2014 Kentucky Law Update program was able to meet the CLE needs of over 5,500 Kentucky Bar members. Please accept our thanks for your support!

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ON THE MOVE

Lewis, Babcock & Griffin LLP announces the expansion of its law practice with the addition of partner Badge Humphries and the opening of an office in the Charleston, S.C. area. The office is located at 2113 Middle Street on Sullivan’s Island. Humphries litigates cases involving Ponzi schemes, business disputes, wage-and-hour, whistleblower claims, and land-use and eminent domain/condemnation issues. He also handles legal and medical malpractice, defective drugs, harmful medical devices, and other personal injury matters. He earned a J.D. with honors from the University of Texas School of Law and a B.A. summa cum laude from Tulane University. Admitted to practice in South Carolina, Georgia, Kentucky, Texas, and West Virginia, Humphries currently serves on the Board of Governors of the South Carolina Association for Justice (SCAJ) as the Consumer and Securities Law Section Chair. Humphries is the partner-in-charge of the new Lewis, Babcock & Griffin Charleston office and can be reached directly at (843) 883-7444.

Allen C. Platt III has recently taken the position of legal counsel with Samtec, Inc. Platt is a graduate of Valparaiso University School of Law (magna cum laude, 1995). Licensed in the states of Indiana and Kentucky, he was previously with the firm Wyatt, Tarrant & Combs, LLP, where he focused his practice in the areas of corporate law, real estate and litigation. Samtec is the service leader in the electronic interconnect industry. Founded in 1976 and headquartered in New Albany, Ind., Samtec is a privately held global manufacturer of a broad line of electronic interconnects, including high speed, micro pitch, rugged/power, and flexible board stacking systems, cable assemblies and components.

The Fowler Bell law firm welcomes Scott M. Brown and Johanna F. Ellison to the firm where they will both be of counsel in the firm’s litigation group.

Ellison’s focus will be within the firm’s workers’ compensation, litigation and employment law groups by representing employers, insurance adjusters, small businesses and national corporations. Ellison’s practice specializes in assisting and representing employers in all phases of the workers’ compensation process and brings a fresh, creative approach to a sometimes confusing process for businesses.

Brown’s focus will be within the firm’s workers’ compensation, litigation and commercial & business law groups. Brown’s practice specializes in evaluating, litigating, and settling workers’ compensation claims, medical disputes and subrogation matters for employers and their insurers.

Hannah Hodges has been named manager of governmental affairs for the Kentucky Community and Technical College System (KCTCS) and will serve as a part of its system office staff in Versailles. Before joining KCTCS, Hodges was a legal writer for McBreyer, McGinnis, Leslie and Kirkland, PLLC, and served as an attorney at the Peter Perlman Law Office.

The London native earned a bachelor’s degree in political science and communication at the University of Louisville and a juris doctorate at the University of Kentucky.

Carlock, Copeland & Stair, LLP, announces that Lee Weatherly has accepted a client nomination to join the Claims and Litigation Management Alliance (CLM). CLM is an alliance of insurance companies, corporations, corporate counsel, litigation and risk managers, claims professionals and attorneys. CLM’s goal is to promote and further the highest standards of litigation management in pursuit of client defense. Attorneys and law firms are extended membership by invitation only based on nominations from CLM Fellows, in-house claims professionals. Weatherly has served as lead counsel in over 70 jury trials and is an active member of both the South Carolina and Kentucky Bars. Weatherly’s current practice focuses on cases involving general liability, automobile and motor carrier accidents, commercial litigation, employment contracts, correctional health care, medical malpractice, and premises liability. In 2013 and 2014, he was named to the South Carolina Rising Stars list as one of the best young lawyers in the state. Less than three percent of the lawyers in the state are named to the list.

Gatherwright Freeman & Associates (GFA) is pleased to announce that Jennifer T. Leonard has joined the firm. GFA is a boutique law firm with practice areas limited to business, tax, and estate planning. Leonard concentrates her practice in estate planning, probate, charitable giving, business law, and taxation. Leonard has extensive experience in assisting business owners and other high net worth individuals with tax and succession planning designed to maintain and protect their personal wealth, including strategizing for payment and deferral of estate tax utilizing irrevocable trusts, charitable trusts and generation skipping trusts. Leonard also handles contested wills, claims against probate estates, and preparation of gift tax and estate tax returns. She earned her B.A. with honors from the University of Kentucky and J.D. from Northern Kentucky University Salmon P. Chase College of Law. She is admitted to practice in both Kentucky and Ohio.

Reminger Co., LPA, announces that Benjamin A. Bellamy joined their Louisville office, where he works on a diverse caseload of litigation matters in federal and state courts. His areas of practice include long-term care liability, medical malpractice, products liability, appellate advocacy, insurance coverage/bad faith, trucking and commercial transportation and general casualty/excess and surplus lines. Bellamy received his J.D. from the University of Louisville. Bellamy can be reached by calling (502) 625-7296 or by emailing bbellamy@reminger.com.

Stites & Harbison, PLLC, announces the addition of five new attorneys to the firm. Two of the attorneys are based in the Louisville office and one is based in the Lexington office. The news announcements are: Lucas Nelson and Zachary M. VanVactor from Stites & Harbison, PLLC, and Taylor J. Stuckey from VanVactor, LLC.

Lucas Nelson joins the real estate & banking service group. He graduated cum laude in 2014 from Indiana University.

Johanna F. Ellison

Scott M. Brown

Hannah Hodges

Jennifer T. Leonard

Lucas Nelson
Maurer School of Law in Bloomington. Nelson was a member of the Phi Alpha Delta Law Fraternity, the Innate Legal Assistance Program and the Sports and Entertainment Law Society. He joined Sistes & Harbison after serving as a summer associate for the firm in 2013.

Zachary M. VanVactor joins the business litigation service group. In 2012, he earned his J.D., magna cum laude, along with a Certificate in International and Comparative Law from Tulane University Law School in New Orleans. While in law school, VanVactor served as the senior managing editor of Tulane Maritime Law Journal and was the senior writing fellow of the International LL.M. program. Before joining Sistes & Harbison, VanVactor served for two years as a law clerk for the Honorable Thomas B. Russell, U.S. District Judge for the Western District of Kentucky. Prior to his clerkship, he served as a judicial intern to the Honorable Jennifer B. Coffman, U.S. District Judge for the Eastern & Western Districts of Kentucky.

Taylor J. Stuckey joins the trusts & estate planning service group. In 2013, he graduated magna cum laude and Order of the Coif from the University of Kentucky College of Law. During law school, he was online editor of Kentucky Law Journal. Prior to joining Sistes & Harbison, Stuckey was a judicial clerk for the U.S. Tax Court in Washington, D.C. Stuckey is also a certified public accountant.

Ricketts Law Offices, PLLC, is pleased to announce that John F. Bennett has joined the firm as of counsel. Bennett received his J.D. in May 2014 from Salmon P. Chase College of Law at Northern Kentucky University, where he obtained his limited license and volunteered at the Divorce Clinic for the Legal Aid Society of Greater Cincinnati and the commonwealth attorney’s office for the 54th Circuit of Kentucky. Bennett will focus on the areas of family law and criminal law.

Regional law firm Bowles Rice LLP today announced the relocation and expansion of its Southpointe, Pa., office to the new Southpointe Town Center. The Southpointe Business Park is located in Washington County, Pa., in the heart of the Marcellus Shale and less than 20 minutes from the Pittsburgh International Airport. Bowles Rice is a full-service law firm with 150 attorneys serving clients from eight regional offices located in Southpointe, Pa.; Charleston, Martinsburg, Morgantown, Moundsville and Parkersburg, West Va.; Lexington; and Winchester, Va.

Frost Brown Todd (FBT) welcomes three new associates to its Louisville office. C. Drew Eckman focuses his law practice in the areas of corporate law, entrepreneurial law, and mergers and acquisitions. He graduated from the University of Louisville Louis D. Brandeis School of Law, where he served as an employment law editor for the Journal of Law and Education. He received his B.A. in business administration, also from the University of Louisville, and was the recipient of the Wall Street Journal Award and recognition as “Most Outstanding Senior in Finance.” Eckman is a member of the Young Professionals Association of Louisville.

Lacey A. Napper focuses her law practice in labor and employment law. She received the Kentucky District Judges’ Association Award for demonstrating excellent trial advocacy skills as a student in trial practice and as a competitor at the American College of Trial Lawyers National Trial Competition (2013 and 2014). She received her J.D. from the University of Louisville Louis D. Brandeis School of Law and graduated with a bachelor's degree from Transylvania University.

Christopher C. Tieke focuses his law practice in business litigation. He graduated from the University of Cincinnati College of Law, where he was an associate member of the UC Law Review. Prior to law school, he taught social studies at St. Xavier High School in Louisville, where he also served as assistant basketball coach.

The law firm of Henry Watz Raine & Marino, PLLC, announces that Meredith K. Schuh has joined the firm as an associate. Her primary areas of practice are civil litigation, employment and family law. Schuh is a graduate of the University of Kentucky College of Law.

Cordell & Cordell, the nation’s largest domestic litigation firm focusing on representing men in family law cases, has announced the opening of its first office in Florence. Cordell & Cordell has more than 170 attorneys working in 100-plus offices across the United States and has established itself as a leader in family law devoted to equal rights for men facing divorce. The new Florence office (2310 Turfway Road, Suite 550, Florence, Ky. 41042) will broaden the opportunities for divorcing dads to gain information and counsel.

Morgan & Pottinger, P.S.C. announced that the firm will open a new office in Bowling Green to serve existing clients and to expand the firm’s presence in Southcentral Kentucky. The new office will initially focus on banking and finance law, bankruptcy, real estate law and commercial litigation. Founded in Louisville in 1974, the firm has long served the banking and finance industry, and its practice areas have grown to include real estate law, commercial litigation, equity law and white-collar criminal defense. Bradley Salyer will lead the new office, located at 2501 Crossings Blvd., Suite 209, in Bowling Green. Salyer was recently named a “Kentucky Rising Star” by Super Lawyers® for 2013-2014 and 2014-2015, and is licensed to practice in Kentucky, Tennessee and Indiana. He is a graduate of the University of Kentucky College of Law. Morgan & Pottinger also has offices in Louisville, Lexington and New Albany, Ind.

Frost Brown Todd has added two new associates to its Lexington office: Rachael High Chamberlain and Laraclay Parker. Chamberlain practices in the tax law practice group and also does general business transactional work. She graduated from the University of Kentucky College of Law where she participated in the Volunteer Income Tax Assistance (VITA) program and was on the editorial staff of the Kentucky Law Journal. She was also a member of the Moot Court Board, serving as treasurer and as a member of the competitive team. She received her bachelor’s degree from Transylvania University in 2011. Parker practices in Frost Brown Todd’s Business Litigation Practice Group. She received her J.D. from the University of Kentucky College of Law, graduating Order of the Coif.

During law school, she served as the online content editor of the Kentucky Law Journal as part of its editorial board. In 2009, she graduated cum laude from Mount Holyoke College, receiving her B.A. in Asian Studies. Prior to law school she interned for the honorable Karen K. Caldwell of the Eastern District of Kentucky.

Kerrick Bachert Stivers PSC welcomes two new associates, Rebekah McKinney and Ena Viteskic. McKinney completed her undergraduate studies in 2009 at Centre College where she earned a B.S. in psychology, graduating cum laude. McKinney went on to earn an M.A. in clinical psychology from Western Kentucky University in 2011, and earned her law degree in 2014 from the University of Kentucky College of Law, graduating magna cum laude. While attending the UK College of Law, she received CALI Awards in law and economics, and securities regulation and served as a staff member of the Journal of Equine, Agriculture & Natural Resource Law. McKinney is a native of Scottsville, where she is a member of an ad hoc group of canoeing and kayaking enthusiasts.

Viteskic is a graduate of the University of Kentucky College of Law and has served a two-year clerkship with the United States District Court of the Western District of Kentucky. She is a native of Bosnia and a member of the Bowling Green community since 1998 where she graduated from Warren Central High School and Western Kentucky University (WKU). At WKU, she was an active member of the WKU Spirit Masters and
Honors Programs. KBS is honored to have her as a member of the firm and pleased to have the first Bosnian attorney to practice in Bowling Green.

McGurk Intellectual Property Advisors announces that David J. Clement has been named of counsel to the firm. Clement is a registered patent attorney who most recently served as senior counsel and global patent operation manager for GE Aviation in Cincinnati. Prior to GE, he worked for The Boeing Company as intellectual property counsel in St. Louis. He will continue to focus on patents and intellectual property in his new role. He received a J.D. from the University of Louisville Louis D. Brandeis School of Law, a master’s degree in strategic studies from the United States Army War College, and a B.S. in aerospace engineering from the University of Virginia. Embodying the spirit of the “citizen-soldier,” he served our nation for just over three decades altogether in the active and reserve components of the United States Marine Corps. Having led Marines at home and overseas in units from the platoon to the division level, he retired in 2011 at the rank of colonel from the post of Assistant Division Commander, Fourth Marine Division, Fleet Marine Force.

The Louisville office of Quintairos, Prieto, Wood & Boyer, P.A. (QPWB), announces two associates: Julie A. Laemmle and Matthew “Matt” R. McCubbins. Laemmle’s practice focuses in the areas of long-term care health litigation and general liability defense. Laemmle received her J.D. from the Indiana University Maurer School of Law in May 2014 and her Bachelor of Arts, magna cum laude, from Saint Mary’s College in South Bend, Ind., in 2011, majoring in mass communication. While in law school, she was senior managing editor of the Indiana Journal of Law and Social Equality, served on the Sherman Minton Court advocacy board, and received the CALI award for excellence in transaction drafting. She was a summer legal intern at QPWB’s Louisville office in 2013.

McCubbins maintains a general litigation and advisory practice. He represents businesses, professional entities, individuals, physicians, and other licensed professionals in commercial, regulatory, and tort litigation. He has been selected for inclusion in Kentucky Super Lawyers – Rising Stars 2013 and 2014 in the area of General Litigation. In 2012, Matt was selected for inclusion in the National Trial Lawyers Association – Top 40 under 40. McCubbins has wide ranging experience in complex commercial litigation and business disputes, governmental and regulatory litigation including administrative law cases, governmental investigations, and professional licensure defense, health care law and physician peer review matters, and personal injury and wrongful death cases. McCubbins received his J.D., cum laude, from Case Western Reserve University School of Law. He holds a B.A. in economics from Bellarmine University, where he was a member of the baseball team. McCubbins is admitted to the practice of law in Kentucky and Indiana. He is further admitted to practice before the United States District Courts for the Western District of Kentucky, the Eastern District of Kentucky, and the Southern District of Indiana. McCubbins is the author of “Developments in Korean Corporate Governance: Progress toward 21st Century Standards in an Emerging Economic Powerhouse,” Int’l Trade & Bus. L. Rev., 2008.

Dinsmore & Shohl welcomes seven fall associates to the firm’s Kentucky offices: Brett R. Nolan and Lauren L. Weiner to the firm’s Lexington office, and Justin B. Brown, Daniel D. Briscoe, R. Brooks Herrick, Corinne E. Keel and Amir J. Nahavandi to the firm’s Louisville office.

Brett R. Nolan practices out of the firm’s litigation department and served as an extern for the Honorable Karen K. Caldwell, United States Chief Judge for the U.S. District Court for the Eastern District of Kentucky. Nolan earned his J.D. from University of Chicago Law School, where he was the comments editor for the University of Chicago Law Review. He received his B.A. from the University of Kentucky.

Lauren L. Weiner also practices out of the litigation department; she gained valuable litigation experience as a summer associate for Dinsmore and earned her J.D. from the University of Kentucky College of Law, where she was the notes editor for the Kentucky Law Journal. Weiner received her B.A. from the University of Dayton.

Daniel D. Briscoe practices out of the Louisville office’s finance department. Prior to joining Dinsmore, he gained valuable finance experience working on a pricing management project for Ohio State University, and he received a certification in mediation while attending law school. Briscoe earned his J.D. from the Ohio State University Moritz College of Law, where he was a member of the Journal of Dispute Resolution Law Review. He received an M.B.A. from Ohio State University and has a B.A. from Centre College.

R. Brooks Herrick practices out of the Louisville office’s litigation department. Prior to Dinsmore, Herrick served as an extern for the Honorable Joseph M. Hood, the United States Senior Judge for the U.S. District Court for the Eastern District of Kentucky. Herrick earned his J.D. from the University Of Kentucky College Of Law, where he was a member of the Kentucky Law Journal. He received a B.A. from Bellarmine University.

Corinne E. Keel also practices out of the Louisville office’s litigation department. Prior to Dinsmore, Keel served as a clerk in the U.S. Attorney’s Office for the Western District of Kentucky. She earned her J.D. from Stanford Law School. During her time at Stanford, she was granted a limited license to practice law in California and completed two full-time clinical programs with the Stanford Community Law Clinic and the Santa Clara County District Attorney’s Office. Keel also was a volunteer and coordinator with the Stanford Housing Pro Bono Project and the member editor for the Stanford Environmental Law Journal. She received her B.A. from the University of Kentucky.

Brett R. Nolan

Lauren L. Weiner

Daniel D. Briscoe

R. Brooks Herrick

Corinne E. Keel

Just B. Brown

Julie A. Laemmle

Matthew R. McCubbins

Karen K. Caldwell

Matthew R. McCubbins

Honorable

Joseph M. Hood

Daniel D. Briscoe

Brett R. Nolan

Honorable

Karen K. Caldwell

Justin B. Brown

Brett R. Nolan

Lauren L. Weiner

Daniel D. Briscoe

R. Brooks Herrick

Corinne E. Keel

Justin B. Brown
He obtained his J.D. from the University of Kentucky School of Law where he graduated magna cum laude. He spent two summers working as a summer law clerk for O’Bryan, Brown & Toner. His primary area of practice is insurance defense litigation with a focus in medical malpractice.

Cecilia Weihe attended Hanover College, where she served as student body president and as a representative to the board of trustees. After college, she obtained her law degree from the University of Kentucky College of Law where she graduated magna cum laude. At the University of Kentucky, she was a member of the Trial Advocacy Board, a pupil member of the Brandeis Inn of Court, and as a member of the Brandeis Honor Society. She received the International Academy of Trial Lawyers Advocacy Award in 2014, the Outstanding Oral Advocate Award in 2013, and she currently coaches the Brandeis School of Law Intrastate Mock Trial Team.

Robert Veldman attended Centre College, where he earned a Bachelor of Arts in history, cum laude. While at Centre, he spent a semester abroad in Shanghai, China. He obtained his J.D. from the University of Louisville Louis D. Brandeis School of Law, where he was a member of the University of Louisville Law Review. He received a B.A. from the University of Wisconsin-Madison.

The law firm of O’Bryan, Brown & Toner, PLLC announces that Cecilia Weihe and Robert Veldman have joined their Louisville office as associate attorneys.

John Dunn, of Reminger Co., LPA, announces that John Dunn has been elected to serve as the vice president of the Salmon P. Chase College of Law Alumni Board. Dunn will serve a one-year term in which he will assist with alumni efforts on behalf of the school. In 2013, he

Amelia Martin Adams, an attorney with DelCotto Law Group PLLC, has been selected as a 2014 Rising Star by the Lexington Young Professionals Association. This award is given to young professionals in Fayette County and surrounding areas who are under the age of 40 and are emerging as leader by demonstrating a strong commitment to impacting the community in a positive manner through professional and non-professional service and achievement.

IN THE NEWS

**Dinsmore & Shohl**'s **Julie A. Schoepf** received the "Outstanding Alumna of the Past Decade Award" from Northern Kentucky University's (NKU) Chase College of Law. She was honored at the alumni luncheon on Oct. 3, 2014. Schoepf earned her J.D. from the Chase College of Law in 2005, where she graduated magna cum laude. She has also served as president of the board of governors of the Chase College of Law Alumni Association. Schoepf practices in the area of commercial lending, real estate and mergers and acquisitions. She represents numerous banking institutions and life insurance companies in connection with negotiating and closing commercial, multi-state loans secured by real estate and personal property. She has significant experience in the area of commercial construction lending. Schoepf’s corporate practice includes stock/asset purchases of diverse operating entities, including all related due diligence. She is an adjunct professor teaching a class on legal issues of real estate investments for the University of Cincinnati’s College of Business.

**Goldberg Simpson** announces that **Lindsey Howard** has joined the firm as an associate. Her practice primarily includes tort defense, insurance coverage and bad faith, and general civil litigation. Howard received her B.A. and graduated summa cum laude from the University of Kentucky. She later earned her J.D., graduating magna cum laude from the University of Louisville Louis D. Brandeis School of Law. While in law school, she served as a summer intern for the U.S. District Court in the Western District of Kentucky for the Honorable John G. Heyburn II. She was also selected to serve on the executive board of the law school’s Moot Court Board, a pupil member of the Brandeis Inn of Court, and as a member of the Brandeis Honor Society. She received the International Academy of Trial Lawyers Advocacy Award in 2014, the Outstanding Oral Advocate Award in 2013, and she currently coaches the Brandeis School of Law Intrastate Mock Trial Team.

** node: **

**J. Stephen Smith**, of Graydon Head, was appointed to chair the 2014 KBA Rules Committee by KBA President William E. Johnson of Frankfort. He is unopposed and re-elected to a third and final term as a KBA Bar Governor for the Kentucky Supreme Court’s 6th District. The term will run from July 2015 through June 2017. Smith practices in Kentucky, Ohio, and Indiana focusing on corporate clients in areas including employment, construction, and compliance. Throughout his career, Smith has been active with the Kentucky Bar Association and its board of governors. From 2005 through June 2011, Smith served on the KBA Ethics Committee and Ethics Hotline. As a hot-line member, he provided ethics guidance to Kentucky attorneys in the 21 counties of the 6th Appellate District. He is also an adjunct professor at the University of Cincinnati College of Law, where he teaches ethics.

**The Litigation Counsel of America (LCA)** has named Stites & Harbison, PLLC attorney **Anne Gorham** as a fellow of this peer-selected and invitation-only trial lawyer honorary society. Attorneys named as fellows have been vigorously vetted for effectiveness and accomplishment in litigation as well as ethical reputation. Membership in LCA is limited to 3,500 Fellows, representing less than one-half of one percent of American lawyers. Fellows in LCA represent the highest standards among American litigation and trial counsel across all segments of the bar. Gorham is a member (partner) of Stites & Harbison, PLLC, based in the Lexington office. As a member of the construction service group, her practice focuses on construction law and litigation and sustainable technologies. She is also a fellow in the American College of Construction Lawyers, serves on their board of governors and will chair their annual meeting in 2016.

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was honored as the outstanding alumnus of the past decade for the law school. Dunn practices in Reminger’s Fort Mitchell and Cincinnati offices, where he focuses on trucking and transportation litigation, insurance matters, professional liability, premises liability, products liability, construction liability and Kentucky workers’ compensation. Before joining Reminger, he was an active duty Army officer and served as a clerk for the Kentucky Court of Appeals. Dunn also served as the risk manager for Northern Kentucky University. He currently serves as a lieutenant colonel in the U.S. Army Reserves and has served in Iraq and Kuwait in support of the global war on terrorism. Dunn has served as an adjunct instructor at Salmon P. Chase College of Law and has coached and mentored the Trial Advocacy Team in both state and national competitions. He has also instructed on appellate advocacy and legal writing. He has been recognized as a Rising Star by Kentucky Super Lawyers Magazine.

Lawrence & Associates announces that Casey Robinson has been appointed to the Kenton Seven Foster Care Review Board. In this position, Robinson will review case files for children in foster care to ensure that all goals are being met and that appropriate objectives are set for them.

The 2015 edition of Benchmark Litigation names 15 Stites & Harbison, PLLC, attorneys as “Litigation Stars” and two as “Future Stars” in Kentucky. The guide honors the firms and attorneys who have demonstrated the ability to consistently handle complex, high-stakes cases in multiple jurisdictions. Stites & Harbison’s honorees from Kentucky include “litigation stars” Thad Barnes, intellectual property; Bethany Breetz, appellate; Carol Dan Browning, antitrust, environmental, health care, product liability and professional liability; Philip Collier, general commercial; Charles “Mike” Cronan IV, appellate, general commercial, health care and intellectual property; Daniel Danford, general commercial, product liability; John Famularo, antitrust, appellate, general commercial, product liability; Douglass Farnsley, medical malpractice; Anne Gorham, construction; William Gorton III, environmental; Joseph Hamilton, general commercial; Buckner Hinkle, Jr., construction and general commercial; Gregory Parsons, construction and general commercial; John Tate, appellate, general commercial, insurance, intellectual property and product liability; Ashley Ward, personal injury and product liability. “Future Stars” include Andrew Beshar and David Ow斯ley II. Since 2008, Benchmark Litigation has been the definitive guide to America’s leading litigation firms and attorneys. The guide is exclusively focused on the U.S. litigation market. Recognition is based on extensive interviews with litigators and their clients over a six-month period to identify the leading litigators and firms. Honorees at both the national and state levels are based on these interviews.

Sturgill, Turner, Barker & Moloney, PLLC, announces that Stephanie M. Wurdock has been presented with the “Young Lawyer of the Year Award” by the Kentucky Defense Counsel, Inc. (KDC). The award is presented annually to a KDC member with fewer than 10 years of practice who has made significant contributions to the KDC and the practice of law. Wurdock serves as the chairperson of the KDC’s Young Lawyers Section Committee and has been instrumental in planning several KDC programs and seminars. She is an associate with Sturgill Turner whose practice over the past three years has focused on defending nursing homes, hospitals and other health care providers against claims of negligent care, wrongful death and violations of resident’s rights. Wurdock has recently broadened her practice to include representing and advising higher education institutions on employment and general liability matters.
first woman judge in Kenton County District Court. She was elected three times to district court before being appointed as the first woman on the Kentucky Court of Appeals in March 1987 by then Gov. Martha Layne Collins. Judge West had broken barriers that no woman in Kentucky had encountered. She reached out to other women and encouraged them to join the legal profession.

DBL Law announces that it has been selected as a member of Geneva Group International (GGI), one of the top 10 worldwide alliances of well-established and experienced accounting, consulting and law firms that are committed to providing clients with specialist solutions for their national and international business requirements. GGI unites regional and international, independent firms with the joint potential to find the right solution for any specific problem and resolve financial, legal, and tax issues which may arise. GGI's broad national and international coverage provides its members and their clients with access to high quality firms throughout the United States and in more than 100 countries worldwide. The members are recognized as leaders in their particular field. All member firms are locally based and indigenous to their areas, providing the highest level of expertise when it comes to knowledge of local business practices, laws and customs.

Frost Brown Todd attorney Mark Flores coordinated the third annual TUBACHRISTMAS concert in Lexington's Triangle Park. Players of all ages from around the region gathered in the spirit of the tradition begun at New York City's Rockefeller Plaza Ice Rink in 1974. The concert benefited the Harvey Phillips Foundation (H.P.F.), a non-profit organization dedicated to developing, expanding and preserving the music arts. TUBACHRISTMAS was conceived in 1974 by Harvey Phillips as a tribute to his teacher and mentor William J. Bell. It reflects on the heritage, and honors all great artists/teachers whose legacy has provided high performance standards, well-structured pedagogy, professional integrity, personal values and a camaraderie envied by other instrumentalists. The first TUBACHRISTMAS was conducted by Paul Lavalle in New York City's Rockefeller Plaza Ice Rink in 1974.

LaJuana Wilcher, partner with English, Lucas, Priest & Owsley, LLP in Bowling Green, participated in two panel discussions addressing the Clean Water Act and environmental advocacy at the National Clean Water Law Seminar in St. Petersburg, Fla. The November conference was sponsored by the National Association of Clean Water Agencies. Wilcher previously was secretary of Kentucky's Environmental Protection Cabinet and head of EPA's Office of Water in Washington, D.C.

Wyatt, Tarrant & Combs, LLP, is pleased to announce that Mark Farmer has been selected as a member of the Leadership Louisville Class of 2015. Founded in 1979 by Wilson Wyatt and other community leaders, Leadership Louisville has ensured that the community's most influential and esteemed leaders are knowledgeable about issues, well-networked and passionate about the success of the region. The 10-month program offers the selected participants exclusive tours and hands-on experiences, all with area leaders who take on the community's biggest challenges every day. Farmer is a partner in the firm's corporate & securities service team. He concentrates his practice in general business law, mergers and acquisitions, and venture capital/private equity investments. He represents clients in stock and asset purchases, mergers, debt and equity financing and complex contract negotiations, including diligence, deal structure, documentation and closing of transactions. Farmer is a former chairman of the Kentucky Bar Association Business Law Section and has been recognized by his peers as a Kentucky Super Lawyers Rising Star. He received his B.A. from DePauw University, cum laude, and his J.D. from the University of Louisville Louis D. Brandeis School of Law, magna cum laude.

Dinsmore & Shohl's Patrick Michael received ALFA International's Nate Fishbach Service Award for the 2014 Attorney of the Year. Michael received the award at the Annual Business Meeting in October for his years of dedication to the organization. Michael was selected for his commitment to ALFA through his leadership of the business litigation practice group and contributions to the International Client Seminar (ICS) throughout the years. He served as program chair for the business litigation practice group for six years, during which time he managed three ICS programs. He has also been a frequent speaker at Business Litigation and ICS programs. Michael is a partner in the firm's Louisville office and focuses his practice primarily in business litigation, commercial transactions and work-outs, non-competition disputes, and professional malpractice defense.

Vince Aprile, who practices with Lynch, Cox, Gilman and Goodman, P.S.C., in Louisville, has been appointed to the editorial board of Criminal Justice magazine, the quarterly publication of the American Bar Association’s Criminal Justice Section. Aprile was previously a member of the magazine’s editorial board (1989-2012) and twice has served as its chair (2005-09; 1991-93). He continues as the author of his column, “Criminal Justice Matters,” a regular feature of the magazine (1992 to present).

Fowler Bell law announces that Casey C. Stansbury, a member in the firm’s litigation, government and municipal law, and electronic discovery groups, was honored by the Kentucky Defense Counsel Inc. (KDC) as the recipient of DRI’s 2014 Albert H. Parnell Outstanding Program Chair Award at DRI’s Annual Meeting in San Francisco on Oct. 23, 2014. This award honors an individual who created a dynamic educational program. The honoree also displayed leadership, dedication and creativity in seminar development. Stansbury also serves as KDC president.
As a final tribute, the Bench & Bar publishes brief memorials recognizing KBA members in good standing as space permits and at the discretion of the editors. Please submit either written information or a copy of an obituary that has been published in a newspaper. Submissions may be edited for space. Memorials should be sent to sroberts@kybar.org.

<table>
<thead>
<tr>
<th>Name</th>
<th>City</th>
<th>State</th>
<th>Deceased</th>
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<tbody>
<tr>
<td>Howard C. Berry</td>
<td>Roswell</td>
<td>GA</td>
<td>March 29, 2013</td>
</tr>
<tr>
<td>William T. Cheshire</td>
<td>Frankfort</td>
<td>KY</td>
<td>October 14, 2014</td>
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<td>William J. Driscoll</td>
<td>Louisville</td>
<td>KY</td>
<td>November 11, 2014</td>
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<td>Erin Brown Faulkner</td>
<td>Louisville</td>
<td>KY</td>
<td>October 20, 2014</td>
</tr>
<tr>
<td>Deborah Lee Haney</td>
<td>Scottsburg</td>
<td>IN</td>
<td>October 5, 2014</td>
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<tr>
<td>Paul E. Hunley</td>
<td>Covington</td>
<td>KY</td>
<td>July 17, 2014</td>
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<td>Joseph Lee Johnson</td>
<td>Santa Barbara</td>
<td>CA</td>
<td>June 10, 2014</td>
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<td>Ben Lee Kessinger Jr.</td>
<td>Lexington</td>
<td>KY</td>
<td>November 23, 2014</td>
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<td>Samuel Gray McNamara</td>
<td>Frankfort</td>
<td>KY</td>
<td>October 5, 2014</td>
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<tr>
<td>Richard H. Nash Jr.</td>
<td>Louisville</td>
<td>KY</td>
<td>November 2, 2014</td>
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<td>Matthew David Nelson</td>
<td>Lexington</td>
<td>KY</td>
<td>October 11, 2014</td>
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<tr>
<td>Clarence A. Noble III</td>
<td>Stanton</td>
<td>KY</td>
<td>June 3, 2014</td>
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<td>Richard Kyle Rose</td>
<td>Lexington</td>
<td>KY</td>
<td>February 2, 2014</td>
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<td>Glenn L. Shilling</td>
<td>Louisville</td>
<td>KY</td>
<td>October 24, 2014</td>
</tr>
<tr>
<td>James R. Wood</td>
<td>Frankfort</td>
<td>KY</td>
<td>November 10, 2014</td>
</tr>
</tbody>
</table>

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