Kentucky Bar Association
New Lawyer Program

June 12 - 13, 2019
The Galt House Hotel
Louisville, Kentucky

Presented by:
The Kentucky Bar Association
CLE Commission and Young Lawyers Division
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The Kentucky Bar Association would like to give special thanks to the volunteer authors who contributed to this program handbook.
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## New Lawyer Program Agenda
### Louisville, Kentucky

**Wednesday, June 12, 2019**

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<th>Event</th>
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<th>Credit Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>7:30 a.m. – 8:30 a.m.</td>
<td>REQUIRED: Registration/Check In</td>
<td>Archibald Room</td>
<td></td>
</tr>
<tr>
<td>8:30 a.m. – 8:45 a.m.</td>
<td>President’s Welcome and Program Introduction</td>
<td>Archibald Room</td>
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<tr>
<td>8:45 a.m. – 9:45 a.m.</td>
<td>Building Professionalism on a Foundation of Strengths</td>
<td>Archibald Room</td>
<td>1.0 CLE Credit</td>
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<tr>
<td>9:45 a.m. – 10:45 a.m.</td>
<td>KBA: What We Do for You – Membership, CLE and Kentucky Bar Foundation/IOLTA</td>
<td>Archibald Room</td>
<td>1.0 CLE Credit</td>
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<tr>
<td>10:45 a.m. – 11:00 a.m.</td>
<td>Break</td>
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<tr>
<td>11:00 a.m. – 12:00 p.m.</td>
<td>You’ve Just Received a Bar Complaint: Now What?</td>
<td>Archibald Room</td>
<td>1.0 Ethics Credit</td>
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<tr>
<td>12:00 p.m. – 1:00 p.m.</td>
<td>Lunch</td>
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<tr>
<td>1:15 p.m. – 2:15 p.m.</td>
<td>Feature CLE: Finding the Golden State Killer and Crime Solving in the Digital Age</td>
<td>Grand Ballroom</td>
<td>1.0 CLE Credit</td>
</tr>
<tr>
<td>2:25 p.m. – 3:25 p.m.</td>
<td>LMICK: Preparing for Legal Malpractice Claims</td>
<td>Archibald Room</td>
<td>1.0 Ethics Credit</td>
</tr>
<tr>
<td>3:25 p.m. – 3:45 p.m.</td>
<td>Break</td>
<td></td>
<td></td>
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<tr>
<td>3:45 p.m. – 4:45 p.m.</td>
<td>eFiling Certification Training</td>
<td>Archibald Room</td>
<td>1.0 CLE Credit</td>
</tr>
</tbody>
</table>
### Thursday, June 13, 2019

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>CLE Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>8:00 a.m. – 8:30 a.m.</td>
<td>REQUIRED: Registration/Check In</td>
<td></td>
</tr>
<tr>
<td>8:30 a.m. – 9:30 a.m.</td>
<td>Annual Convention Programming of Choice</td>
<td>1.0 CLE Credit</td>
</tr>
<tr>
<td>9:40 a.m. – 10:40 a.m.</td>
<td>Annual Convention Programming of Choice</td>
<td>1.0 CLE Credit</td>
</tr>
<tr>
<td>10:50 a.m. – 11:50 a.m.</td>
<td>Annual Convention Programming of Choice</td>
<td>1.0 CLE Credit</td>
</tr>
<tr>
<td>12:00 p.m. – 1:00 p.m.</td>
<td>Lunch or Annual Convention Programming of Choice</td>
<td>1.0 CLE Credit (optional)</td>
</tr>
<tr>
<td>1:25 p.m. – 2:25 p.m.</td>
<td>Annual Convention Programming of Choice</td>
<td>1.0 CLE Credit</td>
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<tr>
<td>2:35 p.m. – 3:35 p.m.</td>
<td>Annual Convention Programming of Choice</td>
<td>1.0 CLE Credit</td>
</tr>
<tr>
<td>3:45 p.m. – 4:45 p.m.</td>
<td>Annual Convention Programming of Choice</td>
<td>1.0 CLE Credit</td>
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</table>
For most of the history of the legal profession in the United States, once a lawyer was admitted to practice no further professional education or re-qualification was required. Over the last twenty-five years there has been the growing recognition that this standard for lawyer competence, if ever valid, is not now. Lawyers must maintain currency in the law, stay abreast of new developments in the delivery of legal service, and sustain a keen sensitivity to professional responsibility issues to remain qualified to serve the public.

The first step in meeting the task of maintaining lawyer competence over the course of a career in Kentucky was the establishment of an annual continuing legal education requirement. In Kentucky, lawyers must earn each year 12 hours of CLE, two of which must be in the area of lawyer professional responsibility and ethics.

The next step was the recognition that newly admitted lawyers enter the profession with some significant gaps in their understanding of how law is practiced. This concern was highlighted in an American Bar Association study known as the MacCrate Report. One of the report’s major conclusions was that new lawyers often have inadequate practice skills and an incomplete understanding of professional values. The report described fundamental lawyering skills as:

1. Problem Solving
2. Legal Analysis and Reasoning
3. Legal Research
4. Factual Investigation
5. Communication
6. Counseling
7. Negotiation
8. Litigation and ADR Procedures
9. Organization & Management of Legal Work
10. Recognizing & Resolving Ethical Dilemmas

The fundamental values of the profession were determined to be:

1. Provision of Competent Representation
2. Striving to Promote Justice, Fairness, and Morality
3. Striving to Improve the Profession
4. Professional Self-Development

In responding to this perceived need of helping new lawyers get off to the best possible start, the Kentucky Supreme Court mandated that all lawyers within the first year of practice attend the KBA’s New Lawyer Program. This two day program is designed to address some, but not all, of the areas identified by the MacCrate Report . . . to assist in filling the small, but critical, gap between law school education and the acquisition of meaningful practice experience. The program emphasizes your new role as "an officer of the court," the relationships involved in fulfilling that role, and contains as much information as a two day program will allow on "getting started."
LAW, THE FIVE CHALLENGES, AND THE LAWYER PERSONALITY

Thriving, both in the law and in other areas of our lives, requires commitment, energy, and engagement. This diagram is my “flow chart of life.” It starts with adversity and ends with death – so much for positive psychology equating to “happyology”! Adversity is a part of any life, and those who practice law deal in adversity daily. Every setback, bump in the road, or disappointment entails a choice: What next? What will you do? How will you respond? What action will you take? Down the left side of the chart is the losing zone – pulling back, reducing effort, losing skills and resources, and ultimately dying. However, kicking out to the right side of the chart puts you in the Thriving Zone. Sometimes, simply recommitting to the goal and working more will get you what you want. Sometimes, you may run into enough adversity that you have to reflect, gather information, increase your capacities, revise your approach or even your goals, then put in the effort to get more of what you want. Regardless, there are always new goals and changes in external circumstances that create new adversities for us, and the process starts again. My suggestion is that the quality of your life will depend on how much time you spend on the right side of the chart – the Thriving Zone. In these pages, you will learn about skills that have been empirically tested and shown to help you (a) regularly kick out to the Thriving Zone and (b) help you function there more effectively. They will increase your commitment, your energy, and your engagement – in life and in the practice of law. By practicing these skills, you will increase your chances of building a satisfying practice of competent lawyering and fulfilling engagement with your family, friends, and communities.
Despite the three years you recently spent gaining knowledge of the law, that knowledge is a relative minor part of what it takes to be either be a good lawyer or to be happy in the practice of law. In a survey by the Tennessee Commission on Continuing Legal Education, 41 percent of attorneys identified Lack of Commitment, Energy, and Engagement as a more significant cause of poor lawyering than Lack of Knowledge of Substantive Law or Lack of Law Practice Management Skills. Many of those selecting Law Practice Management or Substantive Knowledge noted in their comments to their responses that, if an attorney has Commitment, Energy, and Engagement, they will master the other areas.¹ This view by practicing attorneys is confirmed by research assessing the effects of law school and law practice on wellbeing. Larry Krieger, a law professor at Florida State and Ken Sheldon, a research psychologist at Missouri, recently surveyed 6,000 lawyers in four states across the country and found that law school grades predicted very little about the wellbeing of lawyers in the practice of law, and law review membership had zero correlation!²

**Beyond Money**

The effect of money on wellbeing has been the subject of much research. The overall findings can be summarized easily: Money matters significantly to wellbeing when you do not have enough to live comfortably. After that, its importance drops dramatically. The exact income amounts vary, but for North America the best and most recent evidence suggests that the impact on income for reducing negative emotions stops boosting positive emotions at about $65,000 of annual household income, stops decreasing negative emotions at about $95,000, and stops affecting life satisfaction judgments at about $105,000.³ This pattern fits with the findings in the study by Krieger and Sheldon mentioned above. Attorneys in elite firms were actually less happy than attorneys working in government or non-profits.

**Lawyers and Wellbeing**

Today, the rapidly developing field of positive psychology is producing a growing body of research on how people thrive through challenges. This research highlights resources and approaches that can help lawyers renew their commitment, energy, and engagement. High levels of commitment, energy, and engagement clearly contribute to higher levels of professional performance. Thus, we can have hope for improving both attorney wellbeing and attorney performance simultaneously! Here is a summary of some things we know about attorney well-being, happiness, and positivity in general:

**Lawyers are more frequently unhappy, depressed, anxious, and addicted to alcohol or drugs than their peers in other professions.**

More than 20 years of research shows that lawyers experience:

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• the highest rate of major depressive disorders of any of 104 occupational groups (generally 2-4 times that of the general population)\(^4\)

• rates of anxiety, phobia, and interpersonal sensitivity 5-15 times higher than in the general population,\(^5\)

• high levels of suicide and substance abuse,\(^6\) and

• significantly lower levels of happiness than their socio-economic peers.\(^7\)

Although this last point may seem trivial compared to the other items in the list, the research strongly suggests that happy people perform better, help others more, and are more successful.\(^8\) (Let’s treat “happy” as short hand for people who frequently experience positive emotions (even very mildly), who experience negative emotions much less often than positive, and who generally judge their lives to be satisfactory.)

**Problems Begin in Law School**

• Students who apply to law school are as mentally healthy as other college graduates. Law does not attract individuals who are already unhappy, depressed, anxious, or addicted.

• Something happens in law school, and that something seems to be related to a decreased connection to important personal values.

Although there are some differences, students entering law school look much like other college graduates. For example, in accordance with average for the U.S. population, less than 10 percent are depressed, but, by the end of the first year of law school, approximately 30 percent of all students are depressed, and this rate increases to 40 percent by the end of their third year.\(^9\) One recent study of the students at a major national law school found that 53 percent of the respondents reported levels of depression that would significantly affect their ability to function, much less thrive.\(^10\) Anxiety and hostility also go up throughout law school. Law students also tend to move from personal (“intrinsic”) goals and values for their legal careers to more status-seeking, external (“extrinsic”) goals and values.\(^11\) In other words, students move from wanting to “do good


\(^5\) Id.

\(^6\) Id.

\(^7\) Analysis by the author of over 80,000 records from a 15-month period at www.authentichappiness.org.

\(^8\) Diener, E. (2013).


and be good" to wanting to "get the goods." Materialism, the pursuit of money above other values, predicts decreased well-being. Thus, the shift from intrinsic to extrinsic values does not bode well for law students.

Better Is Possible

Before looking more deeply into what may cause wellbeing to plummet early in law school for so many law students, and then stay low throughout practice, perhaps I should sound a note of hope. Better is possible. In these pages, you will read of proven strategies to increase wellbeing, commitment, energy, engagement, and satisfaction with yourself, your relationships, and your work. Each of these strategies has research evidencing effectiveness, but first let me offer an additional reason to make an effort to pick the strategies that appeal to you, try them, master them, and make them a habit.

Action!

After finishing the Masters of Applied Positive Psychology (MAPP) program in 2006, I was asked to speak at a Tennessee Bar Association CLE event, then at other bar events, local and state, and for organizations such as the Tennessee District Attorneys General conference. After two years, I studied the CLE Commission’s records and realized I had spoken to over 900 attorneys during that time period. With the Commission’s permission, I surveyed those attorneys to see if our work had any effect. I learned that 60 percent of those responding had taken some action as a result of their participation. Those attorneys were three times more likely to report that their commitment, energy, and engagement in practice was somewhat or much improved.

Now, let’s look more deeply at the challenges you must address.

Law’s Five Challenges to Thriving

If aspiring lawyers-to-be are not “broken” when they enter law school, what accounts for the drastic decrease in well-being suffered by so many beginning in the first few months of law school? Suggestion: the cause is what lawyers do for society and how we do it. Or, more specifically, lawyers are faced with a constellation of five challenges in particularly potent and prevalent ways. These five challenges are:

1. Values Conflicts
2. Zero-Sum, High Stakes Conflicts

Thriving Challenge #1: Values Conflicts

Societies around the world endorse a common set of 10 categories of values. These are core values endorsed by most individuals, but the values are in conflict; they pull against each other. Shalom Schwartz, the originator of this research, has found that these values exist in a circumplex relationship. The values closest to each other are harmonious – they can often be pursued together. The values across the circle from each other are more likely to demand thoughts, beliefs, feelings and actions that are incompatible.

Many legal conflicts involve disputes where values are so in conflict that non-legal resolution methods fail. Criminal cases may pit the rights of the accused and safeguards on government overreaching (Self-Direction) against safety and security for society in general (Security). For example, think of *Miranda vs. Arizona* which pitted the interest of our society in Security (along with a bit of Tradition and Power) against the rights of an accused to Self-Direction (and, perhaps a bit of Universalism – treating all as if innocent and as you would want to be treated.) Divorce cases may pit a parent’s opportunity to advance in his or her career (Achievement) against the value of the other parent’s presence in the children’s lives made possible through geographic proximity (Benevolence, Tradition). Few, if any, legal cases are good vs. evil. Almost all involve either one value against another to which it is opposed (*i.e.*, across the circumplex) or one person’s pursuit of a value vs. another person’s pursuit of the same value, *e.g.*, power for both sides in a business transaction.

Because law deals with conflicts that cannot be resolved by a resort to values, law school teaching subtly (and without conscious intent by law professors) trains students to treat

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arguments based on values, social consequences, and ethics as “throwaways.” In research stimulated by attending law school later in life, linguistics researcher Elizabeth Mertz discovered that one of the primary results of legal education was to disconnect students from their values. Having become intrigued by what she saw in her own law school education, she was obtained a grant and had a team of researchers observe, record, transcribe and analyze the first-year contracts course at eight law schools around the country. The schools ranged from most elite to most accessible, and the professors were diverse as to age, race, and teaching style (semi-Socratic to almost pure lecture). However, in every course her team discovered the same dynamics: legal precedents are carefully parsed, but arguments from values were made and countered without rigor or seriousness, thus sending a message that values are not useful. This consistent classroom dynamic caused her to conclude that one of the primary results of law school education is to detach law students from their values.

Professor Schwarz finds from his research that these value groups can be described as follows:

**Power** – Goal: social status and prestige; control of people, resources. Attainment and preservation of a dominant position in the social system. Authority, wealth, social power.

**Achievement** – Goal: personal success. Demonstrating competence in terms of prevailing social standards. Ambitious, successful, capable, influential.


**Stimulation** – Goal: excitement, novelty, challenge. Maintain an optimal, positive level of activation. A varied life, excitement, daring.

**Self-Direction** – Goal: independent thought and action; choosing, creating, exploring. Creativity, freedom, curious, independent.

**Universalism** – Goal: Understanding, appreciation, tolerance, protection for the welfare of all people and for nature. Broadminded, social justice, equality, peace, beauty, nature.

**Benevolence** – Goal: Protecting those who are close, the “in-group.” Helpful, honest, forgiving, responsible, loyal, true friendship and mature love.

**Tradition** – Goal: Respect, commitment, acceptance of customs and ideas from culture or religion. Humble, devout, accepting of my portion in life.

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15 Id.

Conformity – Goal: Restraint of actions, inclinations, and impulses likely to upset or harm others or violate social expectations or norms. Obedience, self-discipline, politeness.


Since ALL the values are endorsed by societies around the world, it takes time and a good bit of self-reflection to ascertain your personal prioritization, especially since you live in contexts (your legal practice setting, your church and community organizations, your family and social group, etc.) that all emphasize different prioritizations. To help you begin your exploration of your values structure, before going any further you might wish to go to yourmorals.org, register, and take the “Schwartz Values Survey.”

You may be able to better understand each of the values categories by looking at the sub-values for each of these categories shown in the image on the next page. Which values are most important to you? What does your values portrait look like? In thinking about this, keep these points in mind.

- Values are motivational – they affect how you set and prioritize goals, what you think about, where you spend your time. In other words, your actual values portrait shows up in what you do, not in what you say you want.

- On the other hand, life circumstances may limit choices so that actions do not truly reflect values. For example, a parent with limited job opportunities might be compelled to work two jobs to meet the needs of his or her children, even though the parent might well value family (Benevolence) much more than money (Power). To what extent are external factors, rather than your personal values, affecting your behavior at this point in your life?

- Think about times when you faced tough decisions. What did you think most about – what weighed most heavily in your decision-making process? Do the values you prioritized then seem to also be reflected in more normal circumstances?

- Look at the broad categories. Do the sub-values in one exert a strong pull for you; you look at them and think, “Yeah, that is REALLY me!”? Do the sub-values in the opposing category strike you as relatively unimportant for your life? (Few, if any, will be complete turnoffs.) If so, then likely your personal values profile prioritizes those values.
This image incorporates individual items within each value. Values that are closer together are more aligned and more easily reconciled or pursued in tandem. Those further apart are more opposed and less likely to be pursued in tandem.
**Prioritizing Values:** Just as there is a common set of values, there is also a high agreement on the priority of these value categories in societies around the world. The consensus ranking is: Benevolence, Universalism, Self-Direction, Security, Conformity, Pleasure (Hedonism), Achievement, Tradition, Stimulation, Power.\(^{17}\) This is not a claim that such prioritization is “right” in any sense – moral, ethical, or pragmatic. Moral, ethical, or pragmatic justifications must be argued on some other basis.

While societies may prioritize Benevolence and Universalism values first, the legal system (and, to some extent, our laws), do not. The legal system operates to apply Power to end disputes. Justice, fairness, the truth, and all other similar concerns are secondary to the primary function of ending disputes. Even in our laws, the primacy of Benevolence values is not always acknowledged. For example, the spread of “no fault” divorce proceedings clearly favors Autonomy values over Benevolence.

The “fit” of your values priorities with the priorities of your workplace can affect your wellbeing. If your priorities are different, you may feel uncomfortable. Use the table below to reflect on what values are prioritized (rewarded, acknowledged, accommodated) in your legal setting and how these may be interacting with your personal priorities.

<table>
<thead>
<tr>
<th>Law</th>
<th>My Practice Setting</th>
<th>Me</th>
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<tbody>
<tr>
<td>Power</td>
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\(^{17}\) Schwartz, S. 2012.
**Personal Application**

How do your personal value priorities, as shown by the Schwartz Values Survey, align with the values endorsed by the legal system and your legal practice settings?

<table>
<thead>
<tr>
<th>Very low alignment</th>
<th>Very high alignment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 2 3 4 5 6 7</td>
<td></td>
</tr>
</tbody>
</table>

What challenges do you anticipate in meshing your role as a lawyer with your personal values?

__________________________________________________________________
__________________________________________________________________
__________________________________________________________________

How would you describe your satisfaction with how you spend your time, energy and attention, and the results you are getting for each value category? 1= Extremely Dissatisfied, 7 – Extremely Satisfied

<table>
<thead>
<tr>
<th></th>
<th>Extremely Dissatisfied</th>
<th>Extremely Satisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benevolence (Friendship, family, love)</td>
<td>1 2 3 4 5 6 7</td>
<td></td>
</tr>
<tr>
<td>Universalism (Welfare of all, nature)</td>
<td>1 2 3 4 5 6 7</td>
<td></td>
</tr>
<tr>
<td>Self-Direction (Living life of my choice, free)</td>
<td>1 2 3 4 5 6 7</td>
<td></td>
</tr>
<tr>
<td>Security (Personal, family, social safety, stable)</td>
<td>1 2 3 4 5 6 7</td>
<td></td>
</tr>
<tr>
<td>Conformity (Appropriately restrained, polite)</td>
<td>1 2 3 4 5 6 7</td>
<td></td>
</tr>
<tr>
<td>Pleasure (Enjoying life, fun, satisfying desires)</td>
<td>1 2 3 4 5 6 7</td>
<td></td>
</tr>
<tr>
<td>Achievement (Success, competence, influence)</td>
<td>1 2 3 4 5 6 7</td>
<td></td>
</tr>
<tr>
<td>Tradition (Custom, Religion, my lot in life)</td>
<td>1 2 3 4 5 6 7</td>
<td></td>
</tr>
<tr>
<td>Stimulation (Excitement, novelty, challenge)</td>
<td>1 2 3 4 5 6 7</td>
<td></td>
</tr>
<tr>
<td>Power (Wealth, status, prestige, authority)</td>
<td>1 2 3 4 5 6 7</td>
<td></td>
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</tbody>
</table>

One year from today, how might your daily life look if you were living in better alignment with your values?

**Thriving Challenge #2: Zero-Sum Conflicts, High Stakes**

Zero-sum conflicts exist where one participant's gain is necessarily at the expense of another participant's loss. Such conflicts are also known as win-lose, as opposed to win-win. This zero-sum aspect is clear in litigation, but it also exists in business negotiations where, ultimately, a deal is only done if it benefits both parties. Even though the overall
transaction may be a non-zero,\textsuperscript{18} within the range of price/commitments that let the deal move forward is an area of zero-sum conflict. Zero-sum conflicts elicit negative emotions such as fear of loss, anxiety over consequences, or anger at tactics.

Negative emotions run especially high when, as in most legal disputes, the conflicts involve very high stakes such as personal liberty or fortunes. Further, performance in such situations may well be enhanced by such emotions. Just as an individual under physical attack may perform better if he or she becomes angry, many attorneys use anger as fuel for their advocacy. Of course, there is a price for living in a constant state of low-simmering anger. And, note the "may" – an angry emotional state can also impair our performance as advocates by narrowing our focus (see below). Attorneys face substantially more zero-sum situations than other professionals and also face them with a skilled, trained adversary on the other side. This aspect of practice can result in unusually high levels of negative emotions, in the tendency to damp down all emotional responses, or both. Either way, the impact upon the “broaden and build” effect of positive emotions (see below), relationships, achievement, and general well-being is quite corrosive.\textsuperscript{19}

**Thriving Challenge #3: Adversarial Skills**

The lawyer’s role in resolving values-laden, zero-sum conflicts (or in negotiating agreements to avoid them) often requires the use of adversarial skills. We are trained in how to argue, but we are not trained in how to argue \textit{and} maintain a relationship. We are also not trained in when not to use our adversarial skills. We are not equally skilled in other forms of communication such as appreciative or assertive approaches. Our training elevates adversarial skills to the highest form of discourse. Attorneys often judge intelligence and ability in a lawyer by their skill in verbal combat.\textsuperscript{20} As a result, we can become adversarial. It becomes our stance toward any disagreement or conflict. We are often not as good at appreciative, collaborative exploration of possible solutions, so we go straight to adversarial argument. This adversarial stance can create zero-sum situations where none may have existed before. At the very least, it sets us up for more frequent and stronger negative emotions.

**Thriving Challenge #4: Necessary Evils for Questionable Justice**

A “necessary evil” occurs when a professional must inflict emotional or physical pain upon another human being in service to some higher good.\textsuperscript{21} A doctor performing surgery commits a necessary evil by inflicting pain and injury on the patient in service to the patient’s ultimate health. Lawyers not only must frequently participate in necessary evils, they must often do so in the fully conscious presence of the recipient of the harm, and with a skilled adversary arguing that the behavior is not necessary. So, whether it is a criminal

\textsuperscript{18} For a fascinating exploration of the concept of “non-zero” and its impact on human society, see \textit{Non-Zero: The Logic of Human Destiny} by Robert Wright.


\textsuperscript{20} Mertz, E., 2007.

\textsuperscript{21} Molinsky & Margolis, 2005.
defense attorney cross-examining a child witness in a child sex abuse prosecution, a civil trial practitioner arguing that the fault for a plaintiff's injury rests with the defendant, an employment law practitioner advising on how to fire an employee or close a plant, or any one of hundreds of other situations, lawyers are routinely engaged in necessary evils. The result is often either an excess of negative emotions or an attempt to avoid all emotionality.

**Thriving Challenge #5: Legal Culture/Lawyer Personality Interaction**

Because of the effects of the factors listed above, and the inability of attorneys to adopt alternative attitude/behavior sets in non-lawyering situations, lawyers often utilize adversarial, non-emotional (or negatively emotional) approaches with each other in non-adversarial situations, including with their colleagues in law firms or legal departments.22 Some even take these attitudes and behaviors home. The result is that lawyers frequently exist within organizations and offices that are not sufficiently positive to allow even moderately successful functioning. For an individual, a couple, or a business unit, positive emotions (even brief and mild) and interactions must outweigh negative ones by at around 3:1 for the individual, couple, or organization to experience the highest levels of success.23

**Lawyer Personality as an Element of Legal Cultures**

Another factor that affects legal cultures is typical lawyer personality patterns. Thanks to the work of Larry Richard, J.D., Ph.D.,24 we know something about lawyer personality. Lawyers25 differ from the average American in these key areas:

**Lawyers are very HIGH in:**

**Skepticism: Lawyers average the 90th percentile.**26 Lawyers are skeptical about more than just facts. Here’s the definition of skepticism as measured by the instrument Dr. Richard has used in this research: “A concern with the attitudes of others towards oneself.” High score: indicates a skeptical or doubting attitude; tends to judge others. Low score: indicates trusting, gives benefit of the doubt.

**Benefits in Law:** Helps lawyers test everything, look for adverse evidence, risks, and threats to clients. Also helps lawyers remain objective about what their clients say.

**Risks in Life:** Extremely high levels of skepticism can be corrosive in close relationships, not only family and friends, but even colleagues in practice. Further, it is easy for lawyers to turn their skepticism inward, so they begin to doubt themselves.

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22 Maister, 2008.


24 David N. Shearon was for several years partner with Larry Richard and Paula Davis-Laack in Lawyer Strong, LLC to provide resilience training to law firms.

25 Dr. Richard’s work has focused primarily on attorneys in large law firms. It is possible these traits differ for attorneys in other practice settings.

**Autonomy:** Lawyers average at the 89th percentile. Autonomy is a measure of the need for independence. Lawyers like feeling like they’re in control of their world, and don’t like being told what to do by others. High score: independent, autonomous, may resist being managed, may bristle at being told what to do. Low score: Looks to external rules, hierarchy or client preferences for guidance; likes rules, procedures.

**Benefits in Law:** Aligns with a lawyer’s duties as an advocate and fiduciary.

**Risks in Life:** Can interfere with cooperation and collaboration. Can interfere with seeing guidance or asking for help when needed.

**Abstract Reasoning:** Lawyers average at the 82nd percentile. Abstract Reasoning is a measure of how much an individual loves analytical thinking, problem-solving, and intellectual challenge. This is one of the principal reasons that lawyers choose to enter the legal profession, as well as a main reason that they stay. High score: interested in thinking, analyzing, logic; loves to use one’s intellect; likes solving problems; Low score: more pragmatic, may be “anti-intellectual.”

**Benefits in Law:** Law routinely fits real-world situations to abstractions such as “cause of action” or “elements of a contract.” We even fit people into abstractions, e.g., “plaintiff” or “buyer.” (But, consider the effect of talking in abstracts if your clients are more pragmatically oriented!)

**Risks in Life:** Abstract thinking often focuses on broad and long-lasting causes and the implications and consequences of events. For adversities, such thinking can create a negative emotional balance or even depression and often interferes with problem solving by minimizing control.

**Urgency:** Lawyers average at the 71st percentile. Urgency is a measure of an individual’s sense of immediacy and a need to get things done. High score: impatient, results-oriented, need for “closure.” Low score: patient, you take your time, like a slower pace; relaxed.

**Benefits in Law:** Clients want responsiveness, and most lawyers are dispositionally suited to be responsive because they have a built-in sense of urgency.

**Risks in Life:** Some things take time; frequent impatience damages relationships.
Lawyers are very **LOW** in:

**Resilience:** Lawyers average at the 30th percentile. Resilience is basically a defense mechanism. It measures how thick- or thin-skinned you are in the face of criticism, rejection or setbacks. Also, a measure of how well you bounce back from such events. High score: thick-skinned, “rolls with the punches,” tolerates criticism or rejection well, positive self-image; Low score: more self-critical, less tolerant of criticism, rejection; self-protective, may be over-sensitive; thin-skinned; may sulk or ruminate, feel wounded, or get defensive when rejected or criticized.

**Benefits in Law:** Self-critical analysis can provide a starting point for improving knowledge, skills, and sustained effort.

**Risks in Life:** Can obviously hurt relationships. Makes it difficult to maintain the positive emotional balance that supports productive action.

**Sociability:** Lawyers average at the 12th percentile. Sociability measures how comfortable one is initiating new intimate relationships; the ability and desire to be with and work with people. High score: enjoy being with others; warm, likes “connecting” at an intimate or emotional level, even with strangers; authentic Low score: tend to be more comfortable when not expected to interact with others on a regular basis; more comfortable with known relationships rather than initiating new ones; often prefer communicating at the intellectual level; may judge a focus on relationships or related issues to be “touchy-feely.”

**Benefits in Law:** Helps lawyers maintain objectivity. Especially when combined with high autonomy, can make the environment in legal organizations seem a bit more comfortable.

**Risks in Life:** Other people matter. Low sociability makes it harder for lawyers to maintain a rich, supportive social network.

**Interaction between Law School, Lawyer Personality, and the Five Challenges**

How much of the lawyer personality is innate and how much is learned? As with most nature vs. environment discussions, the most likely answer is both. We do not yet know how much the differences Dr. Richard has observed are present in beginning law students. Although some of these characteristics seem less subject to being learned, others, such as Skepticism, can be brought out or diminished in an individual by experience. Law training and practice certainly pushes lawyers to doubt everything and everyone.
To the extent that you partake of some of the characteristics of the lawyer personality, the challenges of law may have more impact (and, to the contrary, may make some aspects of the profession rewarding). Here are a few possibilities:

- **Values** – Once law school tips the trajectory toward skepticism about values and a tendency to disconnect, the high skepticism of lawyers may continue the process even further. This can leave us prone to disconnect from our values, to see ourselves “wearing the white hat” in service to important values and lawyers on the other side as dishonorable or motivated only by money.

- **Relationships** – One of the keys to well-being, in fact, maybe the key, is strong, close relationships. Skepticism causes lawyers to doubt people as well as ideas or statements of fact. High Autonomy and low Resilience (being thin skinned, self-critical, taking it personally) coupled with our low Sociability levels can make it difficult to maintain an adequate base of close personal relationships, much less a rewarding set of professional relationships. As a result, we may see some win-win situations as Zero-Sum and be too quick to deploy our formidable (and intimidating) adversarial skills.

- **Necessary Evils** – the impact of this challenge may well be magnified by our tendency to take things personally

**Self-Assessment:** Rate yourself with the scale below: (median for all lawyers is the dark mark!) You might also make a copy of this page and ask others who know you well to rank.

NOTE: You may NOT be very good at self-assessing. Most of us are not. To get a more accurate picture, seek out a professional administration and consultation of the Caliper Profile.27

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<thead>
<tr>
<th>Skepticism:</th>
<th>Trusting</th>
<th>Extremely skeptical, Doubts facts, others</th>
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<tr>
<td></td>
<td>10% 20% 30% 40% 50% 60% 70% 80% 90%</td>
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<tr>
<th>Autonomy</th>
<th>Looks to external rules, hierarchy or client preferences for guidance</th>
<th>Extremely independent, Works alone or directs others, bristles at being “managed”</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>10% 20% 30% 40% 50% 60% 70% 80% 90%</td>
<td></td>
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</table>

27 Dr. Larry Richard has authorized me to allow participants in my programs to contact him for this service. He is one of the leading authorities in the country on lawyer personality. Email: drlarryrichard@lawyerbrain.com.
Based on your self-knowledge, are there any ways in which an aspect of the lawyer personality (yours or others!) may be working against you in your professional life? In your personal life?

If you moved in a more productive direction in any aspect of the way you work with the lawyer personality (yours or others!), what might that look like?

**POSITIVE EMOTIONAL BALANCE FOR LAWYERS**

What are emotions? Well, scientists are unsure how to define them, but it seems clear they are closely tied to our goal setting and achievement mechanisms – they help us get what we want in life. Individuals with damage to the limbic system in the brain (closely tied to emotions) may be able to recognize patterns that affect their goals and articulate strategies based on those goals, but they seem less able to follow through on those strategies. On the other hand, work in the field of emotional intelligence seems to make clear that we can develop ways to live with and through our emotions that help us achieve more of what we want in our lives, both now and over the long haul.

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“Negative” and “Positive” Emotions

One of the first difficulties we encounter when thinking and talking about emotions are the terms we use. Consider the common broad categories of “negative” and “positive.” Imagine a group of average adults asked to work together to make two lists, one of “negative” emotions and one of “positive” emotions. Will they balk at the instructions and start questioning what is meant by “negative” and “positive”? Generally, no. They will list emotions like fear, anxiety, shame, loneliness, sadness, and irritation as “negative” and they will list ones such as hope, happiness, joy, elation, awe, contentment, and love in the “positive” column.

So, what does the term “negative” mean? Does it mean that the emotions that we tend to place under that label are “bad,” or that they are unproductive, or something to avoid? Obviously not. Any negative emotion primes us to think and act in ways that can be very useful in the right situation. Perhaps we could call negative emotions “aversive” because they are generally experienced as unpleasant and we generally seek to structure our lives in ways that minimize these emotions. However, this is a general but not universal approach to negative emotions. Anger does not seem like something we should avoid when in an appropriate situation, and many of us do all kinds of things, from scary movies to skydiving, to stimulate a little fear.

Note that “negative” and “positive” also fail to capture the relationship of each category of emotions to each other. Where the “negative” pole of a magnet will repel the “negative” pole of another magnet and attract the “positive,” emotions react in the opposite fashion. The experience of one negative emotion often makes us prone to experiencing others, and likewise the positive emotions tend to engender more emotions in the “positive” category. Moreover, “negative” and “positive” emotions are not even opposites. We can, to some extent experience both at the same time, or at least in rapid sequence. We gather to remember a loved one who has died and, in the midst of sadness, moments of levity and joy spark through, only to switch quickly back to sadness or even despair.

Negativity Bias

Human beings are hard-wired to seek out, notice, and remember the negative events and experiences that happen during the day. This is called the “negativity bias.” An article summarizing this fundamental way our minds work stated the following:

- 62 percent of emotion words in English are negative; only 38 percent are positive.
- Subjects often significantly underestimate the frequency of positive emotions compared to diary entries.
- People recall negative emotional events four times more frequently than positive.

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• When asked to form impressions based on pictures, subjects spent more time studying pictures of bad acts than of good.

• Subjects required fewer behaviors to conclude that a person has an undesirable character trait, and the impact of negative traits on overall impressions was stronger than positives.

• Raters are more confident of the accuracy of their bad impressions about a person than of their positive.

• If interviewers have an initial positive rating of a candidate, it only takes 3.8 unfavorable bits of information to change to rejection, while 8.8 bits of positive information were required to shift an initial rejection to approval.

The Positive Power of Negative Emotions

Negative emotions based on a thoughtful, realistic assessment of external events and circumstances exist for a reason and they can be very productive. Anger can help you defend an important value or protect another person. Anxiety can help you identify a plan of action to better handle threats in your environment. Shame can motivate you to apologize and make amends when you have damaged important relationships. Embarrassment can cause you to work to develop new knowledge and skills – to “step up your game.”

On the other hand, inaccurate thinking leads to unnecessary (and unhelpful) negative emotions and unproductive behavior. Perhaps the best we can do is to accept that the labels “negative” and “positive” are imperfect but useful. Instead of focusing on the label, we can focus on how the array of our emotions may be useful, and in what contexts.

Researchers spent decades focusing solely on the importance of negative emotions because their effects on thinking and behavioral tendencies were easier to see, e.g., “fight or flight.” While negative emotions have their place and can, in the right context, enable us to react in appropriate ways, current research is clear: the balance point of our lives must tip solidly toward positive emotions for us grow and develop to our fullest.

Are Positive Emotions Just About Feeling Good?

Just as negative emotions are more than just “aversive” – they help us act productively in many situations – positive emotions are more than just “attractive” – they also help us act in productive ways. Positive psychology researchers, most prominently Barbara Fredrickson and her research team have unraveled the function of positive emotions and the importance of positive emotional balance. Known as the “Broaden & Build Theory” of positive emotions (“BBT”), Dr. Fredrickson and her team have shown, in both laboratory experiments and large-scale interventions that positive emotions broaden our thought/action repertoire and help build physical, psychological and social resources that allow us to meet challenges, overcome setbacks, and pursue goals together.31 The BBT of positive emotions suggests that experiences of positive emotions broaden a person’s thought processes (you can think more flexibly and creatively), which in turn helps to build

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long-term personal resources (by increasing well-being and building and strengthening social connection and friendships).\(^{32}\)

Resilient people, “proactively cultivate their positive emotionality by strategically eliciting positive emotions through the use of humor, relaxation techniques, and optimistic thinking.”\(^{33}\) Additional studies show that positive emotions predict increases in both resilience and life satisfaction. Being able to harness positive emotions during adversity may help buffer against stress and restore more productive coping habits.\(^{34}\)

**Positive Emotional Balance**

A positive emotional balance makes us less likely to act on bias and increases our ability to see the big picture. For example, Dr. Fredrickson’s team found that the phenomenon of “own race bias” – that we are better able to remember faces of our own race than those of other races – exists when we are in a negative or neutral emotional state, but disappears when we have more of a positive emotional balance.\(^{35}\) In addition, people are more global in their thinking and can see “the big picture” more easily when they are in a positive emotional state.

In addition, positive emotions and the thinking patterns that generate an overall positive emotional balance create substantial benefits in other life domains, including length of life, health, and success. In the “Nun Study,” researchers used data from a study of two convents of nuns who agreed to participate in research into Alzheimer’s. At the time of the study, the nuns were in their early 70s and they were tracked carefully through the end of their lives. As initiates to the order some 50 years earlier, each of the nuns had written a brief biography of their life to that time, and almost all of these biographies were still available in their original, hand-written versions. Researchers discovered that nuns who wrote autobiographies with a positive emotional tone lived on average 10 years longer than the nuns who wrote negatively toned biographies.\(^{36}\) Similarly, Harvard medical school researchers found that individuals who tended toward a more positive emotional state were less likely to become ill when exposed to pathogens in a controlled environment, and, if they became ill, experienced milder symptoms and reported less disruption to their activities.\(^{37}\) Finally, Tim Judge and colleagues at the University of Florida discovered that young people with key thinking patterns that promote positive emotional balance were able to leverage early successes (like high GPA in high school and high SAT scores) as they progressed through life. These positively-oriented individuals earned significantly more money as they approached 50 years of age than their similarly successful high

\(^{32}\) Id.


school peers. In fact, early success had a negative relationship with later earnings for individuals with negative orientations.

How positive?

Are you positive enough? How positive do you need to be to reach optimum levels of openness, collaboration, connection, resilience, wellbeing, health, and achievement? Research on positive emotions and performance, positive emotional balance and recovery from depression, positive interactions within marriages, and positive approaches in teams indicates that ratios from 3:1 to almost 6:1 (75 percent to 86 percent positive) produce substantially superior results. Most individuals operate at levels significantly below 3:1. You can get a sense of your own positivity ratio using the Fredrickson-designed assessment at http://www.positivityresonance.com/tools.html.

Emotional Contagion

Emotions are contagious, including positive ones. Although the specificity of the research into the impact our networks have on us – and that we have on others through our network connections – can be surprising (e.g., just sitting beside someone who eats a lot can increase the amount you eat), the general principles, which can help us manage our networks, are straightforward. Our emotional tone is affected by the temporary emotional states of those around us; our network of relationships can have a profound impact on everything from our health to our performance at work.

In fact, one’s position in “positivity networks” may better predict work performance than his or her position in “information networks.” Kim Cameron, a leading researcher in the field of Positive Organizational Studies at the University of Michigan, suggests that each of us can tend toward being an “Energizer” or a “De-Energizer.” Here are the characteristics his research suggests for each:

<table>
<thead>
<tr>
<th>De-energizers</th>
<th>Energizers</th>
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<tbody>
<tr>
<td>Do not let others be valued</td>
<td>Help others flourish</td>
</tr>
<tr>
<td>Mostly somber, solemn</td>
<td>Trustworthy, have integrity</td>
</tr>
<tr>
<td>Do not follow through</td>
<td>Dependable</td>
</tr>
<tr>
<td>Inflexible thinking</td>
<td>Use abundance language</td>
</tr>
<tr>
<td>Show no concern for others</td>
<td>Heedful, fully engaged</td>
</tr>
<tr>
<td>Self-aggrandizing</td>
<td>Genuine, authentic</td>
</tr>
<tr>
<td>See road blocks, obstacles</td>
<td>See opportunities.</td>
</tr>
<tr>
<td>Create problems</td>
<td>Solve problems</td>
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39 Id.

40 Fredrickson, B. L., & Losada, M. F. (2005).


Have you surrounded yourself with Energizers? Are you an Energizer? What do you do that regularly creates moments of positive emotions for those around you on a daily basis? What do you do that regularly creates moments of negative emotionality for others?

Between “Energizer” and “De-Energizer”, where are you today? Use this scale to rate yourself as you are today.

<table>
<thead>
<tr>
<th>De-Energizer</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>Energizer</th>
</tr>
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Positive Emotions and Lawyer Performance

Even when operating in our professional roles, we are still human beings. The scared or angry professional is going to experience narrowed focus and behavioral tendencies aligned with their emotional state. Likewise, the professional experiencing a brief positive emotional state is going to think more broadly, consider more behavioral responses to the situation, and create better momentary and long-term connections with others. The general principle is that happiness leads to success much more than success contributes to happiness. Further, various studies have shown that, when tipped toward a positive emotional state, individuals and groups use better strategies, better avoid stereotypes, are more inclusive, more creative, more motivated, and spend more time on difficult tasks. These are only a sample of the improved performance attributes of a positive emotional state. This is not to say that a positive (especially an energized positive state vs. a more calm positive state) is always best for every task. For example, individuals are usually better at executing steps in a complicated task or carefully weighing the merits of competing arguments when in a neutral or negative emotional state.

Positive Emotions and Conflict Resolution

Individuals experimentally tipped into a positive emotional state demonstrate greater propensities to solve conflicts by collaboration and to eschew avoidance and competition as conflict resolution strategies. They also persist longer with negotiations and are more willing to make monetary concessions. Researchers have used the following to tip individuals into a positive emotional state: warm lighting, flattery, humorous videos, small gifts, and “emotional contagion” from others. Lawyers and others involved in conflict


45 Id. at 817-820.

46 Id.

47 Id.
resolution might consider how and when to seek a positive emotional tone to improve conflict resolution.

Research-based Positive Emotional Practice #1: Right Spotting

As noted above, our natural tendency is to focus on the negative: threats, weaknesses, problems, risks, and worst-case scenarios. Those immersed in disputes on a daily basis may be even more prone to this tendency. The science covered above, however, emphasizes the need to balance the wariness and conflict perception that is so much a part of the daily lives of lawyers with a broadly focused and sensitive awareness of what is going right and of what is good and positive and growing. In other words, you need to practice noticing the good things in your lives. Fortunately, the effects of developing such a practice have been studied!

Dr. Martin Seligman and a team of researchers at the University of Pennsylvania recruited volunteers through Penn’s research website (www.authentichappiness.org) to test several interventions designed to improve overall well-being. One of these exercises asked participants to spend a few minutes at night just before going to bed recording three good things that happened that day and spending a few minutes reflecting on each one.

Participants doing variations of this exercise noticed the following benefits:48

- increased happiness
- decreased depression
- increased moments of positive emotion, such as gratitude
- improved psychological capacities, such as hope and optimism
- improved health and physical function

Right Spotting Together

Obviously, this practice changes how we think. It can help you pay attention to what is going right in your life and maximize the boost you get from the good stuff. However, if done with someone close to you, it can also help you build and sustain relationships. Think about doing this activity regularly with a spouse, significant other, child, sibling, or close friend. Many people report this approach to the activity increases the payoff.

The next two pages contain copies of a Right Spotting Journal page. Feel free to use one now. The sooner you can act on any intentions to engage in this activity, the better! The second is yours to use. You can make copies for a binder, or just use it as a reminder of good thought questions while writing in a notebook, diary, or file.

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Right Spotting Journal

Think of something that went right – something good that happened – since yesterday morning. Describe it in the first box below and write a sentence about it based on one of these prompts:

- Thinking broadly, this good thing was caused by…
- This good thing happened because I am…
- I can have similar good things in the future by…
- This good thing means…

Repeat for boxes 2 & 3 – a total of three good things in the last 24 hours!

<table>
<thead>
<tr>
<th>Good Thing:</th>
<th>Reflection:</th>
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Research-based Positive Emotional Practice #2: Deliberate Breathing

Breath is central to life. You can go without food for many days, without water for a few days, but you can only go without breathing for a few minutes. We associate breath with life, and even the word “inspire” derives from the Latin for “to breathe.” Breathing is the activity controlled by the autonomic nervous system (the system that controls the functions of our organs, hormone secretions, etc.) that is also most subject to conscious control. We cannot completely control our breathing, but we can exert some control and, with practice, increase that control.

In addition, breathing connects to the systems associated with our emotions and with physiological responses to stress. Acute stress (a sudden threat, for example) causes our nervous systems to activate the “fight-or-flight” response. Your heart rate and blood pressure go up, energy flows to your muscles and away from your digestive and recovery systems, and your awareness and thoughts focus tightly on the threat. In contrast, a “relaxation response” eases the stress response. Your thoughts become calmer and your focus broadens to allow you to take in more information and see more possibilities. As a result, developing a breathing practice has been a standard technique for improving your stress response and resilience for decades.49

Both research literature and popular materials contain a number of different recommended practices for using controlled breathing (and thinking) to affect your response to stress and adaptation to modern life. Common elements of these practices include:

- **Low pressure practice:** As with any other skill, careful, deliberate practice in low-stakes situations will allow you to facilitate development of neural pathways that then enable you to use the skill under pressure. Choose a quiet setting and a time of day when you are either already somewhat relaxed (just after getting up in the morning works for many) or want to move toward relaxation (before bed) or seek a change in mental state (taking a break during the day). Adopt a comfortable position, either sitting erect with feet on the floor and hands in your lap or lying prone.

- **Body Scan:** As you begin your practice, systematically scan your body for tension. Begin at your feet. You may either simply notice tension where it exists in any part of your body as you work up from your feet to the top of your head. When you notice tension, allow it to drain away and feel your muscles relax. Alternatively, you may tense the muscles in the area of your focus, hold for two seconds, then allow those muscles to completely relax, noticing the warm, relaxed state that occurs.

- **Slow, deep breathing:** Slow breathing is promoted by counting with recommendations ranging from four to eight counts of inhaling, then a similar or longer count of exhaling. Some recommend a pause – holding the breath – between inhaling and exhaling. Experiment to find the rhythm that works best for you. Deep breathing (also called “abdominal” or “diaphragmatic” breathing) allows the abdomen to expand and lets air flow deeply into the lungs (as opposed to shallow, “chest” breathing.) If this is a new concept for you, place a hand on your abdomen as you practice so you can feel your abdomen expand and contract.

Focus on some aspect of your breathing, e.g., the flow of air in through your nose or the feel of your abdomen expanding.

- **Positive Emotion Visualization:** As an alternative to focusing on your breath, you can visualize a setting or situation that induces warm, relaxed, positive emotions and focus your attention on staying in that setting as fully as you can. (You can sequence these approaches by doing a body scan as you begin, then focusing on your breath for a few minutes, and ending with a period of visualization.) Think of settings or situations that induce love (maybe being with family or friends), awe (a marvelous landscape view), joy (perhaps the birth of a child), etc. Although just slowing and deepening your breathing helps, research suggests that slow, deep breathing alone does not produce nearly the same results as when combined with the thinking component.50

- **Release and Return:** As your focus drifts from your chosen object of attention, whether that is a body scan, your breathing, or an emotional state, simply notice that your mind has drifted, acknowledge the thought that is now your focus, and release that thought and return to your chosen focus. This part of your practice – release and return – is just as much a part of the experience as the times when you sustain your focus. The practice of releasing and returning is strengthening your attention control (a strength that will likely make itself known in other areas of your life). The focused times are training your mind and body in relaxation and bathing you in positive emotions.

**How much practice?**

Research has shown that one 12-minute session can help people to be less reactive to some negative stimuli.51 Reviewing the research suggests that as little as 10-12 minutes per day on a regular basis can have significant positive effects.52 Set aside a total of 10-20 minutes in one or two sessions a day to try out deliberate breathing. Starting small is just fine – even two minutes a day! Follow the instruction above or locate a guided session on the internet. You might also try a formal course, such as Mindfulness Based Stress-Reduction to support you in practicing the skill as you develop familiarity and comfort.

**POSITIVE EMOTIONAL BALANCE QUICK TIPS**

**Supplement**

Add to your positive emotions by intentionally engaging in activities that build your wellbeing. For example, listen to a playlist that puts you in a positive mood while on the way to work may be more helpful than listening to the news. Take a brief walk as a work break (maybe instead of some activity you wish to reduce). Schedule a visit with your most upbeat friend. Intentionally build in moments of positive emotion.

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52 See also, Black, D. S. (2015).
Savor

To savor an experience is to stop and enjoy it fully, noticing intently the sensations and emotions of the moment. Build some regular “triggers” for savoring into your day. Examples could include:

- First cup of coffee
- Hug from a loved one
- Sunrise or sunset
- Hot shower
- Playing with a pet
- A “win” at work (Share it!)

Sleep

Many of us run chronically short on sleep. Surely, no citation to research is required to note that we are all in better moods and more able to handle the normal adversities of life if we are well-rested. Sleep supports both positive emotional balance and resilience. Here are some tips for getting a better night of sleep:

- Get a medical checkup and discuss your sleep.
- Try going to bed 30 minutes earlier.
- Avoid alcohol most nights. It disrupts sleep. 53
- Turn off all electronics 30 minutes before bed. Practice deliberate breathing.
- Practice Right Spotting just before bed.

S.T.O.P

Practice this skill at various times during the day. You can set times (before I leave the office, when stopped for traffic, etc.) or triggers (when someone brings up sports, when I hear someone else’s phone ring) to remind you to practice the skill. Use the skill whenever you feel emotions or reactions getting away from you.

S – Stop what you are doing.
  T – Take a breath.
  O – Observe. What just happened. What are you thinking? Feeling?
  P – Proceed in accordance with your values.

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CHARACTER STRENGTHS: THE VALUES IN ACTION INVENTORY OF STRENGTHS

The Values in Action Inventory of Strengths54 (VIA) is one of the most used psychological assessments in existence. Since it was introduced approximately 15 years ago, it has been completed by millions of people, is the subject of a large and growing stream of research by psychologists around the world, and is included in training programs in schools, colleges, and the business world. It is also a significant component of the U.S. Army’s Master Resilience Training program. Here are a few key facts about the VIA:

- Developed by a team of researchers in the early 2000s.
- Identifies strengths valued around the world, throughout history.
- Sources of ideas for the strengths included religious literature, philosophers, children’s stories, fables, etc.
- To be included, in addition to being valued in almost every culture, strengths had to stack up well against 10 criteria, including those that we might wish we had more of in our lives as we lay on our deathbed and that seeing a strength in action elevates others.
- Online since 2002, millions of people have taken it.
- Each strength has substantial research behind it.
- Scores of new research studies using the VIA are published each year.

The VIA identifies 24 “Character Strengths” that have been valued by almost every culture around the world and through thousands of years of history. Each strength has been the subject of substantial research. We know operational components, correlates, and often how to teach these strengths. Interestingly, law school seems to leech some of these strengths out of law students. While incoming law students endorse the strengths much like other Americans, lawyers endorse 21 of the 24 lower than average, some significantly so.55

You can take the VIA and get your personal report at: https://www.viacharacter.org/www/Character-Strengths-Survey. That site (operated by the not-for-profit that helped fund the development of the VIA) has a wealth of resources to help you understand, explore, and apply your Character Strengths. In so doing, you will likely be reconnecting with some of the values that law school challenged in you.


55 Unpublished analysis by the author of 15 months of VIA results from approximately 18,000 visitors at www.authentichappiness.com as compared to results for an incoming class of law students at a state university law school.
Signature Character Strengths

The top three to seven strengths on your VIA Report are likely your “Signature” strengths. Signature Strengths are:

- Easy – we engage signature strengths without much thought or effort; they feel like “the real me”; they are almost always on; we are authentic when acting on them
- Energizing to use (produce a “good tired”) or draining to work against
- Essential – we cannot imagine living without them

**Easy:** Many individuals recognize quickly that most of the strengths at the top of their VIA list are “the real me” – they are authentic. We feel “at ease” with them. No one needs to remind us to use them; they are more who we are than what we do, though they shape our actions. Although activating a Signature Strength takes no effort, our Signature Strengths may call forth very strenuous effort. For example, Kindness drives doing for others, and Love of Learning can see a person starting a new degree program in mid-life.

The authenticity element of Signature Strengths can have a negative feel if there are aspects of yourself you do not like. For example, Prudence and Self-Control may be hard to embrace for someone who sees themselves as too shy and longs for more adventure in life. However, this is likely more due to a Shadow Side use of the signature strengths, or perhaps the need for Synergy with other strengths. However, “too much me” is still “the real me” and validates the Signature Strengths.

It is also possible to be surprised at a Signature Strength. This can happen because it is “too easy” – you may have trouble imagining it as a strength because it is so easy you are simply unaware of its role in your life. It may also be a strength that is more internal and not ordinarily commented on by others. Forgiveness, for example, is a very internal Strength and one that, except in extreme circumstances, others may not readily notice and comment on. Thus, finding such a Strength at the top of your list could be a surprise.

The “too easy” aspect of Signature Strengths can also lead you to undervalue them. It can lead us to think, “What’s so special about ______? Doesn’t everybody ______?” For example, “What’s so special about Curiosity? Isn’t everyone interested in the world around them?” And the answer is that, yes, most people do have all of the Character Strengths to some degree. But, the ease, energy, and essentiality of Signature Character Strengths make them constant, steady, foundational sources of thought, feeling and behavior rather than occasional aberrations in the pattern. That is different from “Isn’t everybody…?”

**Energizing:** Signature Character Strengths also interact with our energy systems. Think about a day when you are using your signature strengths. Likely, you will think of a day when you felt energized. For example, if you have Curiosity and Love of Learning, you may well experience a day learning something (say, attending a seminar) as invigorating. This energy effect does not mean you will never get tired while engaging Signature Strengths, but your energy will last longer (perhaps because they are “Easy” – you are not “forcing yourself) and at the end of the day you will have a “good tired” – satisfied and ready to refresh, replenish, rest, and go again.
Alternatively, you may experience the energy effect of some Character Strengths only when you have to pull against them. I credit this insight to an Army Sergeant who took issue with the suggestion that Signature Strengths were “energizing” and carefully explained how he experienced his Signature Strengths. For example, one of his was Prudence. He noted that he didn’t find it energizing. But, when I asked how he felt about times when he had to act without carefully considering alternatives, the light came on (for both of us) – “It wipes me out,” he said.

**Essential:** It is usually hard for a person to imagine a day without their Signature Strengths. Try it. Pick one of your Signature Strengths and imagine living a day without using it at all. You may have trouble even doing this exercise without the strength. For example, if Curiosity is yours, you might first think, “Hmmm… a day without Curiosity … that would be interesting….,” But, there you go again – being Curious! For a person with a Signature Strength of Kindness, they are chilled and repulsed by thought of going through a day without even noticing the needs of others; being oblivious and failing to help when they have the opportunity; possibly even causing pain because of their lack of awareness.56

**The Synergy of Strengths**

The interaction of strengths – how they work together – is also an important concept when dealing with strengths. Rarely if ever does an action, much less a life of actions, stem from only one VIA Character Strength. Look at how strengths work together to understand the operation of an individual’s strengths. It is the synergy of a person’s strengths that create excellence in living. Just as the motor, wheels, transmission, and body of a car are of little use by themselves, together they create an extremely useful tool. When we seek to understand behavior (our own or others) in relation to VIA Character Strengths, it is usually necessary to think of strengths working together and the synergy they create.

Imagine two volunteers at a shelter for individuals who are currently homeless, both with the Signature Strength of Kindness, but with other signature strengths that differ. The actions of the individual with Kindness plus the strengths in the left column might be very different from those of the person with Kindness plus the strengths in the right column. Can you think of examples? Who will be out circulating among the recipients? Who would be in the background helping volunteers work together better?

**Bring-Your-Strengths-to-Work Day (It’s Every Day!)**

The framework of Signature Strengths can put these common suggestions about the world of work into a more understandable framework. If you had the opportunity to shape your workdays in ways that regularly let your employ three, four, or five of your top strengths, what would those days be like? Think of the ease of being your true self and just letting your energy flow into obvious and attractive actions that you did not have to force. Imagine reaching the end of the day without draining every drop of your energy and with a real

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56 I owe much in my understanding and teaching of Character Strengths to Ryan Niemic, Education Director for the VIA Institute on Character. This exercise of thinking of a day without a Signature Strength is one such debt.
sense of satisfaction and a desire to reset that evening and go again the next day. Consider what it would be like not to leave an essential part of yourself “in the car” when you arrived at work each day. What if your Humor and Playfulness or your Kindness were just as much a part of your work day as any other aspect of yourself?\footnote{Another person to whom I owe more for my understanding of Character Strengths, and many more topics in Positive Psychology is Dr. Karen Reivich. The concept of “leaving your strengths in the car” is one such insight.}

Note that it may well be possible to craft your job to engage more of your strengths. Perhaps, just opening up to the possibility that a lawyer can bring more than learning, judgment, and adversarial skills into their work will let you see new ways to contribute. Individuals who report regularly using two or more of their Signature Strengths at work are more satisfied with their careers and get more daily pleasure, engagement, and meaning from their work. Those who use three Signature Strengths report even more satisfaction, and those who report they use four even higher still.\footnote{Harzer, C., & Ruch, W. (2012). See also, Littman-Ovadia, H., Lavy, S., & Boiman-Meshita, M. (2017).}

- The more of your Signature Character Strengths you can use each day, the more likely you are to enjoy your work, become deeply engaged in it, and find meaning from it

**CHARACTER STRENGTHS AND PRACTICING LAW**

For any other profession or career, the preceding would be sufficient. However, the role of Character Strengths in the practice of law may be a bit more complicated and deserves a bit more thought. As we have seen, law is a very challenging environment. You may remember the research of Elizabeth Mertz mentioned on p. 8 – that law professors consistently teach in a way that tends to disconnect from their values. This is not out of meanness or depravity (despite what some might think!). Rather it is an almost unavoidable byproduct of instruction in a legal system that resolves disputes that involve values that are inherently in conflict, but where both the system and the teaching approach pre-date today’s research into the role and importance of values by more than 100 years.

**Values Conflicts and “Values in Action” Character Strengths**

Remember (pages 7-11 above) that “Values Conflicts” are one of the distinguishing facts of the legal system. Human values conflict – we want both security as a society and personal freedom, but each lead to different actions. Therefore, we are in conflict about things like government surveillance of citizens. Those who prioritize safety a bit more are willing to allow more surveillance. Those who prioritize personal freedom a bit more are willing to run more risks. Both societal and personal circumstances can tip the balance. Increased governmental surveillance and restricted immigration seemed more reasonable immediately after 9/11. Those who have more resources and protection from harm may be more willing to risk decreased surveillance or to allow broader immigration. (Obviously, politicians – a career that can attract lawyers – also live in the midst of values conflicts.)
Since the character strengths described above are called “Values in Action,” one might wonder if lawyers also start to disengage from their character strengths during law school. This possibility is highlighted by the work of Elizabeth Mertz studying teaching in law school (p. 7 above). She found that one of the outcomes of the style of teaching that is apparently ubiquitous among law professors is to “detach students from their values.” Could this also manifest in a disengagement from Character Strengths? It might. In unpublished research by the author, entering law students endorse the 24 VIA Character Strengths about the same as the American public. However, a look at the results of the taken by American lawyers shows a much different picture.59

American lawyers endorse only three strengths more than average: Judgment, Love of Learning, and Curiosity. Love of Learning in particular differs from average: 13 places higher and a .29 greater endorsement. It is easy to see how some of the top strengths for lawyers are useful in the practice of law, and how some might have been strengthened by law school and the practice of law. Love of Learning – the pull to gather new bodies of organized knowledge, the “I love school” reaction – can account for the willingness to add three more years of structured, classroom study on top of a college degree. Judgment – the instinct to see all sides of a situation and consider all arguments – is likely both innate and trained for lawyers. Judgment resides easily in a highly skeptical personality (pp. 13-17 above). Curiosity helps both in learning the details of any matter or client’s business, and in mastering new bodies of knowledge as required.

On the other hand, lawyers endorse some of the Character Strengths far less than average for Americans, and these deficiencies can make lawyering even tougher for lawyers. Let’s look at a few:

**Spirituality [Purpose]** is the strength where lawyers differ most from the average. (Again, average may not describe you. Take the VIA Survey and consider your personal listing.) Many entering law students have what some may see as a naïve or idealistic view of “justice.” Many report wanting to help others.60 Law school can tend to squeeze this out of students, and the practice of law often continues the process. Although some lawyers feel a strong sense of operating in a “system of justice,” many others find themselves questioning whether they are really just using power to force results that benefit some aspects of society. However, much of what we do as lawyers is predicated on and justified by belief in the ultimate rightness of the acts – that they fit within a grounded moral framework. Consider, for example “zealous advocacy,” the concept that lawyers are justified in representing their client’s interests without concern for the interests of the opposite side because that side will be represented by counsel also. When this framework

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59 Unpublished analysis by the author of 15 months of VIA results from approximately 18,000 visitors at [www.authentichappiness.com](http://www.authentichappiness.com).

gets called into question, perhaps by a realization that “the other side” often can afford enough high-quality lawyering to oppose us, the result can undermine our commitment, energy and engagement with practice. Losing faith in the ultimate justice of the world can be a damaging blow.  

**Citizenship (Teamwork)** is another glaring absence from many lawyers’ lives. Lawyer skepticism and rationality, combined with our training in adversarial skill, can make us much more inclined to pick apart the ideas and contributions of our colleagues than to find the positives and build on them. In 2006, *The American Lawyer* published an article by Dr. Maister entitled, “Are Law Firms Manageable?”

The article began:

> After spending 25 years saying that all professions are similar and can learn from each other, I’m now ready to make a concession: Law firms are different. The ways of thinking and behaving that help lawyers excel in their profession may be the very things that limit what they can achieve as firms. Management challenges occur not in spite of lawyers’ intelligence and training, but because of them. Among the ways that legal training and practice keep lawyers from effectively functioning in groups are

- problems with trust;
- difficulties with ideology, values, and principles;
- professional detachment; and
- unusual approaches to decision making.

If firms cannot overcome these inherent tendencies, they may not be able to deliver on the goals and strategies they say they pursue.

Lawyer personality traits such as skepticism and urgency can make them hard to lead (they doubt you and will not give you time to explain). Some of those traits also make it difficult to be a good leader of lawyers. Good leaders must establish a relationship of trust, which not only includes being trusted, but also giving trust, something that skepticism again makes difficult. In addition, the saying “They don’t care how much you know until they know how much you care,” gets to the heart of another challenge for lawyer leadership. It is hard for lawyers, either as leaders or followers to establish caring relationships. (This can also be a problem of creating a sense of being on the same team with clients!)

Finally, **Hope [Optimism]** is low for lawyers. We will deal with this more later, but this deficit is crucial. It means that lawyers see the causes of bad events of their life as long lasting, affecting many areas of life, and often due to inherent flaws in their natures. (The technical term is that many lawyers have a “negative explanatory style” and generate

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causal explanations for adversities that are permanent, pervasive, and personal.\textsuperscript{63}) This has ramifications not only for dealing with adversities in the course of legal matters, but also for client relations, firm management, and, perhaps most importantly, for the most important, closest personal relationships in a lawyer’s life. We will consider how lawyers can fight these patterns of thinking and become more hopeful and resilient in the section below on Transformational Thinking for Lawyers.

**Shadow Sides**

Not every action that stems from a strength is good for the individual or the people around them. Sometimes, our strengths work against us. Each of the 24 VIA Character Strengths can have a “shadow side.” When we overuse a strength, use it at the wrong time or wrong place, or use it for what others would see as an unacceptable purpose, the “shadow side” of that strength is coming through. “Humor and playfulness” is a great example. It can be overused and become disruptive. There are times and places it just doesn’t work (in the TSA check lane, before a judge). And, it can be used for an unacceptable purpose, such as humiliating another person. Other examples include creativity (constantly re-inventing the wheel) and social intelligence (can be used to manipulate others against their best interests). Learning to use your Signature Strengths in new ways, and in synergy with each other consciously, can help you avoid using them in the Shadow Side.

**Your Strengths Are Not Static; You Can Grow.**

Just because set of strengths are at the top of your list today doesn’t mean you stop growing. In the first place, there is likely a huge amount of upside for you in the skilled and appropriate application of your Signature Strengths. You can learn to apply them to challenges where you have not considered them before. You can become particularly skillful in their application. And you can learn to use more of your strengths in synergy with each other. Although we often focus on “fixing our weaknesses” as the pathway to improved outcomes in life, much of the research in strengths suggests that the “upside” of your strengths may be far greater than you imagine. Often those with a high base-level talent can increase their performance using that talent far more than those for whom it is less natural. Imagine, for example, a wide receiver on a football team who, instead of working on increasing and capitalizing on his speed and catching ability, chooses to focus on lifting more weights than the linemen on the team. Not likely to get him the best results!

Beyond your Signature Strengths, however, you may find a strength or two down toward the bottom of our lists that you want to be more prominent in your life. You value the strength; but you may not be living it often or well. The secret to growth is practice. As you bring a Character Strength into your life in a conscious way – which may require some serious effort! – you begin to make that strength more natural and authentic so that we exercise it more often and more skillfully. You can make a Character Strength that is not easy, energizing and essential into a more regular part of your daily life by conscious practice.

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Frequency of Co-Occurrence

Another interesting way to think about one’s Character Strengths and especially their synergies is to look at them in relation to how often the strengths co-occur. The circumplex below shows the strengths sorted by how likely they are to co-occur. Character Strengths that are closer are more likely to both be high in a given individual’s list of strengths. Two strengths that are distant on the circumplex are unlikely to appear high in an individual’s list, but it can happen. (The dimensions – heart to head and self to others reflect the judgment of the late Dr. Chris Peterson who led the development of the VIA.) What are the synergies in your Signature Strengths?
Research-based Positive Emotional Practice #3: Using a Strength in a New Way

You can use a Signature Character Strength in a new way in a wholly new activity – something you have not done before. It can be a one-time event (visiting a museum) or something you could repeat (completing five secret acts of kindness in one day).

However, you can also focus on a routine or recurring event – something that you do daily or weekly, even something you dislike. For example:

- **Curiosity** lends itself well to mindfulness approaches such as noticing all the sensations, thought, and emotions you experience during an activity you dislike such as washing the dog (exactly where is that pain in your back, and how big is it; does it grow and subside, or stay steady; notice the smell of wet dog and the feel of suds on your hands, etc.)

- **Creativity** can be used to find a way to do something different during a common task in a way that no one else will notice.

- **Social Intelligence** might be used to make a task you dislike into the highlight of someone else’s day.

- **Humor and Playfulness** can turn drudgery into a game.

Research-based Positive Emotional Practice #4: Active Constructive Responding

Based on the work of Shelly Gable, Harry Reis, and others, it turns out that a critical question in relationships is, “Will you be there for me when things go right?” Think about it – do you really want to keep spending time with someone who only focuses on you when you’ve screwed up or things are going badly for you, but doesn’t show much interest when something good happens for you? Active constructive responding predicts relationship growth.

**Will you be there when things go wrong?**

It turns out that the **perception**, the “feeling” (emotion-laden belief) that someone close to you will be there when things go wrong is positive, but the reality of actually having them be there for you is much more complex. The feeling that someone will be there for you (“perceived support”) is uniformly related to good outcomes such as lower risk of depression in stressful times, better adjustment to disease, and reduced heart-rate and blood pressure when facing a stressful task. Moreover, it turns out that how someone responds to our good news has more impact on our feeling that the person will be there for us when times are tough than actual experiences of receiving support! In the context of learning (which, as a new lawyer, you will be learning all the time!), just bringing to mind a close, responsive relationship helps the learner engage better with challenges and minimizes self-handicapping.

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64 Gable, Shelly L., Courtney L. Gosnell, Natalya C. Maisel, and Amy Strachman (2012).

65 Id.

The Benefits of Being There When Things Go Right

The research by Dr. Gable and others establishes that it matters whether and how we are “there for” another person when things go right – and especially when they choose to share good news with us. Responding to that good news actively (engaged, with energy, attuned to the other person) and constructively (building up the good news, helping them re-live the event) predicts that the relationship will:

- grow closer
- experience fewer conflicts
- be judged as more satisfactory by both parties.67

What relationships in your life would you like to describe with those three things?

THE FOUR STYLES OF RESPONDING

ACR means paying attention and showing engagement and responsiveness in an authentic way when someone shares good news, then responding in ways that help them “re-live” the event. Helping them “re-live” is not the same as congratulating or praising them; it is more on the order of “tell me more about that.” This type of responding predicts greater closeness in the relationship over time, fewer conflicts, and greater satisfaction with the relationship.68

Responses to good news can be categorized along two dimensions: active-passive and constructive-destructive:

**Passive Constructive:** You offer distracted, understated support. This often kills the conversation. This can come from distraction, a lack of interest in the news being shared, or even a lack of interest in the person sharing. Alternatively, a version of this can arise from real interest in the person, for example when a parent turns immediately from the good news to what the sharer might try to accomplish next. Regardless of the cause, this style leaves the sharer of good news feeling misunderstood, not good enough, or unimportant.

**Passive Destructive:** You one-up the person, ignore their good news, or take over the conversation and make it about you. Many people inadvertently use this response style when they have good news that is in common with the sharer.

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68 *Id.*
**Active Destructive:** You take a negative focus when the person shares good news and start identifying problems or risks in the good news. This style leaves the sharer feeling angry and even embarrassed. If you are truly concerned about someone’s good news, take a few minutes to actively constructively respond to it, then pick a separate time and place to have a follow up conversation.

**Active Constructive:** This is the only response style to good news that builds relationships. You help the person re-live the good news by showing authentic interest and asking questions. This style actually benefits both the sharer and the responder because it generates positive emotions (and you now know the importance of positive emotions in influencing your resilience). As a result, both people walk away from the conversation feeling better.

**“Waller” In It!**

I grew up on a farm. For a time, we raised pigs. Pigs like to wallow – “waller” if you’re from West Tennessee! I always think of ACR as helping the other person “waller” in their good news. You can do this best by asking questions about the event. Almost always when someone shares good news, they start at the 40,000 foot level: “My kid hit a home run yesterday!” But, if given the opportunity, they are happy to get to down to tree-tops and give you the details. What was the situation? What else happened? How did you feel? How did others feel? What’s next? Questions like these, plus some attentive listening, can let the other person “waller” for a bit.

Active constructive responding takes just a minute or two, but the relationship payoff is huge. As noted, the research suggests it leads to greater warmth and closeness and willingness to share, fewer conflicts, and more satisfaction with the relationship for both parties. If you support other people when they share good news with you, they will feel safer coming to you with bad news because you’ve built an additional level of trust in your “emotional bank account.” As a leader, spouse, friend or parent, how important is that? And I can tell you from experience, once you’re off their list as a person to approach with good news, you’ll be off their list as a person they can trust with bad news.

Here is an example of each style. The good news is: “I’m about to run my first half marathon.”

<table>
<thead>
<tr>
<th>Active Constructive</th>
<th>Active Destructive</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Wow, that’s impressive! Tell me about your training regimen. How do you plan to celebrate when you’re done? I’d love to see some pictures of the event!”</td>
<td>“Didn’t you injure your knee running last year? Are you sure you’ve trained well enough? And don’t you have to spend a lot of time training? Are you going to be able to see all of your daughter’s soccer games?”</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Passive Constructive</th>
<th>Passive Destructive</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Hmmm, that’s great.”</td>
<td>“Cool. That takes me back to a time when I ran my first 10K. Man, it was a grueling race. I’ll show you pictures of my medals sometime!”</td>
</tr>
</tbody>
</table>
ACR Challenges

Here are some things that can seem like challenges to helping others “waller,” but often are not truly that much of a difficulty.

- **Not interested in the news**: Sometimes, the news itself may not be interesting. Imagine a father who is a big outdoorsman but has a young daughter into dance who is excitedly telling him about her new dance outfit. He may not be interested in dance or the outfit, but he is interested in his daughter. How does she feel about it? What was the best part of shopping with Mom? Who is her best friend in dance class? What is she working on? All this and more can come from a few questions helping her “waller” in the joy of her new outfit.

- **Here there be dragons!** What if you perceive a risk in the good news that the other person may not be seeing. For example, imagine an adult child with a challenging job, a spouse who also has a challenging job, and a young child comes to share the good news that he or she has gotten into a graduate program to earn a degree that will boost their career? They come to you to share the good news. What should you do? Well, unless there is a serious risk of immediate harm, help them waller! ACR that good news! There will be time for another conversation about balance and other priorities later.

- **No time.** Really? Would you have had time for bad news? Plus, ACRing often takes only a minute or two. There is time to waller!

**Beware Praise**

One common way to attempt ACRing that may not be as successful as it first appears is to praise the other person. “That was so great!” But, praise really does not help them re-live the event. It does not help them waller in the event. Rather, it focuses them on your judgment of the event. Now, they may like the praise, but it is an extrinsic reward, not the intrinsic joy they came to you with. And, extrinsic rewards crowd out intrinsic motivations. Take off the robe. Quit judging. Waller with them in their joy!

**Oh, Wow! I could’ve ACRed!**

Perhaps the biggest challenge of ACR is just to recognize opportunities and move to that mode. Think about opportunities you have to respond to good news from those close to you or with whom you want closer relationships.
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I. THE KENTUCKY BAR ASSOCIATION

A. Kentucky Bar Association

The mission and purpose of the Association (SCR 3.025) is to maintain a proper discipline of the members of the bar in accordance with these Rules and with the principles of the legal profession as a public calling, to initiate and supervise, with the approval of the Court, appropriate means to insure a continuing high standard of professional competence on the part of the members of the Bar, and to bear a substantial and continuing responsibility for promoting the efficiency and improvement of the judicial system.

B. Board of Governors

SCR 3.070 provides that the Board of Governors is the governing body of the Association and the agent of the Court for the purpose of administering and enforcing the Rules of the Court governing the practice of law. Membership of the Board consists of attorneys including the KBA president, president-elect, vice president, immediate past president, the Young Lawyers Division chair and two attorneys elected from the membership of the Association in each Supreme Court District. In addition, there are four lay members that serve on the Board of Governors for consideration of disciplinary cases.

The president is the chief executive officer of the KBA and serves a one-year term beginning on July 1. The president-elect automatically becomes president at the end of the current president's term.

The president-elect and vice president are chosen by a vote of the bar membership should there be more than one candidate for the respective positions. Any member of the Bar can petition to run for statewide office. Nominating petitions for president-elect and vice president must be filed prior to November 15 of each year. Election ballots are sent to the membership only if there is more than one nominee for either or both of the positions.

A Bar governor elected from a Supreme Court District serves a two-year term and is eligible to be elected for three successive two-year terms without a break in service. The Bar governor terms are staggered in order that one of the two governors from each District will be up for election each year. A candidate for Bar governor must be a member of the Bar in good standing and reside in the Supreme Court (Appellate) District in which she or he seeks election. Petitions to run for Bar governor from an appellate district must be filed in the office of the KBA Director during the month of October. If only one person files for a position, she/he is declared elected after the filing deadline. Ballots are mailed to members in the Supreme Court District where more than one attorney has filed for Bar governor. Vacancies in a Bar governor position are filled for the remainder of the term.
by appointment by the president subject to a written confirmation of a majority of the Board of Governors.

The Board meets at least six times a year in sessions that generally are a day and a half in length. During the discipline session of each meeting, seventeen members of the Board participate in deliberations on charges of professional misconduct brought against members of the Bar and make recommendations to the Supreme Court on guilt and punishment or innocence of charged members. In addition to the seventeen Board members who hear discipline cases, four non-lawyers appointed by the Chief Justice also participate as Board members for disciplinary matters only. During meetings the Board may also hear task force, committee and section reports, make Bar policy decisions, issue formal ethics opinions and unauthorized practice of law opinions, consider appeals from CLE Commission rulings, consider budget matters and review other matters involving Bar operations.

Each year the Board has the responsibility of recommending an annual operating budget to the Court. The proposed budget must be submitted to the Court at least four months prior to the start of the fiscal year. As a mandatory Bar, the major source of funds for Bar operations are dues from members. The Court sets the dues structure based upon recommendations from the Board. The current annual dues structure is as follows:

- Member five years and over: $310
- Member under five years: $220
- Member of the judiciary: $150
- Senior Retired/Inactive (Age 70 – Non-practice): $0
- Honorary Member (Age 75 or 50 years in practice): $0

C. **SCR 3.130** – Kentucky Rules of Professional Conduct

II. **GOVERNANCE OF THE LEGAL PROFESSION IN KENTUCKY**

A. **Section 116** of the **Kentucky Constitution**

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

B. **Ex Parte Auditor of Public Accounts, 609 S.W.2d 682 (Ky. 1980)**

The Auditor of Public Accounts made direct application to the Supreme Court to determine whether he was legally entitled or required to audit the books and accounts of the state bar association. The Supreme Court held that where funds of the state bar association and the Board of Bar Examiners were not collected pursuant to any statute and were not appropriated by the legislative body, and where both the association and the Board of Bar Examiners existed solely by virtue of rules of the Supreme
Court, expressly and exclusively authorized by State Constitution, and were accountable to that court only, there was no constitutional authority by which they could be made accountable to either one of the other two branches of government. Held KRS 21A.130, 21A.140, 21A.150 and 21A.160 void because they purport to erect powers and limitations that no longer fall within the legislative province. This is the definitive case on the relationship of the Kentucky Bar Association as an "arm and agency" of the Supreme Court of Kentucky.

III. KENTUCKY BAR ASSOCIATION SERVICES

A. Casemaker

The KBA website is also a conduit to Casemaker, one of the fastest growing online legal research services available today. This outstanding research tool is offered to all KBA members through the website free of charge. Casemaker includes both state and federal research libraries. Casemaker also includes features such as the ability to save search history, make notes, and create file folders.

1. The federal search library contains:

   - United States Supreme, Circuit, District and Bankruptcy Court Opinions
   - Federal Court Rules
   - United States Code
   - Code of Federal Regulations
   - USC Bankruptcy Reform Act
   - U.S. Constitution
   - Internal Revenue Service Rulings
   - Internal Revenue Bulletins
   - Court of Appeals – Armed Forces as well as Veteran Claims
   - Court of Claims as well as International Trade
   - Federal Communications Commission as well as the Energy Regulatory Commission
   - Federal Labor Relations Authority
   - Federal Register
   - Federal Rules Decisions
   - Federal Sentencing Guidelines
   - Longshore and Harbor Workers' Compensation
   - National Labor Relations Board
   - NTSB Decisions
   - Board of Immigration Appeals
   - Black Lung Cases
   - Department of Energy
   - Patent Decisions
   - Public Laws
   - Tax Court
   - Trademark Decisions
2. The Kentucky search library contains:

- Administrative Regulations
- Attorney General Opinions
- Case Law
- Constitution
- Court Rules
- Federal Court Rules
- Session Laws
- Statutes
- Workers’ Compensation Decisions
- Open Meetings Decisions
- Open Records Decisions

3. All state search libraries are now available and contain:

- State Case Law
- State Constitution
- State Statutes
- Administrative Code
- Legislative Acts
- State Register (if such exists)
- Court Rules

Depending on the individual state's agreement with Casemaker, many state libraries include: local federal rules, reports, links to court forms, jury instructions, "unreported" opinions, bankruptcy decisions, ethics opinions, workers' compensation opinions, environmental decisions, Attorney General Opinions, court rules, and other legal information as specified by the individual bar's requests.


CasemakerPro is included for bar members and features many advanced, high-definition search tools, including CaseCheck+, a citation tool for use in the future treatment of a case, a vast federal library, access to all state libraries (including the District of Columbia), multistate search, and State and Administrative Codes, all in an aggregated search as well as CasemakerDigest which provides regular summaries of appellate cases. CasemakerPro also includes CiteCheck which allows you to upload your brief, pleading or document, and receive a report stating whether your case citations continue to be good law. In addition, Casemaker unveiled CasemakerLibra, which links your searches to appropriate state and ABA publications.
5. Training.

For those just getting started or interested in the latest updates, Casemaker offers both recorded and live webinar training as well as recorded videos for your convenience.

All of this is available to KBA members at no cost.


B. Member Services

Visit the [KBA's member services webpage](http://www.kybar.org/?memberservices) for special savings and benefits from a growing list of products and services! The volunteers of the Member Services Committee – working in cooperation with the KBA Board of Governors – have worked diligently to provide additional offerings to KBA members including:

- GEICO Auto Insurance.
- Website development and design services from Amicus Creative and ESQSites.
- Credit card processing through LawPay.
- Online payroll and accounting services through SurePayroll.
- An association discount for Guardian Life Insurance Company's non-cancellable disability coverage (administered by National Insurance Agency, Inc.).
- A Leeward Group personal umbrella policy for a wide range of personal liability exposures (administered by National Insurance Agency, Inc.).
- Term life insurance coverage offered through National Insurance Agency.

Visit [http://www.kybar.org/?memberservices](http://www.kybar.org/?memberservices) today and learn more about these and other services offered by Lawyers Mutual Insurance Company of Kentucky (LMICK); United Parcel Service (UPS); AVIS and Budget car rentals; the Kentucky Legal Directory; National Insurance Agency, Inc.; and the use of meeting rooms at the Kentucky Bar Center.

Check back regularly for updated services by selecting the Member Services link under the Members tab of the KBA homepage. For more information, contact the Membership Department by email at member-services@kybar.org.
C. Help with Ethical Dilemmas

Facing a tricky situation in a case? Not sure what to do, and worried you'll be penalized if you choose the wrong course of action? The KBA Ethics Committee is here to help you.

1. Ethics Hotline and Informal Advisory Ethics Opinions (SCR 3.530).

Any member of the KBA who is in doubt about the propriety of a professional act may request an informal advisory opinion from a member of the Ethics Hotline Committee assigned to the requestor's Supreme Court District. A list of Ethics Hotline Committee members is included in the Reference Section of these materials.

The request should be in writing and clearly, fairly, accurately, and completely state the facts and circumstances relating to the matter. In an extreme emergency, the request may be by telephone, followed by a written request. No attorney shall be disciplined for any professional act performed in compliance with the written advisory opinion rendered by the Ethics Hotline Committee member.

An attorney who is in doubt about any act or course of conduct by any person or entity which may constitute the unauthorized practice of law as defined by SCR 3.020 may request a formal or informal advisory opinion from the Ethics Hotline Committee of the KBA, or the Unauthorized Practice of Law Committee.

2. Formal Ethics Opinions.

The KBA Ethics Committee may occasionally consider requests for formal ethics opinions on subjects of interest and importance to the bar. The chair of the Ethics Committee shall cause the issuance of a formal advisory ethics opinion, which is reviewed by the Board of Governors of the KBA.

If adopted by the Board of Governors, a formal advisory ethics opinion will be published in the Kentucky Bench & Bar next issued after adoption.

Any person or entity aggrieved or affected by a formal advisory ethics opinion may request review of the opinion by the Kentucky Supreme Court by filing a motion for review with the Clerk of the Supreme Court, with notice to the KBA Executive Director, within thirty days after publication of the opinion, or a synopsis of it, in the Bench & Bar, and payment of the filing fee required by CR 76.42(1).
D. Kentucky Law Update

The **Kentucky Law Update program** was established by the Kentucky Supreme Court over thirty years ago as a service to KBA members. This two-day program series is offered at no charge to attendees who are members of the KBA in good standing. The Kentucky Law Update is presented each fall in the following locations representing each of the seven Supreme Court districts: Lexington, London, Russell/Ashland, Prestonsburg/Pikeville, Owensboro, Bowling Green, Paducah/Gilbertsville, Covington, and Louisville. The program is designed to educate and inform the lawyers of Kentucky about changes in the law and rules of practice which impact the daily practice of law, regardless of level of experience. Pre-registration is recommended and preferred but not required. Full program brochures and registration materials are sent via mail and email to KBA members each summer and is available on the website.

E. Information about Legal Services

Members of the Bar who advertise their legal services should be aware of the broad scope of **SCR 3.130(7.01 – 7.60)** and its expansive definition of advertising. Subject to certain listed exceptions, **SCR 3.130(7.01)** defines “advertise” or “advertisement” as furnishing any information or communication containing a lawyer’s name or other identifying information.

A nine-member Attorney’s Advertising Commission is empowered to regulate attorney advertising. Commission members are appointed by the KBA president and approved by the Board of Governors for three-year terms.

The Rules were recently amended, and attorneys are no longer required to submit all advertisements before distribution. However, under **SCR 3.130(7.01)**, attorneys may request the Attorney’s Advertising Commission to issue an advisory opinion as to whether the advertisement complies with the Advertising Rules and Regulations. Information about attorney advertising can be found under the Discipline section at the KBA homepage [www.kybar.org](http://www.kybar.org).

Direct contact with potential clients either in person or by live telephone is still strictly prohibited in Kentucky under **SCR 3.130(4.5)**, formerly SCR 3.130(7.09).

**REMINDER** – The lawyer advertising rules are part of the **Rules of Professional Conduct**, and attorneys must ensure advertisements for their legal services comply with the Rules. As such, an attorney may be disciplined for violation of the advertising rules in the same manner as violation of the other Rules of Professional Conduct. Additionally, advertising correspondence and inquiries from the KBA will be directed to the lawyer or law firm employee and not an advertising agency.
F. Alternative Dispute Resolution

Supreme Court Rules administered by the KBA offer several options and plans to assist and encourage members to resolve disputes between attorneys and between attorneys and their clients. There is no fee required to initiate any of these alternative dispute resolution procedures. Each of the following dispute resolution procedures is voluntary; the Association strongly encourages, but cannot compel, the use of the methods in lieu of judicial action or the disciplinary process.

The public perception of the entire profession will undoubtedly be enhanced if lawyers participate freely and frequently in alternative dispute resolution programs. You should consider mediation or arbitration before judicial action in the following circumstances:

1. **Legal fee arbitration.**
   
a. **SCR 3.810** provides that members in good standing with the KBA may submit to binding arbitration any dispute, disagreement or controversy between the attorney and a client which concerns the amount of fee due to the attorney for particular legal services rendered.

   b. Disputes between attorneys (or law firms) concerning the amount due each for particular legal services rendered may also be submitted to binding arbitration pursuant to **SCR 3.810**.

   c. The parties to a fee arbitration procedure must certify in writing that a good faith effort has been made by them to resolve the dispute prior to submitting it to arbitration.

   d. Where the dispute is already the subject of a pending law suit, the parties must follow the procedures set out in **KRS 417.060**.

   e. A petition for fee arbitration is reviewed by the KBA Executive Director who shall determine initially whether it presents a dispute under the Rules. If the Executive Director accepts jurisdiction, the matter proceeds. If jurisdiction is denied, the decision of the Executive Director is final and the parties will be advised.

   f. The procedure for arbitration is determined by the amount in controversy between the parties. The "amount in controversy" means the difference between the sum of money an attorney proposes to charge for legal services and the sum the client offers, or is willing to pay, for the services. The minimum amount in controversy must exceed $2,500.00.
i. Where the amount in controversy is $10,000 or less, a sole arbitrator, who shall be a practicing attorney, is appointed by the KBA Executive Director to hear and decide the dispute.

ii. Where the amount in controversy exceeds $10,000, a panel of three arbitrators shall be appointed. Two of the panel members shall be practicing attorneys appointed by the KBA Executive Director. The third panel member shall be a lay person appointed by the Chief Judge or presiding judge of the Circuit Court of the county where the attorney/party maintains a principal law office.

g. The Office of Bar Counsel serves as the record keeper and administrator for fee arbitration proceedings.

h. Any award rendered shall be enforced pursuant to the provisions of KRS 417.180. With the exception of the award itself, records of the proceedings are not open to the public.

2. Legal negligence arbitration.

a. SCR 3.800 provides a procedure to arbitrate claims of legal negligence which do not exceed $50,000. Arbitration is voluntary; the attorney must agree to submit the claim to binding arbitration. If the dispute is already the subject of a pending suit, arbitration is not appropriate unless the parties follow the procedures of KRS 417.060. The parties must certify in writing their good faith prior attempts to settle the dispute.

b. The parties (or one of them) may petition for legal negligence arbitration by filing a petition to be reviewed by the KBA Executive Director. If the Executive Director accepts jurisdiction, and the attorney agrees to arbitrate, the matter proceeds. If jurisdiction is denied, the decision of the Executive Director is final.

c. The procedure for arbitration is determined by the amount in controversy. “Amount in controversy” means the amount of direct loss claimed as a result of the claimed negligence of an attorney. The minimum amount in controversy must exceed $2,500.00.

i. Where the amount of the claim is $10,000 or less, a sole arbitrator, who shall be a practicing attorney, will be appointed to hear the dispute.
ii. Where the amount of the claim exceeds $10,000, a panel of three practicing attorneys shall be appointed to hear the claim.

d. The Office of Bar Counsel serves as the record-keeper and administrator in legal negligence arbitration proceedings.

e. The solo arbitrator or panel shall convene and conduct a hearing and hear sworn testimony concerning the claim. Any award rendered can be enforced under the provisions of KRS 417.180. With the exception of the award itself, records of the proceedings are not open to the public.


a. Per SCR 3.820, the Kentucky Supreme Court has established a Clients' Security Fund for the purpose of providing indemnification to clients who have suffered monetary loss because of the dishonest or fraudulent acts of a member of the KBA.

b. The purpose of the fund is "to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of lawyers admitted and licensed to practice law in the courts of this State occurring in the course or arising out of a lawyer-client relationship between the lawyer and the claimant." The Court has opined that "[e]very lawyer has an obligation to the public to participate in the collective effort of the bar to reimburse persons who have lost money or property as a result of the dishonest conduct of another lawyer." Dishonesty and fraud denote wrongful conduct in the nature of theft, embezzlement and conversion of money, property or other things of value.

c. The fund, established in 1971, has been funded by allocation of a portion of the dues payments of KBA members. The proceeds are invested in interest bearing instruments, and are a trust administered by a Board of Trustees, under the supervision of the Kentucky Supreme Court.

i. The Court may assess fees or allocate such funds as are from time to time necessary and proper for the payment of claims and the costs of administration of the Fund.

ii. A lawyer's failure to pay any fee assessed for the Clients' Security Fund shall be cause for suspension from practice until payment is made.
iii. A lawyer whose dishonest conduct results in reimbursement to a claimant shall make restitution to the Fund in the amount of the claim plus interest and costs incurred in processing the claim. A lawyer's failure to make satisfactory arrangements for restitution shall be cause for suspension, disbarment or denial of any application for reinstatement to the practice of law.

d. Clients' Security Fund Trustees are appointed for three-year terms by the KBA Board of Governors. The Board of Trustees consists of five members; three are lawyers and two are non-lawyers. The trustees serve without compensation, elect a chair and meet as often as necessary to consider claims and conduct the business of the fund.

e. Information concerning the Clients' Security Fund and claim forms may be obtained from the Office of Bar Counsel, which provides administrative support to the trustees and investigates claims.

f. Eligible claims are described in SCR 3.820(10), and must be filed no later than two years after the claimant knew or should have known of the dishonesty or fraud by the lawyer.

g. The KBA Board of Governors, with approval of the Supreme Court, may institute caps on claims. The current limits are $50,000 per claim and $150,000 aggregate payment per lawyer.

h. The Trustees may have access to records of pending or closed disciplinary proceedings involving the same attorney, or conduct. However, a finding by the trustees that dishonest conduct has occurred which justifies reimbursement does not constitute a finding of dishonesty for purposes of imposing professional discipline.

i. Payment of a claim, in whole or in part, is a "matter of grace," as no person shall have the legal right to reimbursement from the fund as a claimant, third party beneficiary or otherwise. Claimants may be required to exhaust other remedies prior to reimbursement by the Fund.

j. The Trustees will not entertain a claim of consequential damages arising from the wrongful act of an attorney; reimbursement is limited to actual pecuniary losses.

k. Clients' Security Fund proceedings and records are confidential until reimbursement is made. After payment of a claim, however, the trustees may publicize the nature of the claim, the amount of payment and the name of the
lawyer. The identity of claimants is not disclosed absent specific permission. Law enforcement agencies, disciplinary authorities and other entities may be granted access to relevant information gathered in the proceedings.

G. Unauthorized Practice

Under SCR 3.530(6), an attorney who is in doubt about any act or course of conduct by any person or entity which may constitute the unauthorized practice of law may request an advisory opinion from the Unauthorized Practice Committee.

1. Formal unauthorized practice opinions may be issued by the Unauthorized Practice Committee and adopted by the Board of Governors and published in the same manner as formal ethics opinions.

2. Any person or entity aggrieved or affected by a formal advisory opinion may request the Kentucky Supreme Court to review the opinion by filing a motion for review with the Clerk of the Supreme Court, with notice to the KBA Executive Director, within 30-days after publication of the opinion, or a synopsis of it, in the Bench & Bar.

3. The KBA Executive Director is authorized by SCR 3.460 to initiate an investigation into any report of unauthorized practice of law. Any person who engages in the practice of law without a license to do so may be subject to a finding of contempt by the Supreme Court.

4. The unauthorized practice of law is also a misdemeanor criminal offense in violation of KRS 524.130 and can be the subject of a criminal complaint issued by the county attorney of the county where it occurs.

H. Continuing Legal Education SCR 3.600 to SCR 3.695

The Supreme Court Order establishing mandatory Continuing Legal Education requirements in Kentucky was issued on June 28, 1984. This Order established the CLE Commission as Kentucky's regulatory agency as well as a provider of high quality CLE programming for Kentucky Bar Association members. The CLE Commission continues to strive for advancement and improvement in CLE programming, while encouraging and promoting the offering of high quality CLE in Kentucky.

The CLE Commission consists of seven attorneys, one appointed by the Supreme Court from each appellate district of the state. CLE Commission terms are three years in length and Commission members may serve two consecutive terms. The Commission is responsible, under the direction of the Kentucky Supreme Court and the KBA Board of Governors, for the administration and regulation of the CLE program for members of the KBA.
IV. COURTNET 2.0

The Administrative Office of the Courts provides Kentucky attorneys with a service called CourtNet 2.0, which offers real-time, online access to Kentucky civil and criminal cases.

In addition to being intuitive and easy to use, CourtNet 2.0 offers:

- Consolidated, detailed case information.
- Active and closed cases.
- Citation images.
- Search results grouping for quick reference.
- Case cart.
- Ability to re-execute last ten searches.

For information on how to subscribe to CourtNet 2.0, visit https://kcoj.kycourts.net/CourtNet/.

V. MEMBER ACTIVITIES AND OPPORTUNITIES

A. Boards & Commissions

1. Board of Governors.

   Two Bar Governors are elected from each of the seven Supreme Court Districts. A bar governor term is two-years and service of three consecutive two-year terms is permitted.

2. Judicial Nominating Commissions.

   Pursuant to Section 118 of the Kentucky Constitution, two members of the bar serve on each judicial nominating commission. Bar representatives on the judicial nominating commission are elected for four-year terms by members of the Bar in their respective judicial circuits. There are also two bar members on the statewide judicial nominating commission that are elected by a mail ballot of all members of the bar.

3. Bar Center Board of Trustees.

   Membership of the Bar Center Board of Trustees includes six trustees appointed for terms of three-years each. The Supreme
Court of Kentucky appoints three of the trustees and the KBA Board of Governors appoints three trustees.

4. IOLTA Board of Trustees.

Membership of the IOLTA Board of Trustees includes one trustee from each of the seven Supreme Court Districts. IOLTA trustees from the Supreme Court Districts are appointed for three-year terms. The KBA Board of Governors makes the appointment subject to the approval of the Supreme Court.

5. CLE Commission.

The CLE Commission consists of seven members, one from each Supreme Court District. The members are appointed for terms of three-years and may serve two successive three-year terms. The Supreme Court appoints one of the members of the commission to act as chair. Appointments to the commission are made from a list of three nominees for each vacancy that is submitted by the Board of the Governors to the Supreme Court.


The Inquiry Commission, consisting of nine members, is appointed by the Chief Justice of the Supreme Court. Six of the nine members of the Inquiry Commission must be lawyers. The role of the Inquiry Commission is to consider all lawyer discipline matters referred to it pursuant to the Supreme Court Rules.


There are five trustees of the Clients' Security Fund. Three of the trustees must be members of the bar and two of the trustees are non-lawyers. Trustees are appointed by the Board of Governors for three-year terms, and the Board may limit the number of successive terms that a trustee may serve.

8. Section and Division Officers.

Section and Division Officers are elected by section and Young Lawyers Division members attending their annual meetings. The KBA By-laws provide that each section and YLD shall have at least a chair, chair-elect and vice-chair.


The nine members of the Attorneys' Advertising Commission are appointed for terms of three-years each by the Board of Governors. Members may serve two successive terms.
10. Committee Chairs.

Committee chairs are appointed by the President of the Kentucky Bar Association. Membership on committees is also by appointment of the KBA President.

11. Trial Commissioners.

Trial commissioners in discipline cases are selected from a trial commission appointed by the Chief Justice subject to the approval of the Supreme Court. Members of the trial commission must possess the qualifications of a circuit judge, including a minimum of eight years of the practice of law.

B. Committees

Committee appointments are made annually by the President of the KBA. If you are interested in a committee appointment, call John D. Meyers, the Executive Director, at (502) 564-3795 or email at jmeyers@kybar.org.

1. Annual Convention (General & CLE Program).

The role of the Annual Convention Committee is to assist the KBA staff in planning all of the events for the KBA Annual Convention. A CLE program committee is appointed to assist the KBA CLE Director in planning and implementing the continuing legal education programs to be presented during the Convention.


The role of the Committee on Child Protection and Domestic Violence is to review the various legal aspects surrounding juvenile issues. Work of the committee has included publication of a handbook on children's rights.

3. Communications/Public Relations.

The role of the Communications/Public Relations Committee is to oversee the publication of the Bench & Bar. The committee accepts and reviews legal articles to be published in the Bench & Bar. In addition, the committee advises on issues regarding KBA public relations. The chair of the committee also serves as editor of the Bench & Bar magazine.

4. Diversity in the Profession.

The role of the Diversity in the Profession Committee is to identify the roadblocks in attaining diversity and equity in the legal profession and the Kentucky Bar Association as well as produce a more diversified legal community in Kentucky. The Committee
sponsored a Diversity and Inclusion Summit in both April 2015 and 2017, and again in March 2019.

5. Ethics.

The Ethics Committee reviews advisory opinion requests from Bar members on ethical questions based on contemplated attorney conduct. Committee members assist in drafting opinions to be presented to the Board of Governors under the provisions of SCR 3.530. The Board may authorize formal or informal opinions.


The Ethics Hotline Committee consists of at least one member from each Supreme Court District. The role of the committee members is to render advisory ethics opinions of an emergency nature. By Rule, opinions may be provided only to an attorney based on the contemplated conduct of the requesting attorney.

7. Investment.

The Investment Committee reviews the performance of the investment management company retained to invest KBA surplus funds. The committee may also make recommendations to the Board of Governors on matters involving the surplus fund investment policy.

8. Legislative.

The role of the Legislative Committee is to review legislation that may affect the legal profession. The KBA has a Legislative Policy & Procedure that is followed if a determination is made that a particular piece of legislation will be recommended by the Board of Governors or a section of the Bar. As an integrated bar, the KBA is very restrictive on legislative issues that may be considered for bar endorsement.

9. Member Services.

The role of the Member Services Committee is to review proposals for endorsement of products and services that may be of assistance to members in their practices. The committee makes recommendations to the Board of Governors on whether particular products or services should be endorsed by the KBA.

10. Military Law.

The Military Law Committee provides education for lawyers and judges on programs available for Kentucky veterans.

The Rules Committee is a committee whose members are members of the Board of Governors. This committee reviews proposals for amendments to the Civil Rules, Criminal Rules and Supreme Court Rules. Committee members are also involved with the drafting of proposed rule amendments.

12. Unauthorized Practice of Law.

The role of the Unauthorized Practice of Law Committee is to render advisory opinions on questions of whether a particular activity may constitute the unauthorized practice of law by a non-lawyer. Formal unauthorized practice of law opinions may be issued by the Board of Governors upon recommendation of the Unauthorized Practice of Law Committee.

C. Sections and Divisions

KBA members may join a section or sections of their choice by paying voluntary annual dues ranging from $10 - $25 per section.

- Alternative Dispute Resolution.
- Animal Law.
- Appellate Advocacy.
- Bankruptcy Law.
- Business Law.
- Civil Litigation.
- Construction & Public Contract Law.
- Corporate House Counsel.
- Criminal Law.
- Education Law.
- Elder Law.
- Environment, Energy & Resources Law.
- Equine Law.
- Family Law.
- Health Care Law.
- Immigration & Nationality Law.
- Labor & Employment Law.
- LGBT Law.
- Local Government Law.
- Probate & Trust Law.
- Public Interest Law.
- Real Property Law.
- Senior Lawyers.
- Small Firm Practice & Management.
- Taxation Law.
- Workers' Compensation Law.
Of particular importance for new KBA members is membership in the Young Lawyers Division (YLD), which specifically addresses the unique needs of "young and less young" newer attorneys. Educational programs, newsletters, social activities and public service projects are among this Division's busy agenda.

For further information on how to join a section or YLD, call the KBA Accounting & Membership Office at (502) 564-3795. In addition, section information is included on the annual dues statement mailed each July.

D. Bench & Bar Magazine

Bench & Bar magazine is published by the Kentucky Bar Association six times per year. It is designed to keep you informed of new developments in the legal system, and to educate you on existing areas of the law. The magazine also provides an outlet for announcement of state and local bar association news, of promotions, law firm information or relocation, or honors. Most articles are authored by Kentucky lawyers; thus, the information is beneficial for your Kentucky law practice. The Publications Committee welcomes submission of articles and editorial comments from KBA members. The editorial guidelines are available on the KBA’s Communications & Publications page.

The Bench & Bar is also available as an online PDF flip-book on the KBA website at http://www.kybar.org/?BBarchives.

E. e-News

Each month, the Kentucky Bar Association distributes e-News, an electronic newsletter providing information about the activities of the Kentucky Bar Association and other information relevant to attorneys practicing in the Commonwealth of Kentucky. e-News can also be accessed on the KBA website.

F. KBA Career Center

Kentucky Bar Association’s Career Center is the premier resource to connect career opportunities with highly qualified legal talent. Whether you’re searching for a new hire or searching for a new career, the KBA Career Center provides avenues to help you achieve your goal. To access the KBA Career Center visit: https://jobs.kybar.org/.

1. Manage your career.
   a. Search and apply to fresh jobs on the spot with robust filters.
   b. Upload your anonymous resume, so employers can contact you, but you maintain control of your information and choose to whom you release your information.
c. Receive an alert every time a job becomes available that matches your personal profile, skills, interests, and preferred location(s).

d. Access career resources and job searching tips and tools.

2. Recruit for open positions.

a. Post your jobs, or your institutions’ jobs, where legal professionals will find and apply to them.

b. Email your jobs directly to job seekers.

c. Manage jobs and applicant activity right on our site.

d. Search the resume database and contact qualified candidates proactively.

3. Visit the KBA Career Center today and get started!

VI. MEMBER RESOURCES

A. Malpractice Insurance

Lawyers Mutual Insurance Company of Kentucky, Inc. (LMICK)
323 West Main Street, Suite 600
Louisville, Kentucky 40202
(502) 568-6100 or 1-800-800-6101

B. Lawyer Referral Services

Fayette County Bar Association
219 North Upper Street
Lexington, Kentucky 40507
(859) 225-9897

Louisville Bar Association
600 West Main Street, Suite 110
Louisville, Kentucky 40202
(502) 583-5314

Northern Kentucky Bar Association
529 Centre View Boulevard
Crestview Hills, Kentucky 41017
(859) 781-1300

C. Life and Disability Insurance

National Insurance Agency, Inc.
13804 Lakepoint Circle, Ste 202
Louisville, Kentucky 40223
VII. REFERENCES

- **SCR 3.025** – Kentucky Bar Association
- **SCR 3.040** – Dues; Date of Payment and Amount
- **SCR 3.070** – The Board; Functions and Membership
- **SCR 3.175** – Efficient Enforcement; Notice of Attorney’s Address
- **SCR 3.460** – Unauthorized Practices Proceeding
- **SCR 3.530** – Advisory Opinions – Informal and Formal
- **SCR 3.600 – 3.695** – Continuing Legal Education
- **SCR 3.800** – Legal Negligence Arbitration
- **SCR 3.810** – Legal Fee Arbitration
- **SCR 3.815** – Mediation and Arbitration
- **SCR 4.310** – Judicial Ethics Committee and Opinions
I. ADDRESS CHANGES

A. Pursuant to SCR 3.035, all KBA members must maintain a current official address and current official email address at which he or she may receive communications, as well as a physical address if the mailing address is a Post Office box. If you move, you must notify the Executive Director of the KBA in writing within ten (10) days. Address updates can be made on the KBA website under the For Members heading.

B. A member’s official address, official email address, office number and fax number are public information and may be provided to the public upon request and will be available on the Lawyer Locator feature on the KBA website.

C. The official address you provide also serves as your address for service of bar complaints under SCR 3.160(1). Members must include their 5-digit member identification numbers on all filings with the Courts of the Commonwealth and in all communications with the KBA.

D. Every member of the KBA shall be deemed to have appointed the Director as that member’s agent for service of any document that is required to be served upon that member by any provision of Supreme Court Rule 2 or 3, provided that service of a document upon the Director shall constitute constructive service of that document upon the member only upon proof that all of the following requirements have been satisfied:

   (a) Reasonable efforts have been made to achieve actual service of the document upon the member;

   (b) Two (2) true copies of the document have been provided to the Director, accompanied by a written request that the Director serve the document upon the member at the member’s current Bar Roster address;

   (c) Within seven (7) days after receipt of such request, the Director mailed one (1) copy of the document to the member at the aforesaid address, posted by certified mail, return receipt requested, restricted delivery—addressee only, in an envelope bearing the return address of the Director and marked on the outside as “OFFICIAL COMMUNICATION—IMMEDIATE ATTENTION REQUIRED”; and

   (d) No less than thirty (30) days after mailing the document pursuant to subparagraph (c), the Director shall enter a Return of Service which attests:
(i) that the Director mailed one of the copies of the document mentioned in subparagraph (b) to the member's Bar Roster address in accordance with the requirements of subparagraph (c);

(ii) that the Director has attached to the Return of Service all communications received in response to the service or attempted service of the document, including any certified mail receipt or other postal notice or return receipt relating to the delivery or attempted delivery of the document and any communication from the member of the KBA or other person acting on behalf of such member; and

(iii) that the Director has provided a true copy of the Return of Service, with copies of all attachments, to the person or entity who requested service of the document upon the member of the KBA.

(3) The KBA may reject any communication to the KBA which fails to comply with paragraph (1)(c) of this Rule 3.175, provided that a member's failure to include his or her member identification number in a document shall not result in a default in any disciplinary proceeding.

II. ANNUAL MEMBERSHIP DUES

A. As a courtesy, Annual Dues Notices are mailed to each member on or before the first week of August and payment is due no later than September 1. Online payment of dues by credit/debit card is available and encouraged on the KBA website.

B. Dues not paid on or before September 1 are assessed an additional late payment fee of fifty dollars ($50). On or before September 15 of each year, the Treasurer shall notify a member in writing of his or her delinquency and late fee. On or before October 15 of each year, the Treasurer shall in writing certify to the Board the names of all members who remain delinquent. The Board shall cause to be sent to the member a notice of delinquency by certified mail, return receipt requested, at the member's bar roster address. Such notice shall require the member to show cause within thirty (30) days from the date of the mailing why the member's law license should not be suspended for failure to pay dues and the late fee. In addition, such notice shall inform the member that if such dues and late fee, as well as costs in the amount of fifty dollars ($50), are not paid within thirty (30) days, or unless good cause is shown within thirty (30) days that a suspension should not occur, the lawyer will be stricken from the membership roster as an active member of the KBA and suspended from the practice of law. At the conclusion of the thirty (30) days, unless the dues, late fees and additional cost payment have been received, or unless good cause has been shown as to why the member should not be suspended, the Board of Governors will vote to suspend any such member
from the practice of law. A copy of the suspension notice shall be sent by the Director to the member, the Clerk of the Supreme Court of Kentucky, the Director of Membership, and the Circuit Clerk of the member’s official address district for recording and indexing. The suspended member may apply for restoration to membership under the provisions of SCR 3.500. A member may appeal to the Supreme Court of Kentucky from such suspension within thirty (30) days of the date the suspension notice is recorded in the membership records. Such an appeal shall include an affidavit showing good cause why the suspension should be revoked. Members suspended for nonpayment of dues under SCR 3.050 must apply for Restoration and pay a fee of $350 or $750 depending on the duration of the suspension period and all applicable unpaid Bar Association dues, late fees and costs (see SCR 3.500).

III. CERTIFICATES OF GOOD STANDING

The KBA issues Certificates of Good Standing to members on request. The cost for each certificate is $25. Payment options include online requests with credit/debit card or pre-payment by mail with check. Request forms are available at http://www.kybar.org under For Members and Member Requests. Please allow five to seven business days for processing the certificates.

IV. MEMBERSHIP CARDS

Upon admission to the Kentucky Bar Association you received a Membership Card. This card does not expire. If you need to order a replacement card, please visit our website. Replacement Membership Cards are $10 each. Payment options include online requests with credit/debit card or pre-payment by mail with check.

V. NAME CHANGES

A. To change your name with the Kentucky Bar Association and the Supreme Court of Kentucky, you must complete a Name Change Form. This form is available on the KBA website under the For Members heading, and then Member Requests. The completed Name Change Form should be submitted to the KBA Membership Department along with supporting documents such as a marriage certificate, divorce decree, etc. The motion and certificate of service is then prepared by the KBA and mailed to you for your signature. Upon receipt of the signed motion and certificate of service, the KBA prepares the Order for the Chief Justice’s signature and the Registrar’s Certificate. These are then submitted, along with the motion, to the Supreme Court for filing. After the Order is signed, you will receive a copy from the Court and the KBA will mail you a new membership card with your new name.

B. It is very important for the Court and the KBA records to reflect the same name that you use in your daily practice of law. The KBA receives membership inquiries from the public on a daily basis, and the KBA staff works diligently to maintain accurate records.
VI. PRO HAC VICE (OUT-OF-STATE) CERTIFICATION REQUESTS

The KBA Membership Department is responsible for working with out-of-state attorneys and their Kentucky co-counsels in issuing Pro Hac Vice Certification receipts. Please refer to the KBA website for the form and SCR 3.030. Please allow five to seven business days to process requests. There is a $310 fee per out-of-state attorney per case.

VII. RESTORATION AND REINSTATEMENT

The Supreme Court Rules governing Restoration (SCR 3.500) and Reinstatement (SCR 3.510) to the Kentucky Bar Association can be found on the KBA website.

VIII. WITHDRAWAL FROM THE ASSOCIATION

The Supreme Court Rule governing withdrawal from the Kentucky Bar Association can be found under SCR 3.480 on the KBA website.
I. **OVERVIEW**

A. The annual requirement for Kentucky attorneys is 12 total credits, of which at least 2 must be ethics.

B. The educational year runs from July 1st to June 30th.

C. The deadline to complete attendance is June 30th.

D. The deadline to report attendance is the August 10th following the June 30th end of the year. Therefore, the reporting deadline for the July 1, 2018-June 30, 2019, educational year is August 10, 2019. Any attendance reports received after August 10th must be accompanied by a $50 late fee per certificate.

E. Members may carry-forward up to two years' worth of CLE (24 total credits, of which 4 may be ethics).

F. Kentucky is on a 60 minute hour (note that some states measure credit "hours" in 50 minute increments). Kentucky also rounds to the nearest quarter-hour.

G. All CLE attendance credits earned can be submitted on the Kentucky Bar Association website CLE Portal, [https://www.kybar.org/page/CLE](https://www.kybar.org/page/CLE).

H. Credit can also be earned for preparing materials for or teaching at an accredited CLE program. These credits can also be reported through the website CLE Portal.

I. The application for program accreditation is electronic through the website.

1. **Fees for applying for accreditation of a program:**
   
a. $20 if a member is applying for accreditation;

b. $20 if a sponsor, and program is two hours or less;

c. $50 if a sponsor, and program is more than two hours;

d. If sponsor applies less than 30 days in advance of program, the fee is doubled (never doubled for members, fee is always $20 for KBA members);

2. **Required attachments/information:**

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1 Revised April 2019.
a. Bios of speakers/presenters;

b. Time-specific agenda or outline; and

c. Short description of the written materials made available to attendees at or before the time of the program.

J. Members may claim all 12 hours with live, non-live, on demand, teleseminars, webinars, and technologically transmitted programs each educational year.

K. Members may apply for up to 2 credits for an approved public speaking or public service activity each educational year through the KBA website CLE Portal.

L. Members may apply for up to 6 credits per educational year for qualified legal writing.

M. **Exemptions** from the Annual Mandatory Requirement

1. **Temporary Hardship Exemption**: An attorney may be granted a temporary hardship exemption for one educational year based upon application showing "undue hardship by reason of age, disability, sickness, or other clearly mitigating circumstances." Typically, this exemption is granted based upon medically-related reasons (suffered by the applicant or applicant's family member) and supporting documentation is required. All exemptions and extensions may be applied for through the KBA website CLE Portal, [https://www.kybar.org/page/CLE](https://www.kybar.org/page/CLE).

2. **Permanent Hardship Exemption**: Grounds are the same, but the disability is permanent in nature (almost exclusively medically-related), and the exemption carries forward until removed. Documentation is required.

3. **Non-Practice Exemptions**: Available to those who do not practice law in Kentucky.

4. **Judicial Exemptions**: Available to Kentucky and federal judges, as well as federal and Kentucky administrative law judges.

N. **Extensions** from the Annual Requirement

1. **Hardship Time Extension**: Granted to members who can show "hardship or other good cause clearly warranting relief." Documentation is required. Again, usually medically-related, and members must apply for the extension by September 10th following the June 30th end of the educational year.

2. **Non-Hardship Time Extension**: Available if members cannot show the good cause required to qualify for a Hardship Extension. The
fee for obtaining this extension is $250 for complete applications received by August 15th following the end of the educational year, $350 for complete applications received by September 15th following the end of the educational year, and $500 for complete applications received by October 15th following the end of the educational year. No applications for extensions will be accepted after October 15th following the end of the educational year for which the extension is sought.

O. Where to find information about CLE programming:
   1. KBA website, https://www.kybar.org/page/CLE.
   2. Bench & Bar Magazine.
   3. KBA e-News sent out to all members monthly.
   4. Contact regional law schools and bar associations to determine if they are sponsoring any upcoming programming.

P. You can check your CLE record online at the KBA website. Please select the "Member CLE Portal" option on the CLE main page.

Q. Supreme Court Rules pertaining to CLE can be found at http://www.kybar.org/?clerules. They begin at SCR 3.600 and go through SCR 3.695.

R. Important KBA CLE Events
   1. The KBA Annual Convention is held in May or June each year.
   2. The Kentucky Law Update is held every fall in each Supreme Court District. Information regarding the 2019 dates and locations is available on the KBA website at https://www.kybar.org/page/klu. The KBA will send out a registration mailer for the program in June. Information will also be provided in Bench & Bar Magazine and the KBA e-News.

II. EVERYTHING YOU NEED TO KNOW ABOUT EARNING CLE

Now that you are a member of the Kentucky Bar Association, one of the most important requirements you must meet each year is completing Continuing Legal Education (CLE) credits. SCR 3.645 requires that all members of the Kentucky Bar Association (KBA) complete a minimum of 12 CLE credit hours including 2 ethics hours each educational year. Sometimes there is confusion regarding the 2 ethics hours that are required. They are not additional hours above the 12 hour requirement; they are included in the 12 hour total. The educational year for Kentucky begins July 1st and ends the following June 30th. It is within this time period that you are required to earn your mandatory, minimum, annual CLE hours.
A. KBA CLE Department

The CLE office is staffed Monday through Friday from 8:00 a.m. until 4:30 p.m. (Eastern time) to answer questions you may have. One of the most valuable references you can utilize is the KBA website, www.kybar.org, which is obviously available whenever you may need CLE information. You can download forms, check your CLE record, register for KBA CLE programs or take online CLE programs through the website.

B. Reporting Continuing Legal Education Credits

1. Certification: In order to receive credit for attending the programs you complete, you must submit your CLE attendance certification to the KBA. To certify attendance of an accredited program, complete the online reporting form available on the website.

2. Accreditation: You may only receive credit for completing programs that are accredited by the KBA. If a program you have attended or wish to attend has not been accredited by the KBA there is an easy process you can follow to submit the program for accreditation through the KBA website CLE Portal. The application requires: (1) a time-specific agenda, including topics presented; (2) a brief description of written materials provided to attendees at or before the time of the program; (3) brief speaker bios; and (4) a non-refundable application fee of $20.

3. Members completing or participating in an approved activity will be granted one credit for each 60 minutes of actual instruction time.

4. Time limitations: Certification of a CLE program should be submitted to the CLE Office upon completion of a CLE activity at any time during the educational year (July 1st - June 30th). The last date to submit CLE certifications without a penalty is August 10th immediately following the educational year in which the activities were completed. No credits for programs older than the current and immediately preceding educational year will be accepted.

C. Ways to Earn Your CLE

Listed below are some of the most popular methods of completing CLE used by KBA members. For a complete list of qualifying Continuing Legal Education activities please refer to SCR 3.650.

1. Attend a live CLE program.

The most popular way to receive CLE hours is by attending a live CLE program. There are many CLE providers who regularly provide opportunities for attorneys to earn their educational hours.

As a new member of the KBA, you may not be aware of the CLE program that is offered by the KBA each fall at no cost to its
members. The Kentucky Law Update is a two-day program held each year at various locations throughout the Commonwealth. There is at least one program offered in each of the seven Supreme Court Districts. There is no registration fee for members of the KBA in good standing, and KBA members who attend this program may obtain at least the mandatory minimum annual requirement of 12 CLE hours including 2 ethics hours. Kentucky is the only MCLE state to provide CLE free of charge to its members in good standing. Information about the 2019 dates and locations of this program is available on the KBA website at https://www.kybar.org/page/klu. Information will also be available in Bench & Bar magazine (which you should receive bi-monthly), and the monthly e-News.

2. Online CLE.

You also can earn all of the required 12 CLE hours each educational year by completing online, pre-recorded CLE available on demand.\(^2\) Completing CLE online offers certain benefits in addition to convenience, such as finding courses in practice areas of your choice, access to nationally acclaimed speakers and programs, and 24-hour availability. The KBA offers a number of programs available for viewing through the KBA website. In addition, there are links available to other online providers that can be accessed from this site.

3. Public speaking/service activity.

The KBA promotes community interaction with the legal profession by awarding a maximum of two CLE credit hours for preparation and participation in public speaking activities. Methods of public speaking eligible for these credits include: teaching or participating as a panel member, mock trial coach, seminar leader for law-related education activities or for public service speeches to civic organizations and school groups on legal subjects. Members may not be compensated for these activities and are required to submit a copy of the materials presented at the event. This is a positive way to give back to your local community and earn CLE credits at the same time.

4. Teaching a CLE program.

Teaching/presenting approved CLE programs is another way to earn credits toward your annual requirement. If you serve as a panel member or a seminar leader for an accredited activity, you can earn one credit for each two hours spent in preparation, up to a maximum of 12 credits per educational year. You will also qualify for credits for your actual presentation time. The best way to

\(^2\) "Non-live” CLE is pre-recorded and available on demand. Live webinars and teleseminars which happen in real time with a moderator are considered “live” programs.
become involved in teaching and presenting at CLE seminars is to volunteer. Each year, the KBA recruits over 1,000 volunteers to assist with CLE programming. You may also try contacting your local bar or joining a KBA section or specialty organization that regularly provides CLE programming.

5. Legal writing.

Members may earn CLE credits for publication of a legal writing up to a maximum of 6 credits per year. A legal writing is a publication which contributes to the legal competency of the applicant or other attorneys or judges and is approved by the CLE Commission. Writing for which the author is paid cannot be approved. One credit is granted for each two hours of actual preparation time including research, writing, and editing. While a maximum of 6 credits may be applied to meet the annual minimum requirement, the Commission may grant up to 20 award credit hours for published legal writing. Award credits do not count toward the annual CLE requirement, but do count toward earning a CLE Award. You may apply for legal writing credits through the KBA website CLE Portal.

6. Audio recordings/CDs/DVDs.

Members can obtain CLE credits by listening to accredited digital audio recordings or CDs, or by watching DVDs. Several providers supply recordings in a variety of formats for purchase or for a minimal rental fee. The KBA offers numerous audio CLE programs as well as DVDs available for sale.

7. Teleseminars.

Accredited CLE teleseminars occur by telephone conference at scheduled times. Participants register in advance and are given a telephone number to call at the scheduled time. The KBA offers numerous CLE teleseminar programs through the website.

8. Webcasts or simulcast programs.

Webcasts (both audio and video) and simulcast programs are other means of completing the mandatory CLE requirement.

D. Regulation of Continuing Legal Education Compliance

1. Deadlines and Reminders: In order to assist members in tracking their yearly CLE attendance, Courtesy Reminders are sent to all members who have not yet completed the annual educational requirement. These Courtesy Reminders are emailed each spring prior to the end of the educational year as a service to KBA members. A second Courtesy Reminder is emailed each July, again, to those members who have not yet met their annual CLE requirement. While the deadline for timely completion of CLE is
June 30th, members have until August 10th following the end of the educational year in which to report attendance that was timely completed.

2. CLE Records: Members may access their CLE record at any time via the KBA website, http://www.kybar.org. This gives each member the opportunity to review his/her record. Please notify the KBA CLE Department if you notice any mistakes or discrepancies in your record. Also, if you completed programs that are not on your record, report them at that time.

3. Non-compliance: Non-compliance with the CLE requirement is grounds for suspension from the practice of law in Kentucky (SCR 3.675), and KBA members are suspended each year for this reason. Please do not ignore any communication that you receive from the KBA. If you find that you are unable to complete the minimum annual educational requirement, there are several options available. Extensions and exemptions that may be available to you are detailed previously in these materials and on the KBA website.

A REMINDER: Any change of address must be reported to the Kentucky Bar Association. The KBA must have a current record of the address and email where you wish to receive your KBA mail and it is your responsibility to keep the Association informed. Supreme Court Rule 3.175 includes the provision that a member shall upon a change of address notify the KBA Director within 30 days of the new address. Member profiles may be edited through the KBA website.
I. BACKGROUND AND INTRODUCTION

It is generally accepted that there is a need for efforts to be made to ease the transition from the study of the law to its practice, thereby promoting professionalism and competence in new attorneys and increasing client satisfaction and confidence in newly licensed lawyers. In the past, as was the case in many professions and trades, an apprentice-type relationship would be utilized to train new attorneys and provide them with the lessons and knowledge hard learned by those who had gone before them in their chosen profession. This is still often the method of training utilized by law firms. However, opportunities for mentorship do not arise as naturally as in past years. The recession and corresponding lack of jobs have forced many new lawyers to establish solo practices. In addition, the growth in the legal profession and the specialized nature of law practice today can make it more challenging to introduce new attorneys to the legal community and guide them through the transition to law practice.

In an attempt to address this situation and facilitate mentoring within Kentucky, a Pilot Mentoring Program was created by Supreme Court Order dated August 14, 2007, and funded by a grant from the Bar Foundation. This program was successful and taught us many lessons. First and foremost, we learned that in order for a mandatory, one-to-one mentoring program to be successful, there would need to be staff and resources dedicated solely to administering the mentoring program. The benefits of mentoring are undeniable and well-proven, and so the next inquiry became whether or not it is possible and/or desirable to devote the time and resources needed to achieve a successful, mandatory, one-to-one mentoring program.

During the Mentoring in the Legal Profession Roundtable in Atlanta, Georgia, which took place in February 2011, and was attended by KBA Executive Director John Meyers, these issues were discussed at length. Current thinking is that the one-to-one mentoring model is not the most effective advisory relationship, and that there should be multiple mentors for each mentee. Many programs have found that their results are more positive when mentees choose their own mentor as opposed to having one assigned. Even more interesting, there are clear indications that virtual mentoring might be more effective than actual face-to-face meetings in today’s world.

Given the above, the KBA has undertaken the development of a modern, effective information and advisory hub for our new lawyers, administered by existing KBA staff. The website is called Great Place to Start Resource Center for New Attorneys in Kentucky, or "KBA GPS." The URL for the website is http://www.kbagps.org.
II. OVERVIEW

A. Main Page

The main page for the GPS site provides a description of the resources and services available through the site. The site is also searchable. Many of the resources offered through the site are links and information you may find elsewhere. The benefit of the GPS site is that these useful resources and links may all be accessed through one central location, thus making the site a "Great Place to Start" when you are looking for information and assistance.

B. Services

The services offered through the site are the "Lawyer to Lawyer" service and the "Find a Mentor" service. In order to utilize these services, you need to create an account by completing the online registration form. Your year of admission and KBA ID number (attorney number) are required. Once completed, the form is submitted to CLE staff, who will verify that you are a KBA member and have been a member for five years or less. Staff will then send a response email verifying your login name and password, or a response notifying you that you do not qualify or that more information is needed to process the request. KBA member attorneys of five years or more will be asked to contact the Director for CLE and request an exception to utilize the service.
1. Lawyer to Lawyer.

The Lawyer to Lawyer service is a means by which you will be able to call or email properly vetted, volunteer "Attorney Advisors" to seek advice or guidance in the practice of law in Kentucky. This list is comprised of volunteers who have been practicing attorneys in Kentucky for at least five years and are willing to serve in this capacity. The volunteer attorneys complete an online form which includes areas of interest and practice as well as practice location. All volunteer forms are reviewed to ensure that the attorney is in good standing with the KBA and does not have pending disciplinary issues. The main list of available attorneys is available as a sortable list by name and Supreme Court District. For your convenience, there are two additional alphabetical lists by area(s) of practice and by practice counties. Other links included in this area are the Attorney Advertising Commission and Ethics Hotline Committee. More information regarding these can also be found on the main KBA website at www.kybar.org.
2. Find a Mentor.

The Find a Mentor service allows you to choose a Mentor from a pool of properly vetted Kentucky attorneys with at least five years of experience, who have volunteered to go beyond answering a few email and telephone inquiries. Volunteer Mentors are willing to meet with and advise you on an on-going basis if requested to do so. The scope and duration of this Mentor/Mentee association will be entirely flexible and determined by the needs and requests of the Mentees. Recruitment of Mentors is undertaken in the same manner as solicitations for Attorney Advisors. The main list of Mentors is available as a sortable list by name and Supreme Court District. For your convenience, there are two additional alphabetical lists by area(s) of practice and by practice counties.
C. Resources

1. Online Resources.

The KBA website provides shortcuts to "Online Resources." These include helpful links to Ethics Opinions, Unauthorized Practice Opinions, the Federal Code, Supreme Court Rules, etc., Kentucky State Government websites, Federal Government websites, research websites, local bar association sites, and much more.

There are a separate tabs for Kentucky Courts, which provide useful information regarding the District and Circuit Courts, the Court of Appeals and the Supreme Court. There is also a link to the AOC website and forms. These online resources are available to the public without having to become a registered user.
A Great Place to Start

Welcome to the Kentucky Bar Association’s Great Place to Start! Information center dedicated to providing new attorneys in Kentucky with Mentor and Volunteer Advisor information. It’s an effort to ease the transition into the practice of law and to promote professionalism and competence in new attorneys as well as increasing client satisfaction and confidence.

Volunteer Advisors

The Volunteer Advisors feature allows new attorneys to connect with other experienced KBA lawyers who can answer questions on a wide variety of legal topics and areas of practice through telephone or online correspondence.

Find a Mentor

The Find a Mentor feature is available for new attorneys who are looking to connect with an experienced Kentucky lawyer for more substantive law questions and advice on balancing the personal and professional demands of practice.

Please note: The volunteer advisor and mentor lists are only available to approved users. Approval to view and use the lists is limited to new attorneys admitted to practice in Kentucky for five years or less.
D. Contact and Other Information

Information is continually added and updated on the GPS website. If you have a suggestion for content, a question about current listings or a general comment, feel free to contact the KBA staff listed under the Contact tab. They will be happy to assist or find the answers you seek.
Kentucky IOLTA Fund 2018 Fact Sheet

Through the Interest on Lawyers’ Trust Accounts (IOLTA) Fund, interest generated by Kentucky lawyers’ pooled client trust accounts is combined and then disbursed in the form of grants to assist or establish:

- legal services and pro bono programs
- other law-related programs for the public’s benefit that are specially approved by the Kentucky Supreme Court from time to time


www.kybarfoundation.org/iolta

2018 Grants

$425,000 in total grants from the IOLTA Fund awarded to Kentucky’s four regional legal aid programs

$15,000 in total grants from the IOLTA Fund awarded to Kentucky’s three law schools for student public service fellowships

$1,026,072 in total grants from settlement funds received by the IOLTA Fund awarded to Kentucky’s four legal aid programs for foreclosure prevention and community redevelopment legal services

Total IOLTA Grants

Over $17 million in total grants have been awarded by the IOLTA Fund since 1988

People

11 IOLTA Trustees from across Kentucky

Invaluable annual participation in the IOLTA Program by members of the Kentucky Bar

2 Staff Members

- Guion Johnstone, Executive Director
- Gwen Smallenburg, Program Manager

Support

158 banks participated in the IOLTA program in 2018

Interest on IOLTA accounts is paid to the IOLTA Fund either monthly or quarterly
What is the KBF?

The KBF is the nonprofit, charitable arm of Kentucky’s legal community. Its mission is to further the public’s understanding of the judicial system and the legal profession through programs and philanthropic partnerships that help those in need.

**Founded in 1958** • **35 Board Members** across Kentucky’s seven Supreme Court Districts

**2 Staff Members**
Guion L. Johnstone, *Executive Director*
Gwen Smallenburg, *Program Manager*

**120 Kentucky counties** served
[www.kybarfoundation.org](http://www.kybarfoundation.org)

Who does the KBF help?

As part of serving its mission, the KBF awards annual grants to law-related organizations and projects throughout the Commonwealth and promotes the good works that Kentucky attorneys do for their communities. It also supports statewide educational programs for high school and college students that are presented by Kentucky attorneys.

**Annual grants of $250,000** awarded to twenty-four nonprofit law-related programs and projects throughout Kentucky in 2018

Financial literacy **education** provided by attorney volunteers to **thousands** of Kentucky students

**Total grants of more than $3.5 million** awarded to more than 160 law-related programs and projects throughout Kentucky **since 1988**

Spotlights shone on Kentucky attorneys **making a difference** by **volunteering** in their communities

How can Kentucky attorneys support the KBF?

**4,624** members of the Kentucky Bar supported the KBF as **Sustainers** in 2017.

*Be a Sustainer by contributing $30 when submitting your annual Bar dues statement.*

**94** Kentucky attorneys, judges, and law firms are KBF **Patrons**.

*Become a Patron by contributing $100, $150, or $200 per year for five years.*

**1,032** Kentucky attorneys and judges are KBF **Fellows**.

*Become a Life Fellow by contributing $1,250.*

*Become a Fellow by contributing $300 per year for five years, at the end of which you will attain Life Fellow status.*

**92** Kentucky law firms, attorneys, and friends are members of the KBF’s **Partners for Justice Society**.

*Become a member of the Partners for Justice Society by contributing $5,000 or more.*
It's Friday morning. You are sitting at your desk, going over the list of files needing your attention before you head out for the weekend. Motions to file, clients to call, letters to send – you prioritize and prepare to dig in, when the telephone rings. You're needed up front to sign for something. You wonder what it could be, but you don't panic; you get certified mail all the time, right? You reach the receptionist's desk, and the postman hands you an envelope, green card side up of course. You sign for it, and he takes the card and hands the envelope back to you. You flip it over, and you see those four terrible words – Office of Bar Counsel.

Your first bar complaint has arrived. Whether it happens after five years in practice, or twenty-five years in practice, it is no less upsetting. So, after your heart starts beating again and your stomach stops churning, you head back to your office, and find the file. You may make a quick run through the Kubl er-Ross five stages of grief: denial, anger, bargaining, depression, and acceptance. Once you hit the last stage, you're ready to say, "Ok, maybe I messed up. Now what?"

I. EDUCATE YOURSELF

If you violated the Kentucky Supreme Court Rules of Professional Conduct, you may receive discipline in the form of a private reprimand, a public reprimand, a suspension for a specific period of time with or without conditions, or permanent disbarment. See SCR 3.380(1).

Most disciplinary cases are now resolved at, or even before, the Inquiry Commission level. Of the 1,124 disciplinary files closed during the 2017-2018 fiscal year, 846 were dismissed, either by the Inquiry Commission, pursuant to SCR 3.160(3), which provides an informal diversion method for addressing less serious alleged violations, or simply because they were insufficient complaints. Private admonitions were the result in 40 other complaint cases. The Kentucky Supreme Court only issued renditions in 87 cases, with eight of those being Reciprocal Discipline after an attorney had been subjected to professional disciplinary action in another jurisdiction in accordance with SCR 3.435. So statistically speaking, you are likely to fall into one of those categories. The best way to avoid panic, however, is to know what you are facing – educate yourself about the disciplinary system.

II. THE FRAMEWORK OF THE DISCIPLINARY SYSTEM

A. Constitutional Authority

The Supreme Court of Kentucky has exclusive authority to discipline lawyers in the Commonwealth, pursuant to Section 116 of the Kentucky Constitution.

The Supreme Court has adopted Supreme Court Rules which establish both the substantive rules by which a lawyer's conduct is to be measured
and the procedures to be followed in determining whether the substantive rules have been violated.

Specifically, the KBA acts as an agent of the Supreme Court in the disciplinary process, pursuant to SCR 3.025.

B. The Disciplinary Process

1. Inquisitorial original proceeding.

The function of the OBC, the Trial Commissioner, and the Board of Governors is to prepare the case for review by the Court and make appropriate recommendations to it through the Findings of Fact and Conclusions of Law determined by the Trial Commissioner and the Board of Governors. The action is an original action in the Supreme Court.

"A disciplinary matter is one involving the investigative process between the KBA and the lawyer, not an adversarial proceeding… There is no rule permitting an appeal of that decision (dismissal by the Inquiry Commission). Consequently, [the complainant] has no standing to appeal to this Court." Woodard v. Kentucky Bar Ass'n, 156 S.W.3d 256 (Ky. 2004) (parentheses added).

2. Immunity of participants.

Pursuant to SCR 3.160(4), all participants in the disciplinary process are protected by immunity. Furthermore, the filing of a bar complaint is absolutely privileged.

3. Confidentiality.

Initial proceedings are confidential. SCR 3.150 makes discipline matters confidential until the Trial Commissioner or the Board finds a Rules violation and recommends a public sanction. At that point, the matter is public.

III. PERSONS AND ENTITIES INVOLVED

A. Initial Investigation

1. Complainant.

A bar complaint can be initiated by anyone who files a sworn complaint, or by the Inquiry Commission if it becomes aware of potential misconduct from any source. The Complainant is a witness, not a party to the proceeding; the KBA is the named Complainant once the Inquiry Commission issues a Charge.
2. Respondent.

The attorney sought to be disciplined is the *Respondent*.

3. Office of Bar Counsel.

The attorneys in the Office of Bar Counsel (OBC) are appointed by the Board of Governors and are given the authority and direction by the Supreme Court to investigate and prosecute all disciplinary cases. The OBC is presently staffed with eight full-time attorneys and support staff.

4. Inquiry Commission.

The Inquiry Commission consists of nine persons, six attorneys and three non-attorneys, appointed by the Chief Justice with the consent of the Supreme Court.

The Inquiry Commission has adopted administrative regulations to ensure consistent treatment of cases by and among the three panels, and provide for overall coordination with the OBC.

The Inquiry Commission is primarily a "probable-cause panel." It determines whether probable cause exists for a charge to be filed against a Respondent (SCR 3.190) based upon the information obtained by the OBC during the initial review and investigation phase. The Respondent does not appear before the Inquiry Commission, but generally files a Response and perhaps additional information as well.

B. Post Charge Hearing Proceedings

Trial Commissioners: If the Inquiry Commission authorized a Charge and the Respondent files an Answer which raises issues of fact, the case is assigned to a member of the Trial Commission to conduct an evidentiary hearing (SCR 3.230 and SCR 3.240). The Trial Commission is appointed by the Supreme Court under SCR 3.225.

The Charge outlines the conduct and specifies the Rule(s) the Respondent has violated. It is a notice pleading, like other civil pleadings.

C. Appellate Proceedings

1. The Board of Governors of the Kentucky Bar Association.

The members of the Board who vote on discipline matters consist of the President, the President-Elect, the Vice President, the 14 elected members of the Board (two from each of the Supreme Court districts), and four lay members who are appointed directly by the Chief Justice. SCR 3.370(4).
If the Respondent fails to file an answer, admits the violation, or agrees that the answer raises only issues of law, the case is submitted directly to the Board of Governors (SCR 3.210). The absence of a factual dispute alleviates the need for a Trial Commissioner.

However, in a case heard by a Trial Commissioner, either the Respondent or the OBC may take an appeal to the Board of Governors by filing a notice of appeal from the Trial Commissioner's report. If no notice of appeal is timely filed, the case proceeds directly to the Supreme Court (SCR 3.360). Appeals are routinely filed.

The case is heard by the Board of Governors through briefs and oral arguments (SCR 3.370(2) and (3)). No new evidence is taken, but the Board may remand the case for additional evidence if appropriate (SCR 3.370(6)).

In a case on appeal from a Trial Commissioner, the Board determines whether the decision of the Trial Commissioner is supported by substantial evidence or is clearly erroneous as a matter of law. However, it may conduct a de novo review of the evidence presented at the hearing held by the Trial Commissioner (SCR 3.370(6)).

The Board issues a written decision which is advisory in nature (SCR 3.370(7)). The Disciplinary Clerk sends it, along with the record of the proceeding, to the Court.

2. Supreme Court.

The case can proceed to the Supreme Court in a variety of ways, but ultimately it has plenary authority to review the evidence, decide the case and impose discipline as it deems appropriate. A disciplinary proceeding is an original proceeding in the Supreme Court.

Now that you have an idea of how the disciplinary system functions, and know where in the Supreme Court Rules to look for information on the system, how should you address the complaint on your desk?

IV. RESPOND

SCR 3.130-8.1(b) states: "[A] lawyer…in connection with…a disciplinary matter, shall not…knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority…" Still, the number of attorneys who simply ignore bar complaints is surprising. Under SCR 3.160(3), attorneys against whom complaints of a relatively minor rule violation, such as failure to return a file or failure to return calls, receive a letter informing them that they may be contacted by the OBC attorney to whom the file has been assigned. Many issues can be
resolved by simply faxing a fee agreement, a pleading, or other document. Often these issues may be addressed in a telephone call alone, so do not ignore a telephone message from the OBC attorney.

The letter accompanying the Complaint Form may indicate a need to file a written response. In that event, you should do so within the time frame specified in your letter. If you need additional time to respond, it can be made available. Just call the OBC attorney assigned to the file. Should you try to ignore the complaint or the telephone message in the event no written response was required, you may find yourself facing another violation of your own creation, for which the proof is clear.

Additionally, SCR 3.380(2) provides that the Court may suspend you from the practice of law for an indefinite period of time if you fail to answer a charge filed, or if you fail to further participate in the disciplinary process after you file an answer.

Moreover, without a response, the Inquiry Commission, and possibly the Board of Governors and the Kentucky Supreme Court, does not have the benefit of your point of view and insight. They must rely on the information in the Complaint and the information uncovered in the investigation. The solution is to respond.

A. What Makes a Good Response?

1. Full and complete information.
   
   Responses should focus on the allegations raised in the complaint and provide a clear, objective narrative of the facts relevant to those allegations. Candor and honesty are critical. You may include any information which could be considered a mitigating factor, such as a drug or alcohol problem which might be addressed through the Kentucky Lawyer Assistance Program (KYLAP).

2. Copies of relevant documents from the file or court.
   
   Often, responses can and should be supported by documents to paint the most complete factual picture of the attorney's explanation. Examples include, but are not limited to, contracts, fee agreements, and client correspondence.

3. Relevant background on Complainant.
   
   While Responses should not focus too heavily on Complainants, some facts may be important to an evaluation of the Complaint. Past history with Complainant, issues with collecting unpaid fees, or difficulties working with Complainant during the representation are all factors to be considered in reviewing the case.

4. Seek independent review of your response.

   The decision on whether to retain counsel is, of course, entirely yours. Attorneys in the Office of Bar Counsel are not permitted to

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give legal advice, procedural or otherwise. If you would like an attorney and cannot afford one, [SCR 3.300](#) allows for the Inquiry Commission to appoint one for you.

B. What Shouldn't You Argue?

1. Standing.

   Bar Complaints may be filed by anyone; the ability to do so is not restricted to clients or former clients alone. Frequently, in fact, Complaints are filed by opposing parties. They may be filed by judges or other attorneys, or they may be Inquiry Commission Complaints arising from reports in the local news. Under the Supreme Court Rules, attorneys owe certain duties to their clients, along with certain duties to other parties and to the profession. An argument that a Complainant lacks standing to make a Complaint is not a helpful argument.

2. Statute of limitations.

   There is no statute of limitations contained in the Supreme Court Rules. Certainly, delay in bringing the Complaint is worth noting in the Response, particularly if the passage of time has resulted in loss of information.

3. Character attacks on Complainant.

   While relevant information regarding a Complainant is helpful, demonizing a Complainant is not. Your Response should not simply be, "Complainant is crazy (or a criminal) so I shouldn't have to respond to this ridiculous complaint."

4. Motions to Dismiss Complaint.

   While a motion to dismiss for failure to state a claim may be appropriate in a civil action, such is not the case here. Making such a motion as opposed to simply responding to the Complaint will not speed the dismissal of the Complaint, and a failure to address any issues will prolong the investigation. The better course of action is to use the Response to show why the Complaint should be dismissed.

5. Pleas for mercy.

   Arguing that the malpractice judgment you've already paid or the criminal sentence you are about to serve should be punishment enough will not work. Ethical violations are independent of any civil or criminal remedies. Likewise, arguing the financial consequences of suspension as a reason to dismiss the Complaint will not score any points. The better tack is always to address the merits of the Complaint itself.
6. You people in Frankfort...

With complaints that require a written response, the Inquiry Commission makes the determination of how to proceed. Do not spend time in your response insulting the OBC or the KBA, or questioning the investigating attorney's background or qualifications. Respond to the issues.

V. FACE THE MUSIC

The key point to glean from this is the importance of fully responding to Bar Complaints. Ignoring them will not make them go away. Filing motions to dismiss will not make them go away. Remember that this is an inquisitorial process on behalf of the Kentucky Supreme Court, the licensing entity. It is not criminal in nature. Your Response is critical; without it, the Inquiry Commission will only know the Complainant's side of the story. They will not know yours and may have no choice but to move forward with a Charge for a violation of SCR 3.130(8.1)(b), if for nothing else. Violation of SCR 3.130(8.1)(b) is sufficient, in and of itself, to warrant public discipline. Kentucky Bar Ass'n v. Beal, 169 S.W.3d 860 (Ky. 2005).

If you face the music, you may be surprised how soon the band stops playing.

VI. ETHICS HOTLINE/UPL COMMITTEE

A. Ethics Hotline

If you have a question about how to ethically proceed in a situation, you can contact the Ethics Hotline. SCR 3.530. The Ethics Hotline Committee members’ information is on the Kentucky Bar Association’s website. When you contact the committee member by phone, he or she will attempt to give you a prompt telephonic answer. It is always advisable to follow up by submitting the request and factual information in writing to obtain a written Hotline opinion regarding your contemplated professional act.

You must call about your own conduct that has not yet occurred. You cannot contact the hotline and ask about your past conduct or someone else's conduct.

These opinions are advisory only, but you will not be disciplined for any professional act you perform in compliance with the opinion provided pursuant to your written request, provided that your written request clearly, fairly, accurately, and completely states your contemplated professional act. See SCR 3.530(2) and (5).

B. Unauthorized Practice of Law (UPL) Committee

Under this same Rule, if you believe that a person or entity may be engaging in the unauthorized practice of law, you may seek guidance from the UPL Committee.

As with the Ethics Hotline, when you contact the committee member by phone, he or she will attempt to give you a prompt telephonic answer and
a written informal letter opinion as to whether the conduct constitutes the unauthorized practice of law.

Your communications with committee members in either of these situations are confidential.

If the Ethics Committee or the UPL Committee determines the issue presented to be of sufficient importance, they may present the issue to the Board of Governors to render a formal opinion. Formal opinions will be published in the Bench and Bar and are available on the KBA website.

C. Duty to Self-Report

Pursuant to SCR 3.130(8.3), you have a duty to report misconduct. This is a self-policing profession. If you know that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, you shall inform the OBC. Rule 8.3 does not require that you file a formal complaint.

This is a mandatory reporting obligation, and you can be disciplined for your failure to report another attorney's misconduct. You are not, however, required to report information that is confidential and protected by Rule 1.6.

Although you cannot seek an Ethics Hotline opinion relating to another lawyer's conduct, you can seek an opinion relating to your reporting obligation regarding that other attorney's conduct.

VII. COMMON RULE VIOLATIONS

In the 2017-2018 fiscal year, 1,015 disciplinary files were opened.

By a significant margin, the two most common rule violations recorded in disciplinary files as opened were diligence and communications.

Most of these files were closed at the Inquiry Commission level either with informal procedures or a private admonition.

Also, in the 2017-2018 fiscal year, the Kentucky Supreme Court issued renditions in 87 cases.

Of the bar complaints that made it past the Inquiry Commission level and were reviewed by the Kentucky Supreme Court, most related to communications (SCR 3.130(1.4)), dishonest conduct (SCR 3.130(8.4)(c)), terminating the attorney-client relationship (SCR 3.130(1.16)), diligence (SCR 3.130(1.3)), and criminal conduct (SCR 3.130(8.4)(b)).

All of this being said, only 3.04 percent of the over 18,000 Kentucky lawyers even had a bar complaint filed against them during the 2017-2018 fiscal year.
I. ATTORNEYS CONTINUE TO BE SUED FOR LEGAL MALPRACTICE WITH REGULARITY

A. The American Bar Association Reports that Four out of Five Lawyers will be Sued for Legal Malpractice at Some Point of Their Careers

B. Seventy Percent of Malpractice Claims are Filed against Law Firms with One to Five Attorneys

C. Kentucky Attorneys on Average Face 2.3 Legal Malpractice Lawsuits during their Legal Careers

1. 2012 had highest per 100 lawyers insured at 3.36 claims.
2. 2015 had lowest per 100 lawyers insured at 2.02 claims.
3. 2016 was 2.67 per 100 lawyers insured.
4. 2018 was 2.66 per 100 lawyers insured.

D. Claims Frequency for Kentucky Attorneys by Practice Area in 2018 Include:

<table>
<thead>
<tr>
<th>Practice Area</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Injury – Plaintiff</td>
<td>23%</td>
</tr>
<tr>
<td>Real Estate</td>
<td>27%</td>
</tr>
<tr>
<td>Other</td>
<td>10%</td>
</tr>
<tr>
<td>Collection and Bankruptcy</td>
<td>14%</td>
</tr>
<tr>
<td>Family Law</td>
<td>10%</td>
</tr>
<tr>
<td>Estate, Trust and Probate</td>
<td>5%</td>
</tr>
<tr>
<td>Criminal Law</td>
<td>2%</td>
</tr>
<tr>
<td>Corporate and Business Organization</td>
<td>4%</td>
</tr>
<tr>
<td>Labor and Unemployment Law</td>
<td>1%</td>
</tr>
<tr>
<td>Personal Injury – Defendant</td>
<td>1%</td>
</tr>
<tr>
<td>Workers' Compensation</td>
<td>7%</td>
</tr>
</tbody>
</table>

E. Since 1986, Claims Frequency for Personal Injury-Plaintiff and Real Estate Are the Top Two Practice Areas where Kentucky Attorneys Experience Claims

F. The Stage of Case Most Likely to Generate a Malpractice Claim Is:

1. The preparation and filing of documents.

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1 “Ways to Avoid Legal Malpractice,” Around the ABA, December 2016.

2. The pre-trial and pre-hearing advice.
3. Commencement of an action.
4. Advice.
5. Settlement/negotiation.
6. Trial or hearing.
7. Title opinion.
8. Investigation/other than litigation.
9. Appeal activities.

G. Types of Error Most Likely to Generate a Malpractice Claim Are:
   1. Failure to know or properly apply the law.
   2. Failure to obtain a client’s consent.
   3. Error in public record search.
   4. Failure to know or ascertain deadline correctly.
   5. Procrastination in performing services.
   6. Failure to calendar properly.
   7. Inadequate discovery of facts or inadequate investigation.
   8. Failure to react to calendar.

H. Typical Errors can be Discussed as:
   1. Administrative errors.
   2. Substantive errors.
   3. Client relations.
   4. Intentional wrongs.

II. DOES A MALPRACTICE CLAIM EQUATE TO AN ETHICS VIOLATION OR VICE VERSA?

A. Kentucky is One of the States in the United States which Does Not Equate a Legal Malpractice Claim with an Ethical Violation
B. While a Legal Malpractice Lawsuit does not Automatically Give Rise to an Ethical Violation, There may be Malpractice Claims that Do Result in a Violation of the Kentucky Rules of Professional Conduct Found in Supreme Court Rule 3.130

1. Competence (SCR 3.130(1.1)).
2. Diligence (SCR 3.130(1.3)).
3. Fees (SCR 3.130(1.5)).
4. Conflict of interest (SCR 3.130(1.7); (1.8); (1.9)).
5. Safekeeping property (SCR 3.130(1.15)).
6. Declining or terminating representation (SCR 3.130(1.16)).
7. Candor toward the tribunal (SCR 3.130(3.3)).

C. "Violation of a (Professional Conduct) Rule Should Not Itself Give Rise to a Cause of Action against a Lawyer nor Should It Create Any Presumption in Such a Case that a Legal Duty Has Been Breached."3

III. LEGAL MALPRACTICE LAW IN KENTUCKY

A. What Constitutes a Legal Malpractice Claim? Issues could be:

1. Was there an attorney-client relationship?
2. Did the attorney or law firm make an error?
3. Was the client damaged as a result of the error?

B. "Third Party" Claims also Arise under Malpractice Law when 'Professional Duties' are Relied upon

3. Consultees on “non-legal” matters may see you in your attorney capacity. Everett v. Downing, 182 S.W.2d 232 (Ky. 1944).
4. "Non-client" when you have not communicated your representation, or not properly disengaged, or made a "negligent" referral, or had responsibility for a case referred to another attorney. Lovell v. Winchester, 941 S.W.2d 466 (Ky. 1997).

3 SCR 3.130 XXI.
IV. AVOIDING LEGAL MALPRACTICE CLAIMS

A. Avoid Claims by Avoiding Certain Areas of the Law: Personal Injury – Plaintiff Lawyers, Real Estate, etc.

B. Areas of Law with Rising Number of Claims: Trust and Estates and Family Law

C. Tailor Your Law Practice to Avoiding Legal Malpractice Claims
   1. Calendar deadlines by computer system with backup plans and people.
   2. Litigation docket system.
   3. Respond to all pleadings when received.
   4. Educate your support staff.
   5. Learn eFiling procedures.
   6. Keep good client relationships.

D. Avoid Representation of Clients When:
   1. "Gut test:" You don't like the client or don't "believe" in the cause.
   2. Client "fired" by another lawyer.
   3. Case rejected by other attorneys.
   4. Case not financially remunerative to the client.
   5. Client contends "It's the principal."

E. Keep Good Client Relations
   1. Don't "oversell" the merits or value of the case.
   2. Don't predict "results" of the case.
   3. Be candid, honest and truthful about the case with the client.
   4. Explain the dangers of social media.
   5. Share all "decisions" in the case with the client and discuss expenses of the case.
   6. "Respect" and "educate" your client throughout the representation.
   7. Always return calls, emails, texts, etc. within a reasonable time.
V. **“TOP TEN WAYS” TO MAKE A GOOD CASE FOR YOURSELF**

A. Don't Go into Business with a Client

B. Keep Your Client on the Same Page with You and Be Able to Prove It

C. Don't Think the Standard of Care Moves with Your Profit Margin

D. Avoid People and Causes You Dislike

E. Don't Throw Good Money after Bad in the Courthouse

F. Be Careful

G. File Your Case before the Deadline – Don't Wait until the Last Minute in Case There's a Mistake!

H. Don't Assume Your Clients are Your Friends

I. Behave Like a Human Being

J. Take Good Care of Your "Old Dog"

VI. **PROTECT YOURSELF BY PURCHASING LEGAL MALPRACTICE INSURANCE**

A. No Legal or Ethical Requirements to Purchase Malpractice Insurance – However, Some Attorneys Consider It Part of Responsibility to Clients

B. Purchasing Insurance is a Practical Consideration to You, Your Law Partners and Your Family

C. Effective October 18, 2017, **SCR 3.023:**

On or before September 1 of each year, every member of the (KBA) shall certify to the Executive Director ... (i)f engaged in the practice of law, whether the member is currently covered by a policy of professional negligence liability insurance with the minimum limits of $100,000 per claim and $300,000 per aggregate for all claims during the policy term (unless exempt) ... (AND) Each member who has reported being covered ... shall notify Executive Director in writing ... if the insurance policy ... lapses, terminates or is no longer in effect for any reason. ... The information disclosed by this Rule will be made available to the public.

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4 Lawyers Mutual Insurance Company of Kentucky’s “Top Ten.”
VII. WHAT IS MALPRACTICE INSURANCE AND HOW DOES IT WORK?

A. Malpractice Policies can be Divided into Four Parts:
   1. The declarations page.
   2. The insuring agreement.
   3. The conditions.
   4. The exclusions.

B. The Declarations Page Identifies the Name Insured, the Policy Limits, the Deductible, the Amount of Coverage, the Policy Term and any Special Forms Such as Endorsements
   1. Declarations Page often incorporates the provisions of the application for the policy in order to make it part of the policy. This is done to protect the insurance company in the event the information provided to the company for the policy becomes an issue.
   2. The application asks numerous questions about the claims background; nature of the law firm's practice areas; attorneys' legal practice; knowledge about existing and potential claims.
   3. The amount of coverage selected by an attorney is usually subject to two policy limits: (1) a per claim of occurrence limit; and (2) an annual aggregate limit for all claims made during the policy period.
      a. The "per claim" limit, often expressed as the occurrence limit, means that the company will pay no more than that sum as the total amount of all claims arising out of the same act or omission (or related acts or omissions) despite the number of claimants.
      b. The "aggregate" limit usually is defined as the total limit of a company's liability for all claims made within the term of the policy plus any additional time provided for in an extended reporting endorsement.
   4. The claims or aggregate limit are often expressly stated to be independent of the number of named insureds.

C. Virtually All Policies Contain Deductibles. A "Deductible" is the Sum of Money Paid by an Attorney as the First Dollars Incurred for a Claim.
   1. Deductibles apply to a monetary judgment, award or settlement.
   2. Deductibles may also apply to defense costs or claim expenses.
3. Review the policy to see if the insurance company pays all sums in excess of the deductible or if the policy reduces the amount of the stated policy limit by the amount of the deductible.

4. An insurance company may require a higher deductible if the attorney practices a high-risk specialty: federal or state securities work; patent law; personal injury-plaintiff; trademark law; entertainment law; real estate syndication law; money management or financial services.

D. Who is the 'Insured'?

1. The term 'insured' includes the individuals and entities named on the Declaration Page.

2. Others afforded coverage because of their relationship to the named insureds are called "additional insureds" or simply "insureds."

3. Coverage for a partnership typically includes all of the partners and their employees.

4. "Of counsel" attorneys must be specifically and separately identified if not partners.

5. Coverage for professional corporations usually includes officers, directors and employees and the shareholder-employees (attorneys).

6. Coverage for an "insured" usually includes vicarious liability that is the liability for another's acts or omissions for which the insured is legally liable. Thus, if an employee is negligent, the policyholder will be entitled to a defense and indemnity for derivative liability.

7. Coverage for former employees, associates or partners is typically included.

8. Coverage for new employees may be automatic or may be conditioned upon the requirement that written notice be provided to the insurance company within a specific time period.

9. Coverage for retired attorneys may be provided but such coverage will only extend to professional services rendered prior to the date of retirement from the insured firm.

E. What are the Basic Provisions of a Policy?

1. Typical policy covers an attorney's "acts, errors or omissions." The act or omission must result in a legal liability that causes a claim for damages.
2. Coverage is typically limited to liabilities "arising out of the performance of professional services for others in the insured's capacity as a lawyer." Some policies may also include coverage for professional services rendered as a notary public or as a title insurance agent.

3. Difficulty can arise in determining whether the insured acted as a "lawyer" and whether the services rendered were "professional."

4. In determining whether certain conduct falls within the policy's coverage, courts have been liberal in finding professional services:
   a. Question focuses on whether the basic retention was for legal services or for skills that do not ordinarily constitute the practice of law. Thus, if the purpose of the retention is for legal services, then the rendition of non-legal services that are incidental to that task is covered by the policy.
   b. The services performed are legal as long as the purpose of retaining the lawyer was to obtain the benefit of the attorney's knowledge, skill and experience in the law.

5. Lawyers who are retained by clients for non-legal functions are not entitled to coverage.

6. Often policy's insuring agreement requires that the professional services, the subject of the claim, were performed for "others."
   a. Note that this requirement may preclude coverage where the attorney occupies dual capacities as a fiduciary, such as both executor and attorney for an estate.
   b. This limitation may be modified by a specific clause providing "fiduciary coverage." Ordinarily, the coverage applies only if the services in dispute are those ordinarily performed by a lawyer, such as services provided as administrator, conservator, executor, guardian or trustee.

7. Was there an "insurable event"?
   a. Liability insurance is to indemnify the insured against specific liabilities. Predicate of coverage is the occurrence of an insurable event during the policy period.
   b. The "occurrence policy" was the initial form of coverage offered for lawyers. With these policies, the insurable event, which triggers coverage, is the "occurrence" of an act, error or omission during the policy period. This form more or less evolved from the traditional coverage provided by a general liability policy, such as a homeowner's policy or an auto policy.
8. The coverage is for an act, error or omission that occurs during the policy period no matter when the claim is made.

9. "Occurrence" form offers coverage then beyond the date of the policy's expiration so long as the act or omission occurs during the policy period.
   a. The "Claims-Made" form evolved in the early 1970s because of the problems with the "Occurrence" form. A "claim" is the insurable event rather than an "act or omission."
   b. The "Claims-Made and Reported" form requires that the claim first be made against the insured and reported to the insurer within the policy term. With this coverage form the attorney must report a claim or potential claim to the insurance company within the policy term.

10. A predicate to Claims-Made and Reported form coverage is that the insured neither knew of a claim, nor could have reasonably foreseen that a circumstance, act or omission might arise as the basis of a claim or suit.

11. Primary disadvantage of the Claims-Made coverage form is that it doesn't provide coverage after the policy's expiration date. An attorney must then renew or obtain new coverage each year in order to avoid a gap in coverage.

12. What is "tail coverage?"
   a. Because the Claims-Made form does not provide coverage after the policy expiration date, insurance companies give an attorney the option of purchasing "tail" coverage. Most claims-made forms provide that if the company cancels or refuses to renew the policy, then the insured has the right to purchase "tail" coverage.
   b. A "tail" policy covers only acts or omissions that occurred before the claims-made policy expired. The policy extends the time in which an attorney can report claims.
   c. The endorsement relates only to the reporting period and not the coverage period. Because an extended reporting endorsement extends only the time for reporting claims, not the policy period, it does not extend the time for reporting circumstances that might give rise to a claim under a discovery clause.
   d. Generally, insurance companies allow you to select among "tails" of various lengths, such as six months, one year or five years. "Tails" of an unlimited duration may be available.
13. What is a "discovery clause" in an insurance policy?

a. Coverage usually requires that you give written notice of the occurrence before the policy's expiration date.

b. Reporting a claim or potential claim pursuant to the discovery clause locks in coverage under the current policy for that claim or potential claim. Any claim that may arise subsequently is treated as if it had been made during the policy period and will be covered no matter when it is made.

c. Because failure to report known circumstances can result in a loss of coverage, even if reported in a subsequent policy period of the same insurer, an attorney should report every act or omission that the attorney reasonably believes could someday result in a claim.

14. All attorneys are required to cooperate with the insurance company in the defense of the suit and in any affirmative action against any person, other than an employee, for indemnity or contribution. This "cooperation" includes attending hearings, depositions and trials; assisting in reaching a settlement; and securing and giving evidence.

15. Most policies contain language that "upon payment under this policy, the company shall be subrogated to all the attorney's rights of recovery against any persons or organizations." This clause precludes the insured attorney's cooperation and prohibits the insured attorney from doing anything to prejudice the insurance company's subrogation rights.

16. All policies state that the insurance company has a duty to defend, which exists no matter whether the claim or suit is groundless, false, or fraudulent. In addition, the insurance company has a right to make such investigation and negotiation of the claim or suit as it deems expedient.

a. Some policies allow the insured to participate in selecting defense counsel. The policy may state that the insurance company will consider the attorney's recommendations, or it may state that the defense counsel chosen must be acceptable to both the insurance company and the attorney.

b. A policy usually provides that the insurer will not settle a claim without the written consent of the insured. To shift the financial risk of the attorney's refusal to settle, the policy may provide that, if the attorney refused to consent to the settlement, then the company's liability is limited to the amount of the proposed settlement plus the costs and expenses incurred up to that date. Such a clause is referred to as a "hammer clause."
Exclusions to policies need to be read carefully. The "exclusion" eliminates coverage that otherwise would be present in the policy. The meaning of an exclusion becomes an issue only if the claim first meets the requirements of the insuring agreement.

a. Typical exclusions include: fraud; willful acts; dishonest, fraudulent, criminal or malicious acts or omissions of the insured, any partner or employee.

b. Some policies offer "Innocent Partner" coverage, which covers an attorney who neither committed nor participated in the dishonest acts of other members of the attorney's firm.

c. Some policies exclude claims for libel, slander or defamation.

d. Some policies exclude punitive damages, exemplary damages or any other damages resulting from the multiplication of compensatory damages.

e. Other exclusions that might be in the policy to review: securities rules or law; "business pursuits" other than the practice of law; fiduciary activities; failure to properly safeguard money; personal injury; sanctions imposed by courts and administrative tribunals; fee refunds/disputes; public officials; claims made from discrimination in employment practices, etc.
I. OVERVIEW OF EFILING RULES AND PROCEDURES

A. Where to Find eFiling Rules

1. Kentucky Court of Justice website.
   http://courts.ky.gov/courts/supreme/Pages/rulesprocedures.aspx

2. eFiling Help Page.
   http://efilingapplicationinformation.blogspot.com/

B. Integration with Existing Rules


2. To the extent the eFiling rules are inconsistent or conflict with other rules, the eFiling rules control in cases subject to eFiling.

C. Authorized eFilers

1. Licensed attorneys in good standing.

2. Judges and their staff.

3. Court administrative staff.


5. Law enforcement.

6. Self-represented parties may be permitted to electronically file subject to authentication and training requirements imposed by the AOC.

D. Registration and Responsibilities of eFilers

1. Registered eFilers receive documents and notifications via email.

2. It is the eFilers’ responsibility to have a valid and working email address.

3. It is not the responsibility of the court, the circuit clerk or the AOC to ascertain whether an eFiler is receiving the email notifications from the eFiling system.
4. The eFiler’s login ID/user name, password and profile will constitute the eFilers’ electronic identity and the user account for purposes of this eFiling rule.

5. Security concerns must be reported to:
   
   Email: eCourtSupport@kycourts.net
   Telephone: (502) 573-2350 ext. 50109
   Available 8:00 a.m. - 5:30 p.m., Monday - Friday, EST

II. FORMAT AND TECHNICAL REQUIREMENTS

A. Pleadings, motions, exhibits, affidavits, declarations, memoranda, papers, orders, notices, and any other filings to or by the court may be eFiled.

B. The following items may not be filed through the eFiling system and must be conventionally filed:

   1. Nonconforming documents (those that cannot be scanned or converted to PDF or PDF/A).
   3. Any document ordered sealed in an otherwise public record.
   4. A motion to seal any document.
   5. Depositions upon oral examination.
   6. Depositions upon written questions.
   7. Discovery requests and responses unless ordered by the court, used at trial, necessary to a pretrial motion or agreed to by stipulation.

C. Electronically filed documents must meet the same formatting requirements as paper documents conventionally filed pursuant to the Kentucky Rules Procedure.

D. The eFiling system stamps documents as electronically filed.

E. Documents must be converted to PDF/A or PDF format before they are filed in the eFiling system.

F. Additional format requirements:

   1. 8.5” x 11” size.
   2. At least 200 dot-per-inch (DPI) resolution.
   3. No unintelligible images (e.g., no all-black images).
4. Documents must not be secured, password-protected or have other features limiting access.

5. No external hyperlinks; however, URLs are allowed.

6. Only readable word and viewable pictures or images, and valid, non-corrupted (e.g., a corrupt file having -0- bytes of data).

7. Documents must comprise the complete image or file.

8. Envelopes have a 50 MB limit.

G. Nonconforming documents: Documents that cannot be scanned and converted to a PDF or PDF/A (i.e., video or audio recordings, large maps, etc.) must be filed conventionally, with electronic notice to all parties.

H. Color documents: Exhibits or attachments containing color images may be eFiled, but must also be conventionally filed for the record.

III. ELECTRONIC FILING

A. Once a document is electronically filed all eFilers in the case will receive a Notice of Electronic Filing (NEF).

B. Transmission of the NEF with the hyperlink to the electronic document constitutes service of this filed document under CR 5. No other service on those parties is required.

C. Filing a document electronically does not alter the filing deadline for that document. Filing must be completed BEFORE MIDNIGHT, in the time zone of the receiving court, in order to be timely filed.

D. However, if a time of day is of the essence, the presiding judge may order a document filed by a certain time.

IV. CASE ENTRIES

The circuit clerk receiving an electronic filing will create a case entry using the information provided by the eFiler to record the document filed. If errors in the filing or case entry are discovered by the circuit clerk, he or she may:

• Make minor corrections to the case entry, with or without notifying the parties.

• Return the envelope to the eFiler indicating what further action, if any, is required to address the error.

• Disregard the error.
V. DOCUMENTS REQUIRING LEAVE OF COURT

A. If the filing of an electronically submitted document requires leave of court, the eFiler should attach the proposed document as an attachment to the motion requesting leave to file.

B. When submitting a proposed or tendered document the documents may be submitted in PDF or PDF/A format as well as in a format capable of being read by Microsoft Word.

C. If the court grants the motion, the eFiler must refile the proposed document to make it part of the record.

VI. PROPOSED OR TENDERED DOCUMENTS

A. When submitting a proposed or tendered document the documents must be submitted in PDF or PDF/A format as well as in a format capable of being read by Microsoft Word.

B. Agreed orders signed by all counsel should be submitted in PDF format only.

VII. REDACTION REQUIREMENTS

A. All eFilers must comply with the redaction requirements set out in CR 7.03 and Section 10 of the eFiling Rules, regardless of case type.

B. These requirements apply to all documents, including attachments and exhibits.

C. The circuit clerk will not review filings for compliance with this rule.

D. The responsibility to redact filings rests with the eFiler.

E. eFiled documents appear on CourtNet 2.0.

F. Failure to redact could result in anyone with a CourtNet 2.0 account viewing unredacted documents.

G. Failure to redact could result in Rule 11 sanctions.

H. A party may move to redact improperly included private or protected information.

VIII. SIGNATURES

A. An electronically filed document must include a signature block setting forth the name, mailing address, phone number, fax number and email address of the filing party's attorney or the filing party, if self-represented.
B. The filing party's attorney or filing party, if self-represented, may sign a document either by affixing his/her personal signature to the document then scanning and uploading the document to the eFiling system, or by inserting his/her typed name preceded by a "/s/" in the space where the signature would otherwise appear.

C. Electronic signatures will be treated as a personal signature for purposes of the Kentucky Rules of Procedure. Electronic signatures may be used by:

1. Attorneys.
3. Other court officials (e.g., a court commissioner or circuit clerk).

D. The signature on any document required to be notarized, acknowledged, verified, or made under oath must be handwritten and scanned into the eFiling system.

E. Affidavits and exhibits to pleadings with original handwritten signatures must be scanned and filed.

F. The filing party must retain the originally executed copy.

G. A document requiring signatures of more than one party must be filed either by:

1. Representing the consent of the other parties on the document by typing the name of each person, other than the filing party, preceded by an "/s/" and followed by the words "by permission" (e.g., "/s/ Jane Doe by permission"); or
2. Electronically filing a scanned document containing all necessary or required signatures.

H. Any party challenging the authenticity of an electronically filed document or the signature of the attorney or filing party, if self-represented, on that document must file an objection to the document within 14 days of service of the document.

IX. FILING ON SOMEONE ELSE’S BEHALF

A. An eFiler may not electronically file a document on another person’s behalf without the intent to represent a party or participate in the case.

B. Could result in CR 11 sanctions.
X. ELECTRONIC SERVICE

A. Upon the electronic filing of a document, the eFiling system will generate and send a Notice of Electronic Filing (NEF) to all eFilers/parties associated with that case, along with a hyperlink to the electronic document.

B. Transmission of the NEF constitutes service of the filed document under CR 5. No other service on those parties is required.

C. Service by electronic means shall be treated the same as service by mail under CR 6.05 for the purpose of adding three days to the prescribed period.

D. Parties must service a paper copy of any eFiled document in the manner required by CR 5 on a party or other person entitled to service who is not a registered eFiler.

E. A certificate of service must be included with all documents filed electronically.

XI. SERVICE OF PROCESS IN NEW CASES

A. The plaintiff or petitioner need not present the summons to the circuit clerk along with the initiating document; the circuit clerk will generate the summons and issue it.

B. The summons shall bear the date and time indicated on the NEF, regardless of when the clerk processes the filing.

C. Summons will be issued by the circuit clerk via:
   1. Certified mail.
   2. Sheriff.
   3. Return to Plaintiff.
   4. Secretary of State/long arm.
   5. Guardian ad litem.
   6. Warning order attorney.

D. For service by a process server or other authorized person under CR 4.01(1)(b), other than the sheriff, the summons will be issued by the circuit clerk and electronically returned to the initiating party for service.

E. The return of service must be electronically filed by the party at whose request the summons was issued and served if proof of service is returned to that party.
XII. FEES

A. Fees, including filing fees, are due and payable at the time of electronic filing unless the fee is waived by order of the court, the fee is not due or payable, or if the filer submits an affidavit to proceed in forma pauperis.

B. Other costs may be assessed through the eFiling system for service of process for printing and mailing ($0.10 per page).

C. eFilers will be assessed a third-party payment vendor fee.

D. Fees and costs associated with eFiling shall be taxed as costs and are recoverable by the prevailing party.

XIII. DISCOVERY MATERIALS

A. The eFiling system will not be used for the electronic exchange of discovery materials and other communications between the parties that are not intended to be filed with the court.

B. Parties may exchange discovery materials electronically by mutual consent consistent with CR 5.02, but not via the court's eFiling system.

XIV. ENTRY OF ORDERS

A. Immediately upon the entry of an order or judgment in an action, the circuit clerk will transmit to eFilers in the case, in electronic form, an electronic Notice of Entry, with a hyperlink to the electronic document.

B. Electronic transmission of the notice, along with a hyperlink to the electronic document, constitutes service of the notice in accordance with CR 77.04.

C. The circuit clerk must serve notice in paper form to an attorney or party who is not a registered eFiler.

XV. TECHNICAL DIFFICULTIES/SYSTEM UNAVAILABILITY

A. A technical failure is a failure of the court's hardware, software, and/or telecommunications facility which results in the impossibility for an eFiler to submit a filing electronically. Technical failure can also include the malfunctioning of an eFiler's equipment.

B. An eFiler who suffers prejudice as a result of a technical failure or an eFiler who cannot file a time-sensitive document electronically due to unforeseen technical difficulties, other than a document filed under a jurisdictional deadline, may seek relief from the Court.

C. Parties may also enter into an agreed order deeming a document timely filed.
D. An eFiler experiencing technical difficulty filing a document electronically may contact the AOC's eFiling Help Line at (502) 573-2350, ext. 50109.

E. The eFiling Help Line will be available during the AOC's regular business hours: 8:00 a.m. - 5:30 p.m., Monday through Friday.

F. If the eFiling system is unexpectedly unable to accept filings continuously or intermittently for more than one hour, eFilers will be notified.

G. If the eFiling system will not be available due to scheduled maintenance eFilers will be notified and a notice will be posted on the court's website of the date, time and anticipated length of the unavailability.
Supreme Court of Kentucky

2018-11

AMENDED ORDER

In Re: Administrative Rules of Practice and Procedure for the Kentucky Court of Justice Electronic Filing Pilot Project

Section 1. Citation to Rules
These rules will be known as the "Administrative Rules of Practice and Procedure for the Kentucky Court of Justice Electronic Filing Pilot Project" and may be cited as the "eFiling Rules."

Section 2. Authority
These rules are adopted under the authority granted to the Kentucky Supreme Court by Section 116 of the Kentucky Constitution to promulgate rules and issue orders of practice and procedure for the Kentucky Court of Justice. This Order does not abridge, enlarge, or modify the substantive rights of any litigant.

Section 3. Scope and Application
(1) These rules shall apply to supported case and filing types, in civil, criminal, domestic, juvenile, probate, and other matters in trial courts.

(2) Authorized eFilers may electronically file into a supported action even if the original action was filed conventionally. Service shall be conventionally made for all other parties who are not eFilers in an action.

Section 4. Integration with Other Rules; Precedence in Event of Conflict
(1) These rules supplement the Kentucky Rules of Civil Procedure ("CR"), the Kentucky Rules of Criminal Procedure ("RCr"), the Kentucky Family Court Rules of Procedure and Practice ("FCRPP"), Juvenile Court Rules of Procedure and Practice (JCRPP), and the Local Rules of Court approved by this Court pursuant to SCR 1.040(3)(a) ("Local Rules of Court") (All hereinafter broadly referred to as "Kentucky Rules of Procedure"). The filing and service requirements set out herein are deemed to comply with the Kentucky Rules of Procedure. To the extent these eFiling Rules are inconsistent or otherwise conflict with the Kentucky Rules of Procedure, these rules will control in cases subject to electronic filing.

(2) No local rules, practices, procedures, orders, or other policies of any district or circuit may conflict with or controvert these rules; further, to the extent that any such local rules, practices, procedures, orders, or other policies are inconsistent or otherwise conflict with these rules, these rules shall prevail.

Section 5. Definitions
(1) "AOC" means the Administrative Office of the Courts.

(2) "Case entry" means an entry created within the court's case management system which records each document filed or entered in a case.
(3) "Clerk" means the circuit court clerk.

(4) "Conventionally filed" means the filing of paper documents with the clerk, pursuant to the Kentucky Rules of Procedure, as is done in cases that are not eFiling cases.

(5) "Documents" means pleadings, motions, exhibits, declarations, affidavits, memoranda, papers, orders, notices, and any other filings to or by the court.

(6) "eFiler" means an individual who is authorized by Section 6(1) of these rules to file documents electronically through the electronic filing system.

7) "Electronic filing (eFiling)" means the electronic transmission to the court of a document using the court's electronic filing system, together with the transmission from the court of a notice of electronic filing containing an electronic hyperlink to the filed document. Sending a document to the court via email or facsimile does not constitute "electronic filing."

(8) "Electronic filing (eFiling) system" means the automated system approved by the Kentucky Supreme Court for the filing and service of documents via electronic means.

(9) "Electronic identity" means the combination of the eFiler's login ID/user name, password, and profile.

(10) "Electronic service" means the electronic transmission of documents to a party via the court's eFiling system. Electronic service does not include service of process to gain jurisdiction over persons or property, or service of subpoenas. Registration with the eFiling system constitutes consent to electronic service of all documents as defined in these rules. Electronic service of documents is sufficient to provide service in accordance with the Kentucky Rules of Procedure; no other service is required.

(11) "Electronic signature" means the electronic symbol "/s/ typed name" attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document. The term may also include an electronic image of original handwritten signatures.

(12) "Envelope" means the package of electronically transmitted data and attachments which constitute an eFiling submission.

(13) "Hyperlink" means an electronic connection, which when selected, takes the reader to another place in the document or to a location outside the document.

(14) "Jurisdictional deadline" means a deadline set by statute or rule that the court may not extend or change.

(15) "Nonconforming document" means a document which does not conform to the formatting and technical requirements set out in Section 7.

(16) "Notification of Court Processing (NCP)" means a notice automatically generated by the electronic filing system indicating that an eFiled document has been processed by the clerk. The NCP will indicate whether the filing has been accepted or rejected.
(17) "Notice of Electronic Filing (NEP)" means a notice automatically generated by the electronic filing system at the time a document is filed with the system, containing the date and time of filing and an electronic hyperlink to the document filed.

(18) "PDF" means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

(19) "PDF/A" means an ISO-standardized version of the Portable Document Format (PDF) specialized for the digital preservation of electronic documents.

(20) "Protected information" means information required to be redacted pursuant to CR 7.03 and in accordance with Section 10 of these rules.

(21) "Scanned document" means an electronic image created by scanning a paper document.

(22) "Self-represented party" means a party who represents himself or herself without the assistance of an attorney.

(23) "Technical failure" means failure of the court's hardware, software, and/or telecommunications facility which results in the impossibility for an eFiler to submit a filing electronically. Technical failure can also include the malfunctioning of an eFiler's equipment.

(24) "Uniform Resource Locator (URL)" means letters and symbols that comprise the address of a website.

Section 6. Registration and Responsibilities of eFilers

(1) Authorized eFilers. Registration is limited to:

(a) Licensed attorneys in good standing with the Kentucky Bar Association who have completed eFiling certification;

(b) Judges and their staff;

(c) Court administrative staff, including technical support staff;

(d) Government employees and law enforcement with authorized access to eFile in cases relating to their functions; and

(e) Self-represented parties may be permitted to electronically file subject to authentication and training requirements imposed by the AOC. Nothing in this subsection shall be construed to convey a right to file electronically if authentication or training requirements are not available or have not been completed by a self-represented party.

(2) Registration.
(a) The eFiler's login ID/user name, password, and profile will constitute the eFiler's electronic identity and user account for purposes of this eFiling rule. eFilers must register online through the Kentucky Court of Justice's KYeCourts website.

(b) The eFiler will be subject to the terms of the eFiling system user agreement.

(c) A Commonwealth or County Attorney may elect to use an office account to receive notifications for all eFiled documents in criminal cases within their jurisdiction. Creation and use of an office account under this subsection constitutes consent to electronic service of all documents as defined in these rules.

(3) Responsibilities of eFilers.

(a) If an eFiler believes that the security of his or her electronic identity has been compromised or that a threat to the system exists, the eFiler must notify the AOC eFiling website administrator.

(b) It is the responsibility of the eFiler to have a valid and working email address that has not exceeded its size limitation in order to receive Orders and other documents served electronically. It is not the responsibility of the court, the clerk, or the AOC to ascertain whether an eFiler is receiving notifications from the eFiling system via email.

(c) If an eFiler's email address, phone number, or other information provided in the eFiler's profile has changed, the eFiler must promptly make the necessary changes to his or her profile.

Section 7. Format and Technical Requirements

(1) Conversion to PDF/A or PDF format required. Electronically filed documents must meet the same requirements of format and page limits as paper documents conventionally filed pursuant to the Kentucky Rules of Procedure, including page and word limits.

(a) Documents must be converted to PDF/A or PDF format before they are filed in the eFiling system. PDF/A is the preferred format for purposes of this pilot project.

(b) The eFiler must ensure that the filing is an accurate representation of the document and is complete and readable.

(2) Envelope size limitation. eFiling envelopes, including all attachments, must not exceed fifty (50) megabytes.

(3) Format. Documents filed electronically must comply with the following format requirements:

(a) 8 1/2" x 11" size;

(b) At least 200 dot-per-inch (DPI) resolution;

(c) No unintelligible images (e.g., no all-black images);
(d) Documents must not be secured, password-protected, or have other features limiting access;

(e) No document shall contain any external hyperlinks; however, URL citations are permissible;

(f) Only readable word and viewable pictures or images, and valid, noncorrupted tables shall be included;

(g) Documents must not be corrupted (e.g., a corrupt file having -0- bytes of data); and

(h) Documents must comprise the complete image or file. The eFiler must ensure and verify that uploads to the eFiling system are properly completed.

(4) Nonconforming documents. Documents which do not conform to the above requirements or which cannot be scanned and converted to a PDF or PDF/A (i.e., video or audio recordings, large maps, etc.) must be filed conventionally, with electronic notice to all parties.

(5) Color documents. Exhibits or attachments containing color images may be eFiled, but must also be conventionally filed for the record.

(6) Hyperlinks. No electronically filed document may contain hyperlinks other than internal hyperlinks to the document itself.

Section 8. Electronic Filing

(1) In order to become an eFiler in a supported action, the eFiler must electronically file an Entry of Appearance or any other supported document in that case, or the eFiler may use a supported feature for the purpose of opting into cases. Registering as an eFiler does not automatically opt an eFiler into the eFiler's other existing cases. Registration is not complete until the Circuit Court Clerk transmits a Notification of Court Processing accepting the filing. Electronic service through the eFiling system will not be made on parties associated with the case who are not registered eFilers.

(2) Notice of Electronic Filing.

(a) Upon the filing of a document, a Notice of Electronic Filing (NEF), with a hyperlink to the electronic document, will be automatically generated by the eFiling system, and sent via email to the email addresses of all parties who have registered in the case. The NEF will record the date and time of the filing of the document in the time zone of the receiving court.

(b) All notices of electronic filing and other system notifications will be viewable in the eFiling system under the "Notifications" screen.

(c) In addition to the caption requirements set out in CR 10.01, each document filed electronically will receive a stamp by the eFiling system indicating the document has been electronically filed.
(3) Filing. The electronic transmission of a document to the eFiling system in accordance with the procedures specified in these rules, together with the generation and transmission of a Notice of Electronic Filing from the court with a hyperlink to the electronically filed document, constitutes filing of the document for all purposes of the Kentucky Rules of Procedure.

   (a) A document filed electronically is deemed filed on the date and time stated on the Notice of Electronic Filing from the court, regardless of when the eFiler actually transmitted the document or when the clerk actually processed the envelope.

   (b) Filing a document electronically does not alter the filing deadline for that document. Filing must be completed BEFORE MIDNIGHT, in the time zone of the receiving court, in order to be timely filed. However, if time of day is of the essence, the presiding judge may order a document filed by a certain time.

   (c) Emailing a document to the clerk's office or to the presiding judge does not constitute filing the document. A document will not be considered filed until the eFiling system generates a Notice of Electronic Filing with a hyperlink to the electronically filed document.

   (d) While the eFiling system is designed to accept filings 24 hours a day, it may not always be available due to scheduled maintenance or technical difficulties experienced by the eFiler or system. eFilers are encouraged to file documents in advance of filing deadlines and during normal business hours in the event assistance or support is needed from the AOC's eFiling help line.

(4) Case entries. The clerk receiving an electronic filing will create a case entry using the information provided by the eFiler to record the document filed. If errors in the filing or case entry are discovered by the clerk, the clerk may:

   (a) make minor corrections to the case entry, with or without notifying the parties;

   (b) return the envelope to the eFiler indicating what further action, if any, is required to address the error. Filers notified of an error through a Notification of Court Processing shall make corrections within two (2) business days of receiving the returned envelope from the clerk. Corrections shall be made in good faith and limited to the specified error(s) identified in the Notification of Court Processing. Timely correction shall preserve the original date and time found on the Notice of Electronic Filing. Failure to make corrections could result in a failure to comply with applicable deadlines. Local rules regarding motion hour deadlines are unaffected by this subsection; or

   (c) disregard the error.

(5) Proposed or tendered documents.

   (a) If the filing of an electronically submitted document requires leave of court, such as an amended complaint or a document to be filed out of time, the eFiler should attach the proposed document as an attachment to the motion requesting leave to file. If the court grants the motion and allows the proposed document, the eFiler must refile the proposed document to make it part of the record.
(b) If the eFiler is submitting a proposed order or other proposed or tendered documents such as, but not limited to, judgments, findings of fact and conclusions of law, or jury instructions, the order or other documents may be submitted in PDF or PDF/A format as well as an editable format in .doc format capable of being read by Microsoft Word, and should be identified as "proposed."

(6) Attachments and exhibits. Attachments and exhibits which do not conform to the requirements set out in Section 7 or which cannot be scanned and converted to a PDF or PDF/A (i.e., video or audio recordings, large maps, etc.) must be filed conventionally, with electronic notice to all parties. A party must serve conventionally filed materials on other parties as if not subject to these electronic filing procedures.

Section 9. Discovery and Sealed Documents
(1) Discovery requests and responses as identified in CR 5.06 and RCr 7.24 shall not be electronically filed unless ordered by the court, used at trial, necessary to a pretrial motion, propounded at the onset of an action pursuant to CRs 33.01(2), 34.01(2), and 36.01(2), or agreed to by stipulation.

(2) The eFiling system will not be used for the electronic exchange of discovery materials and other communications between the parties that are not intended to be filed with the court. Parties may exchange discovery materials electronically by mutual consent consistent with CR 5.02, but not via the Court's eFiling system.

(3) The following documents must be conventionally filed: (i) any document in a sealed case; (ii) any document ordered sealed in an otherwise public record; (iii) a motion to seal and any document that is the subject of that motion, including any document requested to be reviewed in camera; (iv) depositions upon oral examination required by CR 30.06(1) to be delivered to the clerk by the officer taking the deposition; and (v) depositions upon written questions required by CR 31.02 to be filed by the officer taking the deposition.

Section 10. Redaction Requirements
(1) Compliance with CR 7.03.

(a) All eFilers must comply with the redaction requirements set out in CR 7.03, "Privacy protection for filings made with the court." These requirements apply to all documents, including attachments and exhibits. The clerk will not review filings for compliance with this rule. The responsibility to redact filings rests with the eFiler.

(b) The provisions of CR 7.03 apply to all eFiled documents regardless of the case type.

(c) eFilers are cautioned, in accordance with CR 7.03(7), that failure to redact information deemed private by CR 7.03 and/or the inclusion of irrelevant personal information in a document, attachment, or exhibit filed electronically with the court may subject the eFiler to the disciplinary and remedial powers of the court, including sanctions pursuant to CR 11.

(2) Improperly included private or protected information.
(a) A party may move to redact improperly included private or protected information from an eFiled document and may request an immediate order from the court temporarily deleting the document from the system pending notice and opportunity to be heard by all parties.

(b) If, after hearing, the court finds that private or protected information was improperly included in an eFiled document, the court may order the clerk to permanently delete the document from the system and require the filing party to file a redacted copy of the document.

(c) If, after hearing, the court does not find that private or protected information was improperly included and the document has been temporarily deleted from the system under paragraph (a), the filing party is responsible for refiling the document electronically.

Section 11. Signatures

(1) Generally. A document electronically filed using the eFiling system must bear the electronic signature of the filing party's attorney or the filing party, if self-represented, as more fully described in paragraphs (a) and (b) below. The electronic signature of the filing party's attorney or the filing party, if self-represented, will be treated as a personal signature and will serve as a signature for purposes of CR 11, all other Kentucky Rules of Civil Procedure, the Kentucky Rules of Criminal Procedure, the Kentucky Family Court Rules of Procedure and Practice, the Juvenile Court Rules of Procedure and Practice, any applicable statutes, the Local Rules of Court, and any other purpose for which a signature is required in connection with proceedings before the court.

(a) An electronically filed document must include a signature block setting forth the name, mailing address, phone number, fax number, and email address of the filing party's attorney or the filing party, if self-represented.

(b) In addition, the name of the filing party's attorney or the filing party, if self-represented, must be preceded by an "/s/" and typed in the space where the signature would otherwise appear. An electronic image of a handwritten signature may be applied to a signature line. A handwritten signature is required for any conventionally filed document.

(c) Affidavits and exhibits to pleadings with original handwritten signatures must be scanned and filed in PDF or PDF/A format.

(d) An eFiler may not submit a document on another person's behalf without the intent to represent a party or participate in the case. Electronically filing a document without the intent to represent a party or participate in the case could result in CR 11 sanctions.

(2) Signatures of more than one party required. A document requiring signatures of more than one party must be filed either by:

(a) representing the consent of the other parties on the document by inserting in the location where each handwritten signature would otherwise appear the typed signature of each person, other than the filing party, preceded by an "/s/" and followed by the words "by permission" (e.g., "/s/ Jane Doe by permission"); or by
(b) electronically filing a scanned document containing all necessary signatures.

(3) Signatures of judges and other court officials. If the signature of a judge or other court official (e.g., a court commissioner or clerk) is required on a document, an electronic signature may be used. The electronic signature shall be treated as the judge's or court official's personal signature for purposes of CR 11, all other Kentucky Rules of Civil Procedure, the Kentucky Rules of Criminal Procedure, the Kentucky Family Court Rules of Procedure and Practice, the Juvenile Court Rules of Procedure and Practice, any applicable statutes, the Local Rules of Court, and any other purpose for which the signature is required in connection with proceedings before the court.

(4) Documents required to be notarized, acknowledged, verified, or made under oath. The signature on any document required to be notarized, acknowledged, verified, or made under oath must be handwritten and scanned into the eFiling system. The court will maintain the scanned document as the official court record, and the filing party must retain the originally executed copy in accordance with Section 17, Retention Requirements. The court may require the filing party to produce the original paper document if validity of the signature is challenged.

(5) Challenging or disputing authenticity.

(a) A non-filing signatory or party who disputes the authenticity of an electronically filed document with a non-attorney signature, or the authenticity of the signature on that document; or the authenticity of an electronically filed document containing multiple signatures, or the authenticity of the signatures themselves, must file an objection to the document within fourteen (14) days of service of the document. An objection to the document shall place a burden on the non-moving party to prove authenticity. Failure to prove authenticity by the non-moving party will result in the filing being stricken from the record.

(b) If a party wishes to challenge the authenticity of an electronically filed document or signature after the fourteen (14) day period, the party shall file a motion to seek a ruling from the court and show cause for the delayed challenge. If the challenge to authenticity is allowed by the court, the non-moving party shall have the burden to prove authenticity. Failure to prove authenticity by the non-moving party will result in the filing being stricken from the record.

Section 12. Electronic Service of Documents

(1) Notice of Electronic Filing. Upon the electronic filing of a document, the court’s eFiling system will automatically generate and send a Notice of Electronic Filing (NEF) to all eFilers associated with that case, along with a hyperlink to the electronic document. Transmission of the NEF with a hyperlink to the electronic document constitutes service of the filed document under CR 5. No other service on those parties is required.

(2) Parties must serve paper copy of any eFiled document in the manner required by CR 5 on a party or other person entitled to service who is not a registered eFiler. It is the responsibility of the eFiler to review the list of parties who will receive electronic service as indicated by the eFiling system and determine which parties, if any, require conventional service.
(a) The Notice of Electronic Filing only be sent to eFilers who have associated themselves with the case, and will continue to be sent to them until they have filed a proper withdrawal of appearance in a case and, if applicable, obtained an order allowing the withdrawal.

(b) The NEF will include the date and time of filing in the time zone of the receiving court, along with an electronic hyperlink to the document filed.

(c) If the eFiler received an NCP that indicates a document or filing was returned by the clerk, he or she may correct any deficiencies and refile the document.

(d) If the eFiler learns or has reason to know that the NEF was not transmitted successfully to a party, electronic service is not effective. The filer must serve the electronically filed document by traditional methods pursuant to CR 5 immediately upon discovering that the notice was deficient or that transmission was otherwise unsuccessful.

(3) Service of process. Electronic service of process is not permitted for purposes of obtaining jurisdiction over persons or property, i.e., CR 4 service, with the exception of the service of summons on a cross, counter, or third-party complaint where the defendant to such complaint has already eFiled in the case and therefore consented to receive electronic service. All other service of process must be effected in the traditional manner. The plaintiff or petitioner need not present the summons to the clerk along with the initiating document; the clerk will generate the summons and issue it as set out below in paragraphs (a) and (b). The summons shall bear the date and time indicated on the Notice of Electronic Filing, regardless of when the clerk processes the filing and issues a Notification of Court Processing.

(a) Summonses will be issued as follows:

(i) For service by certified mail under CR 4.01(1)(a), the clerk will issue the summons, and cause service of the summons and the complaint to be made via certified mail;

(ii) For service by the sheriff under CR 4.01(1)(b), the clerk will issue the summons and cause the summons and complaint to be transferred to the sheriff for service;

(iii) For service by a process server or other authorized person under CR 4.01(1)(b), other than the sheriff, the summons will be issued by the clerk and electronically returned to the initiating party for service; or

(iv) At the request of the initiating party, in accordance with CR 4.01(1)(c), the clerk will issue the summons and electronically return it to the initiating party for service.

(v) For service by warning order attorney under CRs 4.05, 4.06, and 4.07, the party requesting the warning order attorney shall upload a copy of the affidavit as provided by CR 4.06. Such affidavits shall be filed as stand-alone documents and not included within the body of an initiating document or pleading. The clerk shall appoint a practicing attorney of the court to
serve as warning order attorney for the defendant pursuant to CR 4.07. The eFiling system may assess a non-refundable deposit for the warning order attorney, which may or may not constitute the entirety of his or her legal fees under CR 4.07(6).

(vi) For service of process through the Secretary of State in accordance with KRS 454.210, the clerk will issue the summons, and cause two copies of the summons and two attested copies of the initiating party's complaint to be transferred to the Secretary of State.

(b) The return of service must be imaged in a PDF or PDF/A format and electronically filed by the party at whose request the summons was issued and served if proof of service is returned to that party.

(4) Service of subpoenas. Subpoenas issued pursuant to CR 45 must be served as provided in CR 45.03(1) and not by use of the eFiling system. Notices required to be served on each party pursuant to CR 45.03(3) may be served electronically by mutual consent consistent with CR 5.02, but not via the court's eFiling system. Proof of service pursuant to CR 45.03(1) and RCr 7.02 may be filed via the court's eFiling system.

(5) Certificate of Service. A certificate of service must be included with all documents filed electronically. A certificate of service must show parties who received conventional service and parties who received electronic service.

(6) Additional time after electronic service. Service by electronic means under this rule is treated the same as service by mail under CR 6.05 for the purpose of adding three (3) days to the prescribed period.

Section 13. Entry of Orders and Notice of Entry

(1) Entry of orders. All orders, decrees, judgments, and any other documents entered or issued by the court may be filed in accordance with these rules.

(a) Such filing will constitute entry by the clerk pursuant to CR 58 and CR 79.

(b) An order containing the electronic signature of a judge will have the same force and effect as if the judge had affixed a signature to a paper copy of the order and the order had been entered in a conventional manner.

(2) Notice of entry.

(a) Immediately upon the entry of an order or judgment in an action, the clerk will transmit to eFilers in the case, in electronic form, a Notice of Electronic Filing (NEF), styled as a Notice of Entry, with a hyperlink to the electronic document. Electronic transmission of the NEF, along with a hyperlink to the electronic document, constitutes service of the notice in accordance with CR 77.04.

(b) The clerk must serve notice in paper form to an attorney or party who is not a registered eFiler to the extent notice is required.
Section 14. Court Record
(1) The clerk will print documents which have been electronically filed and maintain a paper file in each case. The paper file will constitute the official court record.

(2) Conventionally filed or court generated documents may be scanned by the clerk. The original documents will be maintained in the paper file.

(3) When the law requires the filing of an original document, such as a will, voucher, bond, oath, mortgage document, birth certificate, foreign judgment, or other certified or verified document, the eFiler must scan the original document and file the scanned document in the eFiling system. The filer must either (i) retain the original document in accordance with Section 17, Retention Requirements; (ii) file the original with the appropriate agency or officer as may be required by law; or (iii) submit conventionally to the court when necessary for actions involving original documents.

(4) Electronic receipts may be generated for financial transactions. In the event a receipt is generated, the court’s file copy shall be retained in electronic format.

(5) Notwithstanding subsection (1) of this Section, the Kentucky Supreme Court may designate pilot counties where the electronic court record may be designated as the official court record.

Section 15. Access to Electronic Record
(1) Authorized users may view eFiled documents, scanned images, and electronic case entries through the CourtNet XO application.

(2) Authorized users of CourtNet 2.0 may be assessed a subscription fee and additional costs for accessing electronic images; however, registered eFilers are permitted to electronically file and access images in an action at no cost.

(3) Certain categories of documents containing sensitive information may be designated as protected images and may only be viewable to parties associated with the case in CourtNet 2.0.

(4) Access to confidential cases in CourtNet 2.0 is available to persons entitled by statute, except that non-government parties may be required to eFile into a confidential case in order to access the entire record. Sealed cases are not eligible for eFiling and are not viewable in CourtNet 2.0.

Section 16. Fees, Costs, and Payment Methods
(1) Fees, including but not limited to filing fees, bond fees, and judicial sale fees are due and payable at the time of electronic filing unless the fee is waived by order of the court, the fee is not due or payable, the filer submits an affidavit to proceed in forma pauperis, or the court makes alternative arrangements with the filer. Payments of filing fees and other court costs must be made by credit card or electronic check through the KCOJ payment systems vendor.

(2) Other costs.

(a) Service of process. In actions where certified mail, sheriff service, and Secretary of State service is requested, printing cost shall be $0.10 per page.
(b) Transaction fees for electronic payments may be assessed by the KCOJ payment systems vendor.

(3) All fees and costs listed in this section shall be taxed as costs in the action pursuant to CR 54.04 and shall be recoverable by the prevailing party.

(4) The AOC's centralized printing and mailing facility may be designated to print and distribute documents.

(5) Electronic payments received through the eFiling system, including payments made pursuant to CR 73.02, are deemed to have been made at the time the filing was submitted.

Section 17. Retention Requirements
(1) Original documents and documents containing original signatures. An original document such as a will, voucher, bond, oath, mortgage document, birth certificate, foreign judgment, or other certified or verified document which has been scanned and filed in the eFiling system pursuant to Section 14(3), and any document requiring or otherwise containing an original signature which has been scanned and filed in the eFiling system must be maintained in paper form by counsel and/or the firm representing the party on whose behalf the document was filed until after all periods for appeals expires. Original documents are not required to be retained if the signature is that of an attorney or named party in the case who may personally verify and give proof as to the authenticity of the signatures. Upon the request of the court or other party, counsel must provide the original document for review or inspection.

(2) Discovery documents. Pursuant to CR 5.06, the party responsible for service of a discovery document not filed of record, including interrogatories, requests, and answers and responses thereto, notices, and subpoenas will be the custodian and must retain the original document. The custodian must provide access to all parties of record during the pendency of the action.

Section 18. Technical Difficulties; System Unavailability
(1) Jurisdictional deadlines. Some deadlines are jurisdictional and cannot be extended. A technical failure, including a failure of the eFiling system, will not excuse a failure to comply with a jurisdictional deadline. The eFiler must ensure that a document is timely filed to comply with jurisdictional deadlines and, where necessary to comply with such deadlines, the eFiler must file the document conventionally accompanied by a certification of the necessity to do so in order to meet a jurisdictional deadline.

(2) Technical failures.

(a) If an eFiler experiences a technical failure as defined herein, the eFiler may file the document conventionally, provided that the document is accompanied by a certification signed by the eFiler, that the eFiler has attempted to file the document electronically at least twice, with those unsuccessful attempts occurring at least one (1) hour apart. The clerk may require the document to be accompanied by a disk or CD-Rom which contains the document in PDF or PDF/A format.

(b) The initial point of contact for an eFiler experiencing technical difficulty filing a document electronically will be the AOC’s eFiling help line at the number(s) listed
on the Court of Justice’s website. The help line will be available during the AOC’s regular business hours, 8:00 a.m. until 5:30 p.m., eastern time, Monday through Friday (excluding holidays).

(c) An eFiler who suffers prejudice as a result of a technical failure as defined herein or an eFiler who cannot file a time-sensitive document electronically due to unforeseen technical difficulties, other than a document filed under a jurisdictional deadline, may seek relief from the court. Parties may also enter into an agreed order deeming a document, other than one filed under a jurisdictional deadline, timely filed.

(3) Anticipated system maintenance and downtime. When the eFiling system will not be available due to scheduled maintenance, eFilers will be notified and a notice will be posted on the court’s website of the date, time, and anticipated length of the unavailability.

(4) Unanticipated downtime. When the eFiling system is unexpectedly unable to accept filings continuously or intermittently for more than one hour, eFilers will be notified of the problem by email or by the posting of a notice of the problem on the court’s website.

Section 19, Technical Assistance
An eFiler experiencing technical difficulty filing a document electronically may contact the AOC’s eFiling help line at the number(s) listed on the Court of Justice’s website. The help line will be available during the AOC’s regular business hours, 8:00 a.m. until 5:30 p.m., eastern time, Monday through Friday.

This Order shall be effective August 1, 2018, and until further Order of this Court.

ENTERED this 21st day of June 2018.
REFERENCES AND ONLINE RESOURCES

In this section, you are provided with numerous references and online resources to make your research even easier.

Please note that web addresses can change rapidly. If you find a link that does not work, please report that address to Sonja Blackburn at sblackburn@kybar.org or (502) 564-3795. In addition, web content changes daily, and the Kentucky Bar Association is not responsible for the content found on the Internet sites linked to in this program book.

I. ONLINE RESEARCH RESOURCES

A. Kentucky Bar Association Website

The Kentucky Bar Association website at www.kybar.org offers a broad spectrum of legal research materials and practice information and changes daily. Make this your homepage and first stop for free practice information and legal research tools. Chances are that what you're looking for will be available directly or as a link from the KBA website.

This site gives you information about the KBA and its various departments and resources, as well as numerous research resources and links. You can find information about meeting your annual CLE requirement, the New Lawyer requirement and much more. You can obtain CLE applications and forms, review your CLE transcript on the member portal, and find a calendar of CLE offerings including live programs, teleseminars, webinars, and online video/audio programs. We provide you with the ability to access online CLE offerings and complete all 12 hours of credits per year directly from the KBA website.

The KBA website also contains Ethics Opinions, an index of SCR 3 governing the practice of law, Unauthorized Practice of Law Opinions and more. The Online Resources Page provides links to Kentucky information and sites, federal case law, the U.S. Constitution & selected federal statutes, federal rules & regulations, U.S. government resources & related sites, miscellaneous laws & codes, and links to other state and local bar associations. You can also access the forms library at the Kentucky Court of Justice website or check a docket for any court in the state. Other state court information is also available at this location. The websites for the U.S. District Courts and Bankruptcy Courts may also be accessed, providing access to the Joint Local Rules and other information including forms and electronic case filing.

The KBA website includes a Lawyer Locator feature that allows you to locate other members of the bar by geographic area or section membership. A link to the online research site Casemaker is also provided through the KBA website, as is our Career Center for job seekers and employers.
For the latest in KBA events and other legal news, be sure to visit http://www.kybar.org.

B. Great Place to Start Website

Many of us could benefit from having a mentor 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 https://www.kybar.org/page/gpsabout to see what the program has to offer.

C. Kentucky State Government Websites

Although these government sites may be accessed through the KBA website, direct links are provided herein for your convenience. The Legislative Research Commission’s website at www.lrc.state.ky.us provides access to the Kentucky Revised Statutes, Kentucky Administrative Regulations, the Kentucky Constitution and other valuable information. The State Attorney General’s website at http://ag.ky.gov/ includes information about consumer public protection programs as well as Attorney General Opinions. The official website of Kentucky State Government is found at http://kentucky.gov/. This website provides access to all state government agencies.

Other valuable state resources include:

Kentucky Secretary of State – http://sos.ky.gov/
Kentucky Vital Records Index – http://ukcc.uky.edu/vitalrec/

D. Federal Government Websites

II. GOVERNANCE OF THE LEGAL PROFESSION IN KENTUCKY

A. Supreme Court of Kentucky – §116 of the Kentucky Constitution

B. KBA Board of Governors – SCR 3.070 and 3.080

1. KBA governing body and agent of the Court for administering and enforcing Rules.

2. Elected by Bar members.

C. KBA Continuing Legal Education Commission – SCR 3.600-3.695

1. Operates under policy direction of Board and Supreme Court.

2. Members appointed by the Supreme Court.
3. Responsible for administration and regulation of all CLE programs and activities.

D. Inquiry Commission – **SCR 3.140**
   1. Appointed by Chief Justice with consent of the Court.
   2. Considers all lawyer discipline matters and has authority to charge lawyer with professional misconduct.

E. IOLTA Board of Trustees – **SCR 3.830**
   1. Appointed by Board of Governors subject to Court approval.
   2. Oversees interest on Lawyers Trust Account Program.

F. Clients’ Security Fund Trustees – **SCR 3.820**
   1. Appointed by Board of Governors.
   2. Considers claims against lawyers regarding misappropriated funds.

G. Attorneys’ Advertising Commission – **SCR 3.130 (7.01 - 7.5)**
   1. Appointed by Board of Governors.
   2. Reviews lawyer advertisements.

H. Consumer Assistance Program – **SCR 3.160**
   Addresses client concerns and inquiries regarding attorney conduct.

I. Kentucky Lawyer Assistance Program (KYLAP) – **SCR 3.910**
   1. Appointed by Board of Governors.
   2. Addresses impairment issues within Kentucky legal community.

### III. KENTUCKY BAR ASSOCIATION CODE OF PROFESSIONAL COURTESY

Attorneys are required to strive to make the system of justice work fairly and efficiently. In carrying out that responsibility, attorneys are expected to comply with the letter and spirit of the applicable Code of Professional Responsibility adopted by the Supreme Court of Kentucky.

The following Code of Professional Courtesy is intended as a guideline for lawyers in their dealings with their clients, opposing parties and their counsel, the courts and the general public. This Code is not intended as a disciplinary code nor is it to be construed as a legal standard of care in providing professional services. Rather, it has an aspirational purpose and is intended to serve as the
Kentucky Bar Association’s statement of principles and goals for professionalism among lawyers.

1. A lawyer should avoid taking action adverse to the interests of a litigant known to be represented without timely notice to opposing counsel unless ex parte proceedings are allowed.

2. A lawyer should promptly return telephone calls and correspondence from other lawyers.

3. A lawyer should respect opposing counsel’s schedule by seeking agreement on deposition dates and court appearances (other than routine motions) rather than merely serving notice.

4. A lawyer should avoid making ill-considered accusations of unethical conduct toward an opponent.

5. A lawyer should not engage in intentionally discourteous behavior.

6. A lawyer should not intentionally embarrass another attorney and should avoid personal criticism of other counsel.

7. A lawyer should not seek sanctions against or disqualification of another attorney unless necessary for the protection of a client and fully justified by the circumstances, not for the mere purpose of obtaining tactical advantage.

8. A lawyer should strive to maintain a courteous tone in correspondence, pleadings and other written communications.

9. A lawyer should not intentionally mislead or deceive an adversary and should honor promises or commitments made.

10. A lawyer should recognize that the conflicts within a legal matter are professional and not personal and should endeavor to maintain a friendly and professional relationship with other attorneys in the matter. In other words, "leave the matter in the courtroom."

11. A lawyer should express professional courtesy to the Court and has the right to expect professional courtesy from the Court.

IV. SCR 3.130 KENTUCKY RULES OF PROFESSIONAL CONDUCT

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VI. **SCR 3.175 EFFICIENT ENFORCEMENT: NOTICE OF ATTORNEY'S ADDRESS**

(1) In order to facilitate the efficient enforcement of the Kentucky Rules of Professional Conduct, the rules of the Continuing Legal Education Commission, the dues obligations of attorneys, and such other communications of importance to the profession as the Supreme Court may consider appropriate, each attorney licensed by the Supreme Court to practice law in this Commonwealth shall:

(a) maintain with the Director a current address at which he or she may be communicated with by mail, the said address to be known as the member's Bar Roster address, and shall upon a change of that address notify the Director within thirty (30) days of the new address; and

(b) maintain with the Director a valid email address and shall upon change of that address notify the Director within thirty (30) days of the new address, except however, that "Senior Retired Inactive" members and "Disabled Inactive" members shall not be required to maintain an email address.

(c) include his or her five (5) digit member identification number in all communications to the Association including, but not limited to, any and all communications relating to his or her membership status, membership record, dues obligations, compliance with continuing legal education requirements or disciplinary proceedings in which he or she is a respondent.

(d) If the member provides a Post Office address, he or she must also provide a current address for service of process.

(e) Failure to maintain a current address which allows for physical service of process with the Director may be prosecuted in the same manner as a violation of the Rules of Professional Conduct.
(2) After July 1, 2004, every member of the Association shall be deemed to have appointed the Director as that member's agent for service of any document that is required to be served upon that member by any provision of Supreme Court Rule 2 or 3, provided that service of a document upon the Director shall constitute constructive service of that document upon the member only upon proof that all of the following requirements have been satisfied:

(a) Reasonable efforts have been made to achieve actual service of the document upon the member;

(b) Two (2) true copies of the document have been provided to the Director, accompanied by a written request that the Director serve the document upon the member at the member's current Bar Roster address;

(c) Within seven (7) days after receipt of such request, the Director mailed one (1) copy of the document to the member at the aforesaid address, posted by certified mail, return receipt requested, restricted delivery - addressee only, in an envelope bearing the return address of the Director and marked on the outside as "OFFICIAL COMMUNICATION – IMMEDIATE ATTENTION REQUIRED"; and

(d) No less than thirty (30) days after mailing the document pursuant to subparagraph (c), the Director shall enter a Return of Service which attests:

(i) that the Director mailed one of the copies of the document mentioned in subparagraph (b) to the member's Bar Roster address in accordance with the requirements of subparagraph (c);

(ii) that the Director has attached to the Return of Service all communications received in response to the service or attempted service of the document, including any certified mail receipt or other postal notice or return receipt relating to the delivery or attempted delivery of the document and any communication from the member of the Association or other person acting on behalf of such member; and

(iii) that the Director has provided a true copy of the Return of Service, with copies of all attachments, to the person or entity who requested service of the document upon the member of the Association.

(3) After July 1, 2004, the Association may reject any communication to the Association which fails to comply with paragraph (1)(b) of this SCR 3.175, provided that a member's failure to include his or her member identification number in a document shall not result in a default in any disciplinary proceeding.

VII. ADVISORY ETHICS OPINIONS

A. Written Requests for Assistance
SCR 3.530 Advisory Opinions – Informal and Formal
(1) The Ethics Committee and the Unauthorized Practice Committee are authorized to issue informal opinions, and to submit to the Board for its action formal opinions, on questions of ethics or unauthorized practice, as applicable.

(2) Any attorney licensed in Kentucky or admitted under SCR 3.030(2), who is in doubt as to the ethical propriety of any professional act contemplated by that attorney may request an informal opinion. The President shall designate members of the Ethics Committee to respond to such requests. Ordinarily, the request shall be directed to a member of the requestor's Supreme Court district. Such request shall be in writing or by telephone followed by a request in writing. The committee member to whom the request is directed shall attempt to furnish the requesting attorney with a prompt telephonic answer and written informal letter opinion as to the ethical propriety of the act or course of conduct in question. A copy of any such informal opinion shall be provided to the Director for safekeeping and statistical purposes, and to the Chair of the Ethics Committee, to determine whether the informal opinion has broader application.

(3) Communications between the requesting attorney and the Ethics Committee member shall be confidential. However, the requesting and giving of advice under this Rule does not create an attorney-client relationship. In order to promote uniformity of advice, redacted copies of informal opinions may be circulated among members of the Ethics Committee, as applicable, provided that such confidentiality is preserved.

(4) If the Ethics Committee determines an ethical issue to be of sufficient importance, the Committee may issue and furnish to the Board of Governors a proposed opinion authorized by such Committee for approval as a formal opinion. Such approval shall require a vote of three-fourths of the voting members present at the meeting of the Board. If the Board is unable to approve of the opinion as written, then the Board may return the matter to the Committee for further review and consideration, or may modify the opinion and approve the opinion as modified by the three-fourths vote, or may direct the Committee to furnish the requesting attorney, if any, with an informal opinion in the form of a Chair's letter opinion, with a copy to the Director.

(5) Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act performed by that attorney in compliance with an informal opinion furnished by the Ethics Committee member pursuant to such attorney's written request, provided that the written request clearly, fairly, accurately and completely states such attorney's contemplated professional act.

(6) Any attorney licensed in Kentucky who is in doubt as to the propriety of any course of conduct or act of any person or entity which may constitute the unauthorized practice of law may make a request in writing, or in emergencies, by telephone, to the Chair of the Unauthorized Practice Committee, or such other members of the Unauthorized Practice
Committee as are designated by the Chair, for an advisory opinion thereon. Local bar associations may also request advisory opinions. The Committee member to whom the request is directed shall bring this matter to the attention of the Committee at its next meeting. The Committee may attempt to furnish the requesting attorney with a prompt telephonic answer and written informal letter opinion as to whether the conduct constitutes the unauthorized practice of law. A copy of such informal opinion shall be provided to the Director and the Chair of the Unauthorized Practice Committee.

(7) Any attorney licensed in Kentucky or admitted under SCR 3.030(2) who is in doubt as to the ethical propriety of any professional act contemplated by that attorney with respect to the unauthorized practice of law shall be referred to the Ethics Committee district member for an informal opinion as set forth in (2) and (3). Communications about such an inquiry between the requesting attorney and the unauthorized practice committee member, and between the committee members of the two committees, shall be confidential.

(8) The requesting and giving of advice by the Unauthorized Practice Committee under this Rule does not create an attorney/client relationship.

(9) If the Unauthorized Practice Committee determines an issue regarding the unauthorized practice of law to be of sufficient importance, the Committee may issue and furnish to the Board of Governors a proposed opinion authorized by such Committee for approval as a formal opinion. Such approval shall require a vote of three-fourths of the voting members present at the meeting of the Board. If the Board is unable to approve the opinion as written, then the Board may return the matter to the Committee for further review and consideration, or may modify the opinion and approve the opinion as modified by the three-fourths vote, or may direct the Committee to furnish the requesting attorney, if any, with an informal opinion in the form of a Chair's letter opinion, with a copy to the Director.

(10) Ethics Committee and Unauthorized Practice Committee members shall be immune from suit for advice given in the performance of duties under this Rule.

(11) All formal opinions of the Board arising from either Committee shall be published in full or in synopsis form, as determined by the Director, in the edition of the KENTUCKY BENCH & BAR next issued after the adoption of the opinion.

(12) Any person or entity aggrieved or affected by a formal opinion of the Board may file with the clerk within thirty (30) days after the end of the month of publication of the KENTUCKY BENCH & BAR in which the full opinion or a synopsis thereof is published, a copy of the opinion, and, upon motion and reasonable notice in writing to the Director, obtain a review of the Board's opinion by the Court. The Court's action thereon shall be final and the Clerk shall furnish copies of the formal order to the original petitioner, if any, the movant and the Director. The movant shall
file a brief in support of the review, and the Director may file a response brief thirty days thereafter.

(13) The filing fee for docketing a motion under paragraph (7) of this Rule 3.530 shall be as provided by Civil Rule 76.42(1) for original actions in the Supreme Court.

HISTORY: Amended by Order 2006-09, eff. 1-1-07; prior amendments eff. 1-1-97 (order 96-1); 11-1-95, 11-15-91, 12-31-80, 1-1-78, 12-4-74, 7-2-71

B. Emergency Requests for Assistance

In November 1991, the Kentucky Bar Association inaugurated an official "Ethics Hotline." An unofficial "Hotline" had been operating for some time under Kentucky Supreme Court Rule 3.530, but requests for telephone opinions began to overwhelm the system. Lawyers assumed that telephone opinions could be obtained on a twenty-four hour basis, not just for the defensive purposes set forth in Rule 3.530, but also for "expert opinions" and other purposes. Such expectations put a severe strain on the volunteer Ethics Committee. The "Ethics Hotline" provides telephone opinions in emergencies. However, opinions are only provided to a requesting lawyer regarding the lawyer's own contemplated (future) conduct. Opinions are not furnished to clients, the media, or other non-lawyer sources. The opinions continue to be non-binding, except that they provide a defense to discipline in the event that the lawyer follows the advice given. The opinions are not provided for the purposes of resolving disputes in litigation, or as "expert testimony" in civil, criminal, or disciplinary cases. Each hotline volunteer has discretion to refuse to give an opinion in any particular case, especially if it is not an emergency. A volunteer may require that a written statement of the question or facts giving rise to or assumed in any question be submitted before or after the giving of an emergency opinion.

Readers are directed to opinions KBA E-297 (1984) (jurisdiction of the Committee) and KBA E-348 (1991) (misuse of Committee opinions), as well as to the amended "Hotline Rules" at SCR 3.530(1) and (2). The list of "Hotline Volunteers" is included in this handbook. The requestor should call the "Hotline Volunteer" for the requestor's Supreme Court District.

Written requests for Advisory Opinions may still be forwarded to the Chair under SCR 3.530.

Please note that requests for Advisory Opinions dealing with Justices, Judges, and Trial Commissioners (SCR 4.310), should go to the Ethics Committee of the Kentucky Judiciary and not the Kentucky Bar Association Ethics Committee.

C. Hotline Volunteers by Supreme Court District

A current listing of the Ethics Hotline volunteers for each Supreme Court District is located at http://www.kybar.org/?page=EthicsHotline.
D. Researching Ethics Questions


VIII. SUMMARY OF KENTUCKY STATE COURTS

Reprinted from the Kentucky Court of Justice website.
Last updated: May 2019

This information is provided only as a service and is subject to change. Attorneys who rely exclusively upon information within this publication do so at their own risk. For more information regarding the Kentucky Court of Justice please visit their website at: [https://courts.ky.gov/Pages/default.aspx](https://courts.ky.gov/Pages/default.aspx).

SUPREME COURT

The *Supreme Court of Kentucky* is the court of last resort and the final interpreter of state law. It consists of seven justices who are elected from the seven appellate districts and serve eight-year terms. The Chief Justice of the Commonwealth is chosen by his or her colleagues and serves a term of four years. The justices, as a panel, hear appeals of decisions from the lower courts and issue decisions or "opinions" on cases. A case, which comes before the Supreme Court, is not retried. Attorneys with written briefs and oral arguments addressing the legal issues, which the Court must decide, present the case to the Supreme Court. Cases involving the death penalty, life imprisonment or imprisonment for twenty years or more go directly from the circuit court level,
where the cases are tried, to the Supreme Court for review as a matter of right. The Supreme Court is also responsible for establishing rules of practice and procedures for the Court of Justice, which includes the conduct of judges and attorneys.

**CHIEF JUSTICE**

**John D. Minton, Jr., (2nd Dist.)**  
State Capitol, Room 231, 700 Capital Ave. – Frankfort, KY 40601, (502) 564-4162

Warren County Justice Center, 1001 Center St., Ste. 305 – Bowling Green, KY 42101 (270) 746-7867

**JUSTICES**

**David C. Buckingham, (1st Dist.)**  
State Capitol and Murray office information coming soon.

**Debra Hembree Lambert, (3rd Dist.)**  
State Capitol, Room 223, 700 Capital Ave. – Frankfort, KY 40601, (502) 564-4159

Pulaski County Court of Justice, Suite 3500, 50 Public Square, – Somerset, KY 42502, (606) 451-4311

**Deputy Chief Justice Lisabeth T. Hughes, (4th Dist.)**  
State Capitol, Room 235, 700 Capital Ave. – Frankfort, KY 40601, (502) 564-5444

Jefferson County Judicial Center, 700 W. Jefferson St., Ste. 1000 – Louisville, KY 40202, (502) 595-3199

**Laurance B. VanMeter, (5th Dist.)**  
State Capitol, Room 245, 700 Capital Ave. – Frankfort, KY 40601, (502) 564-6753

1999 Richmond Road, Suite 2B – Lexington, KY 40502-1200, (859) 246-2053

**Michelle M. Keller, (6th Dist.)**  
State Capitol, Room 226, 700 Capital Ave. – Frankfort, KY 40601, (502) 564-4165

Kenton County Justice Center, 230 Madison Ave., Suite 821 – Covington, KY 41011, (859) 291-9966

**Samuel T. Wright III, (7th Dist.)**  
State Capitol, Room 223, 700 Capital Ave. – Frankfort, KY 40601-3415, (502) 564-4168
The Court of Appeals is exactly what its title implies. Nearly all cases come to it on appeal from a lower court. If a case is tried in District or Circuit court, and the losing parties involved are not satisfied with the outcome, they may ask for a higher court to review the correctness of the trial court's decision.

Some cases, like criminal case acquittals and divorces, may not be appealed. In a divorce case, however, child custody and property rights decisions may be appealed. Cases are not retried in the Court of Appeals. Only the record of the original court trial is reviewed, with attorneys presenting the legal issues to the court for a decision.

Fourteen judges, two elected from seven appellate court districts, serve on the Court of Appeals. The judges are divided into panels of three to review and decide cases, with the majority determining the decision. The panels do not sit permanently in one location, but travel about the state to hear cases.

Court Clerk: Samuel P. Givens, Jr.

Clerk of the Court of Appeals
360 Democrat Drive
Frankfort, Kentucky 40601
Clerk's Phone: 502-573-7920

CIRCUIT COURTS

Circuit Court is the court of general jurisdiction that hears civil matters involving more than $5,000, capital offenses and felonies, land dispute title cases and
contested probate cases. Circuit Court has the power to issue injunctions, writs of prohibition and writs of mandamus and to hear appeals from District Court and administrative agencies.

As a division of Circuit Court with general jurisdiction, the family court division of Circuit Court further retains primary jurisdiction in cases involving dissolution of marriage; child custody; visitation; maintenance and support; equitable distribution of property in dissolution cases; adoption; and, termination of parental rights. In addition to general jurisdiction of Circuit Court, the family court division of Circuit Court, concurrent with the District Court, has jurisdiction over proceedings involving domestic violence and abuse; the Uniform Act on Paternity and the Uniform Interstate Family Support Act; dependency, neglect, and abuse; and, juvenile status offenses.

One judge may serve more than one county within a circuit. Some circuits contain only one county but have several judges, depending on population and caseload. Circuit judges serve in eight-year terms.

**DISTRICT COURTS**

District Court is the court of limited jurisdiction and handles juvenile matters, city and county ordinances, misdemeanors, violations, traffic offenses, probate of wills, arraignments, felony probable cause hearings, small claims involving $2,500 or less, civil cases involving $5,000 or less, voluntary and involuntary mental commitments and cases relating to domestic violence and abuse.