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One fourth of my term as your president has flown by and we are into KLU season, so the pace is rapid. I am pleased to be able to report “progress” in our efforts. The window of opportunity for a KBA president is very narrow, so most of the initiatives are begun immediately upon taking office. That is the approach that I took. The specific issues I hoped to address this year are under KBA scrutiny.

The Task Force on Closed and Abandoned Practices has been formed, approved by the KBA Board of Governors and will be meeting shortly. The excellent article published in the September Bench & Bar on how to close a practice after the death of a sole practitioner set the stage for this effort. The focus of the task force will be on those situations where an attorney dies, or for some other reason closes or abandons the practice suddenly, leaving no one in charge and leaving clients stranded. We hope to come up with a statewide approach to handling these unfortunate situations perhaps in the form of a Supreme Court Rule. Attorneys from every Supreme Court District are involved with the task force. We have obtained programs adopted by other states for reference, and I am sure that the task force will come up with an excellent program.

The KBA Board of Governors has received the report from the Task Force on Attorney Advertising and the report has been referred to the board’s rules committee for further deliberation. No doubt a new set of advertising rules will be developed and forwarded to the Supreme Court of Kentucky for further consideration. Keep your eyes and ears open about this because an advertising rule change will affect every attorney’s practice in a substantial way. While change is being considered, the current rules remain in force and I give many thanks to our Attorney’s Advertising Commission for its hard work and dedication.

The IT audit commissioned by the board has been completed, the report received, and is under consideration. As times changed and the analog world became more digital, leadership and staff became concerned about our ability to adapt and progress with the systems in place. This audit was a very worthwhile effort and should be a great help in modernizing the way that staff is able to serve the membership. Future planning will depend on the KBA’s tech capabilities.

The first meeting of the financial summit group was conducted and was very productive. Similarities and differences between the way funds are managed by the Kentucky Bar Foundation, the IOLTA Trustees, and the financial officers of the KBA were identified. The goal is to ensure that those entrusted with your money are exercising their fiduciary duties in the best possible way to maximize income and lower administrative costs.

Finally, KBA President-Elect Bill Johnson is again leading the legislative outreach effort of the KBA in support of appropriate funding for the Court of Justice in the upcoming legislative session. The situation where courts have to be closed because of a lack of funds must never again occur in this Commonwealth and it is our duty as officers of the court to express this concern to the General Assembly in a professional and courteous manner. A kick-off meeting has been scheduled for early November and we are excited for this opportunity to have a direct effect on the Court of Justice.

Your bar association is hard at work for you, providing programs and services, addressing concerns and ‘maintaining a proper discipline’ among the members. The KBA staff is fully engaged in these efforts. More importantly, the hundreds of volunteer attorneys serving on committees, commissions and boards are just as engaged proving that we are all in this together. I am proud to be a Kentucky attorney.
Have You Taken Care of Your “Old Dog” Case?

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It may be difficult to understand why and how alcoholic beverages are currently regulated without knowing some of the history behind the laws regulating the traffic and sale of those products. To say that alcohol products are unique among other consumer products is an understatement. From a legal standpoint, alcoholic beverages are the most heavily regulated consumer products in the marketplace in the United States. They are the only products that are the subject of two amendments to the U.S. Constitution — the 18th Amendment, which ushered in national Prohibition, and the 21st Amendment, which repealed the 18th Amendment and prohibited transportation of intoxicating liquors into any state for delivery or use in violation of that state’s laws.

The causes of national Prohibition, besides the political machinations underlying the adoption of the 18th Amendment, are generally attributed to the abuses associated with the “saloons” as they existed in the late 19th and early 20th centuries. In his book _Last Call_, Daniel Okrent describes the urban saloon as a place where a customer could cash his paycheck, obtain credit, and get a cheap place to stay at five cents a night. The working-class saloon would offer a free lunch to patrons where the food was so salty that only copious amounts of beer could quench one’s thirst. This is where the expression “There is no such thing as a free lunch” arose. Many saloons were owned by or were under contract with brewers and distillers to sell their products exclusively; these so-called “tied houses” had all the drawbacks of absentee landlords, who neither lived in the community nor had any ties therein. Their only motive was increased sales. The abuses associated with saloons are well documented by historians and in the literature of the times. After the turn of the 20th century, the temperance movement gained social and political momentum, eventually leading to the adoption of the 18th Amendment. With the 80th anniversary of the ratification of the 21st Amendment approaching on December 5 of this year, it seems an appropriate time for a review of how we got to where we are now.

The advent of national Prohibition begat a whole new set of problems that were unforeseen by the advocates who helped usher in that great experiment in social engineering. National Prohibition of products which were enjoyed by large
segments of Americans since the first Europeans arrived on our shores is a clear example of something that was *malum prohibitum*. The fact is that those who liked alcoholic beverages did not stop liking alcohol just because of national Prohibition. The natural laws of supply and demand were destined to prevail. What happened during the 14-year span between the onset of Prohibition and its repeal is an object lesson in good intentions gone awry.

In October, 1918, just prior to the effective date of national Prohibition, Congress enacted the National Prohibition Act, also known as the Volstead Act. The act prohibited the manufacture, sale, transport or possession of intoxicating liquor within the U.S., with some exceptions, including beverages prescribed by licensed physicians and wine for sacramental purposes, to be purchased by rabbis, ministers and priests. It also permitted possession and consumption of liquor in a private dwelling for the personal consumption of the owner, his family and private guests, if obtained prior to the effective date of Prohibition. These exceptions were exploited with sometimes comical results, such as rabbis with Irish names, and physician prescription ledgers (which they were required to submit to the U.S. Prohibition Bureau) filled with orders for medicinal liquors for ailments such as “debility” and “La Grippe.” It also gave rise to the cruise ship industry, where passengers were free to imbibe beyond the 12-mile limit of U.S. territorial waters.

The exception loopholes in the Volstead Act provided a means for persons to obtain small amounts of alcohol legally. The unexpected consequence of national Prohibition was the era of lawlessness ushered in by bootleggers and speakeasies. Those excesses have been the subject of television series such as *The Untouchables* and *Boardwalk Empire*. In addition to the disrespect for the law engendered by Prohibition, the greed of low-grade bootleggers lead to the repurposing of industrial grade alcohol, and the consumption of those products, such as wood alcohol, isopropyl alcohol, and other toxic compounds, lead to hundreds of cases of blindness and deaths annually.

By the end of the decade of the 1920s, after witnessing the deleterious effects of Prohibition on American society, many of the former proponents of Prohibition were changing their minds about the continued efficacy of that policy, one of whom was John D. Rockefeller, Jr. Rockefeller was a lifelong “tee-totaler” who had originally enthusiastically endorsed Prohibition, and one of the most respected philanthropists of his time. He came to see that the 18th Amendment was a complete failure. What he witnessed led him to believe that since legally enforced abstinence imposed upon the populace through legal coercion was a failure, a policy of temperance would be the best course for the country to pursue. To this end, he commissioned Raymond B. Fosdick, an attorney, and Albert L. Scott, an engineer, to conduct a study of how the regulatory system in Canada and some countries in Europe helped promote temperance. The results of their study became a blueprint for establishing the regulatory framework for traffic in alcoholic beverages that was used as the authoritative reference by the states upon the repeal of Prohibition.

Fosdick and Albert set out 10 guidelines for establishing a regulatory licensing scheme, incorporating elements which had proved successful in the other countries which they studied. Those guidelines are as follows:

1. Creation of a single state licensing board, with statewide authority and responsibility, appointed by the governor, with merit personnel manning the agency;
2. The members of the board should be given long terms and should be eligible for reappointment;
3. The “tied house,” and every device calculated to place the retail establishment under obligation to a particular distiller or brewer, should be prevented by all available means.
4. Restrictions on the number and character of places where liquor may be sold, such as limits on the number of licenses based upon population;
5. Licenses should be classified to recognize the differences between beer, wine and spirits as problems of control;
6. The hours of sale of liquor, particularly for on-premise consumption, should be carefully regulated;
7. Licenses issued for the retail sale of liquor should run not only to the person who sells, but to the premises where the liquor is sold;
8. The license law should prohibit all sales practices which encourage consumption, including treating on the house, sales on credit or IOUs, bargain days (or happy hours). Rules are also needed to prohibit sales to minors, habitual alcoholics, and anyone who is drunk;
9. Strict regulation of advertising practices;
10. A system to control prices and profits, such as minimum mark-up laws.

In addition to the aforementioned recommendations, Fosdick and Albert were proponents of local option to conform to local attitudes and sensibilities, regarding whether or not to allow sales of alcohol in local cities and counties. They recommended lighter restrictions on the sale of beer and what they termed “natural wines,” those with 10-12 percent alcohol by content, and more stringent regulation of spirits and higher proof wines.

The study also examined two different options for state regulation of alcohol sales, the control system vs. the license system. The authors favored the control system, which was utilized in Canada, whereby the state has a monopoly on sales of alcohol products, because they thought of that system as being operated by state governments for the benefits of society. They examined the license system whereby controls are establishment of negative rules, regulations, conditions and taxes, imposed by the state upon private enterprise. The reason that they favored the...
The current comprehensive liquor control scheme was adopted by the legislature. Those laws are comprised of what is now KRS Chapters 241-244. It is interesting to note that Kentucky liquor control statutes incorporated the elements of the guide- lines set forth in the study commissioned by Rockefeller in 1933.

Chapter 241 deals with the administrative structure of the Department of Alcoholic Beverage Control (ABC). The ABC Board is comprised of three members, to wit: commissioner, distilled spirits administrator and malt beverage administrator. The commissioner is in charge of agency personnel (most of whom are merit employees) and the day-to-day operation of the agency, and the administrators are responsible for the issuance of their respective licenses. Those three board members officiate at administrative hearings held before the board for adjudication of violations of liquor laws. All three members are appointed by the governor for a four-year term, and are eligible for re-appointment without limit on the number of terms served.

Chapter 242 is devoted to local option elections, and the procedures required therefor, and permissible and impermissible activities in dry territories.

Chapter 243 pertains to licensing and taxation of alcoholic beverages. It sets forth the various license types and fees, both state and local. Chapter 243 also details the kinds of activities that are authorized by each license type. Additionally, it details the rate of taxes to be paid by wholesalers of distilled spirits and wine and distributors of malt beverages. According to the Kentucky Revenue Cabinet, alcohol tax receipts (beer, wine and spirits excise taxes and the 11 percent wholesale tax) for Fiscal Year 2012-13 amounted to more than $122 million.

Chapter 244 sets out a comprehensive list of prohibitions, restrictions and regulations for each license type. It deals with, inter alia, persons whom may not be licensed or employed by licensees, premises that may not be licensed, hours of sale, advertising restrictions, disorderly conduct, sale to minors, container sizes that are permissible, and trade practice or tied house restrictions.

In short, all of the areas of concern that were set forth in the Fosdick and Scott study are addressed in the Kentucky alcoholic beverage control laws. These laws have undergone various tweaks during the ensuing 75 years since their initial enact-
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Let’s face it: people love to drink.
Blame it on what you will, but the alcohol industry is expanding rapidly with new niches to quench a thirsty market. Flavored liquors, regional wines and craft beers are all the rage – and their operations require a new level of sophistication that the industry has never before seen. Since the repeal of Prohibition, Kentucky has made changes to its alcohol-related laws on an incremental basis. As a result, Kentucky had “a patchwork of laws and regulations that are duplicative, outdated and cumbersome to administer” and more license types than almost any other state in the nation, which created an administrative nightmare and confused licensees.

In response to industry growth, increased number of wet cities and counties, and the need for a comprehensive act, Gov. Steve Beshear appointed a task force to study Kentucky’s alcoholic beverage control laws in July of 2012 task force, the first of its kind since 1933 when Gov. Ruby Laffoon appointed a liquor control committee to address the issues raised by the repeal of Prohibition. The task force was comprised of 22 members that included members of the Department of Alcoholic Beverage Control (Kentucky ABC), Kentucky legislators and various industry groups as well as other groups that deal with alcoholic beverage control issues. Many volunteers also participated in the task force. The Governor directed the task force to focus its work on three areas: the number and types of licenses issued by the state and what activities each license should authorize, the effectiveness of local option elections and the enhancement of public safety and compliance with regulatory requirements. Based upon its research, the task force approved 34 recommendations, which were incorporated into Senate Bill 13 (“SB 13”), along with other alcohol related items. SB 13 and House Bill 315, which contained proposed legislation permitting brewer’s to give samples along the same lines permitted by microbreweries, were enacted as law on June 25, 2013.

To effectuate the task force’s recommendations, SB 13 consolidated similar license types and both state and local licensing fees, simplified the licensing process and modernized local option laws and laws regarding sales on election days. SB 13 also strengthened the Kentucky ABC’s and local government’s public protection powers, reinforced protection of Kentucky’s three-tier alcohol distribution system relating to microbreweries, and made fees uniform for the same license types while attempting to keep costs and fees low and maintain revenue neutrality.

LICENSE TYPES
The following license types were changed to simplify the licensing process and/or consolidate similar license types:

Distiller’s license – The former souvenir retail liquor license allowed distillers located in wet territory to engage in retail souvenir package sales (up to three liters per visitor per day) to consumers at a gift shop or other retail outlet on their licensed premises. The privileges under the former souvenir retail liquor license have simply been added to the privileges of a distiller’s license so that only one license is now needed. Since almost every distiller located in wet territory held a souvenir retail liquor license, the licenses were merged to eliminate paperwork. Thus, if a distiller is located in wet territory, the distiller automatically has the right to engage in such souvenir package sales; however, a distiller located in dry or moist territory would not have the right to engage in souvenir package sales under this license, or any other license, because the distiller’s location in dry or moist territory prohibits retail package sales.

Winery license – The previously named “vintner license” caused confusion because most people associated wine production with a “winery,” not a vintner. It was also difficult to connect with its counterpart, the “Small Farm Winery license,” which allows licensees to produce up to 50,000 gallons of wine in a calendar year. Because of the difference in names, applicants could not easily identify that the holder of the former vintner’s license operated a winery producing more than 50,000 gallons of wine in a calendar year. The name of this license was simply changed to “Winery.”

Brewer’s license – HB 315 permitted in-state brewer’s license holders to offer free samples of malt beverages in an amount not to exceed 16 ounces per patron, per day if the brewery is located in wet territory.

Out-of-State Distilled Spirits/Wine Producer/Supplier license – Out-of-state distilled spirits/wine producers/suppliers must now obtain licenses and register products for sale in Kentucky on the amount of gallons the licensee imports into Kentucky.

Quota Retail Package license and Quota Retail Drink license – Only the names of these licenses have changed from “Retail Liquor Package license” to “Quota Retail Package license” and “Retail Liquor Drink license” to “Quota Retail Drink license.” These quota licenses are limited in number and set by quota regulations as opposed to non-quota licenses that are infinite in number.

NQ1, NQ2 and NQ3 Retail Drink licenses – Several existing non-quota (NQ) licenses were bundled and new types created to simplify and reduce the number of license types. Former license types were grouped together based upon similar costs, qualifications and privileges, but the qualifications and privileges themselves did not change. There are other non-quota licenses, but the NQ designation is not necessarily included in their name. The NQ1, NQ2 and NQ3 retail drink licenses are combo licenses, which means that, with one exception, the holder needs only to hold one license in order to sell all three types of alcoholic beverages.
beverages - distilled spirits, wine and beer. An NQ1 license combines the former convention center, horse track, automobile racetrack and the air/rail system licenses. The NQ1 license grants the right to sell distilled spirits, wine and malt beverages.16 An NQ2 drink license includes the former restaurant drink, motel drink, restaurant wine, airport drink and riverboat licenses.17 Although the NQ2 license is also a combo license, you should advise your clients that the “combo” designation only adds the privilege to sell malt beverage. Accordingly, a licensee that previously qualified for a restaurant wine license (restricted to wine sales only) will now be allowed to sell only wine and beer, not distilled spirits. All other holders of an NQ2 license that previously qualified to hold a restaurant drink, motel drink, airport drink or a riverboat license have the right to sell distilled spirits, wine and malt beverages. An NQ3 license now contains what was previously known as the special private club, dining car liquor and dining car beer licenses; these holders have the right to sell distilled spirits, wine and malt beverages.18

**NQ4 Retail Malt Beverage Drink license/NQ Retail Malt Beverage Package license** – SB 13 created the NQ4 retail malt beverage drink and the NQ retail malt beverage package licenses by dividing the privileges of the former retail malt beverage license. The NQ4 retail malt beverage drink license permits malt beverage drink sales only for consumption on a licensed premises.19 The NQ retail malt beverage package license permits malt beverage package sales only for consumption off the licensed premises.20 It is possible to simultaneously hold both licenses.21 The two separate retail malt beverage licenses were created to eliminate the licensing scheme conflict with retail distilled spirits and wine license types, which separated its retail license types by either by the drink allowing consumption only on the premises or by the package allowing consumption only off the premises prior to SB 13.

**Special Temporary Distilled Spirits and Wine Auction license** – SB 13 clarified that a caterer may cater an event for which a special temporary distilled spirits and wine auction license has been issued.22

**Bonds** – Bonds were eliminated as a requirement to the following licensing types: distiller’s, winery, brewher’s, rectifier’s, non-resident distilled spirits/wine transporter, wholesaler’s, and bottling house. Bonds are still required by federal law for some licensees.

**Master Files** – SB 13 amended KRS 243.380 to allow a business with more than two licensed premises in Kentucky to submit common information about ownership, management and criminal background checks (if current) only once for all separately licensed premises in one master file. Such businesses only need to amend the master file information for material changes required by KRS 243.390(2) or ownership changes described in KRS 243.360.

**Bundling of License Types** - The “bundling” of the following license types eliminated unnecessary licenses without changing the qualifications and privileges of the former license types:

- **Rectifier’s license** – Former blender’s license was eliminated and its privileges were consolidated into the rectifier’s license.23
- **Special Agent or Solicitor’s licenses** – The nonresident special agent or solicitor’s license was eliminated and its privileges consolidated into a general license for both in-state and out-of-state licensees.24
- **Transporter’s license** – The following six licenses types were consolidated into one transporter’s license25: the transport non-resident, Through transporter’s, freight forwarder’s, transporter’s (for liquor), transporter (malt beverage) and special beer transporter’s.
- **Malt Beverage Storage license** – The following three licenses types were consolidated into one malt beverage storage license26: the malt beverage warehouse, distributor’s storage and the off-premise retail storage.

**Distilled Spirits/Wine Storage license** – The special storage or warehouse license and the bonded warehouse license were consolidated into one distilled spirits/wine storage license.27

**Special Non-Beverage Alcohol license** – The special non-industrial alcohol license and special industrial alcohol license were consolidated into the non-beverage alcohol license.28 The holder of the new special non-beverage alcohol license is permitted to make ethanol fuel.29

**Special Temporary license** – Special events held on unlicensed premises have been required to obtain certain types of “temporary” licenses to sell alcoholic beverages for just that special event. The former special temporary malt beverage license, special temporary wine license and special temporary liquor/wine license were consolidated into the special temporary license.30 The special temporary license includes only the privileges contained in the former licenses and only authorizes alcoholic beverage sales types that are permissible in the territory in which the event is held. Specifically, a special temporary license only authorizes distilled spirits drink sales if the qualifying special event occurs in a wet territory where quota retail drink licenses are permitted.31 In all other cities and counties, the holder of a special temporary license may only sell wine or malt beverages by the drink.32
Historically, the concept was that the “special event” was a county fair, city festival, or similar type of civic or community event. Applicants abused the license, however, and applied for events outside the intended scope of the license. Although the qualifications for non-profit or charitable groups have not changed, to prevent abuses, “for-profit” applicants may now only obtain a temporary license for a bona fide civic event. For-profit applicants are now required to submit written documentary evidence supporting the civic nature of the event and showing the local government’s knowledge and support of the event. The Kentucky ABC requires a resolution from the local government, a letter from a mayor or similar local official with authority, or a newspaper article detailing the civic nature of the event. Marketing materials such as brochures and advertisements will not suffice. A different type of temporary license, the special temporary distillers’ permits and wine auction, remains unchanged by and did not merge into this new license.

**MODIFICATIONS TO STATE LICENSING FEES AND THE ANNUAL RENEWAL SCHEDULE**

SB 13 further attempted to correct inconsistencies and inequalities in license fees. Prior to SB 13, licensees had as many as four different state licensing fees depending upon the type of license and the class of city or county in which a licensee was located. For example, under the former KRS 243.030, the license fee for the retail liquor drink license was $1,000 for a county containing a city of the first class or consolidated government (e.g., Louisville); $600 for a county containing a city of the third class (e.g., Independence); and $500 for a county containing a city of the fourth class (e.g., Bardstown). There is now only one fee for the same license type, regardless of location. Accordingly, a licensee in the aforementioned example would now only pay $620 to the state for a quota retail drink license regardless of whether located in Louisville, Lexington, Independence or Bardstown.34

SB 13 also modified the licensing fee amounts in an effort to remain revenue neutral. Based on the task force’s recommendations, a serious attempt was made to calculate fees equitably across all license types, and changes were not made for the purpose of increasing state licensing fees. Notably, some license fees actually decreased. Consolidated fees remained low in an effort to protect licensees in smaller class cities and counties that may not generate as much revenue as their counterparts located in larger cities and counties.

The state licensing renewal schedule was simplified, and state renewals are now scheduled by month for specific counties instead of by zip code. Previously, retailers in the same city with different zip codes, but literally located across the street from one another, had different license renewal dates, and that caused confusion when wholesalers and distributors attempted to fill orders. These changes mainly affect licensees in larger cities, such as Louisville and Lexington.

To incorporate the statutory modifications into licensing, the Kentucky ABC recently issued replacement state licenses to all existing license holders. The replacement licenses show the new license types in place of the eliminated ones, but the expiration dates of these licenses remain the same. Licensees are required to replace their old state licenses with the new ones and correct licensing numbers on the exterior windows or doors. You should advise your clients that their failure to do so by Sept. 1, 2013, could result in violations issued by the Kentucky and/or local ABCs.

If a licensee’s renewal schedule does change, the Kentucky ABC will phase in the new renewal schedule by requiring the licensee to renew twice in the next year. Licensees should receive their state renewal notices as normal even if the expiration month is changing. The renewal form will permit a licensee to renew the licensees’ existing licenses and pay a pro-rated fee to keep the licenses active during the transition period this year. The second renewal form will allow the licensee to renew on the full year schedule as anticipated by the statutory modifications. Since local governments are not required to renew local licenses based on the state’s licensing renewal schedule, the local renewal date may not mirror the state renewal schedule.

Holders of producer, wholesaler and distributor licenses now have the option to renew their respective licenses for a one-year or a two-year licensing period, instead of just a one-year license as was required prior to SB 13.35 This two-year licensing period and renewal option, however, is not available to retail licensees.

**NEW STATE LAW ALLOWING RETAIL ALCOHOL SALES ON ELECTION DAYS**

Prior to the passage of SB 13, Kentucky was one of only four states left in the nation to prohibit the sale of alcohol on primary and general election days while the polls were open. To modernize Kentucky’s laws, SB 13 amended KRS 244.290 and KRS 244.480 to permit licensees to sell alcoholic beverages on any primary, regular, local option or special election days as the default state law. SB 13 authorized cities of the first four classes, and counties containing cities of the first four classes, to adopt local ordinances to prohibit alcoholic beverages sales, or limit the hours of sales, on any primary, regular, local option or special election day if such locale desires to prohibit such sales. Although counties and cities are not required to enact such ordinances, if prohibition is desired on election days by an authorized local government that did not previously have an ordinance to that effect in place, an ordinance must be passed to prohibit such sales. If no local ordinance exists, whether currently in effect or enacted with the passage of SB 13, retail alcohol sales will be permitted, by default, under state law.
LOCAL OPTION ELECTION LAW CHANGES

What are local option election laws? Following the repeal of Prohibition, Kentucky Constitution Section 61 provided local communities with the right to choose whether to legalize the sale of alcoholic beverages. Many communities decided to remain dry or partly dry (moist), which meant that alcohol sales were banned or restricted. To this day, more than 50 percent of Kentucky geographically remains dry or moist. Citizens in a community can hold a local option election and decide to legalize or prohibit the sale of alcoholic beverages, or authorize a limited form of alcoholic beverage sale (moist).

SB 13 attempted to correct many problems in Kentucky’s existing local option election laws. For the sake of convenience, all local option election laws were placed in KRS Chapter 242, and any laws dealing with unrelated issues such as licensing and ordinances were moved to KRS Chapters 243 or 244. KRS Chapter 242 now better explains which territories can have local option elections and how petitions should be worded. KRS Chapter 242 specifically addresses new “moist” territories where voters only approve a limited form of alcoholic beverage sales in a territory. Although the term “moist” was previously used in the industry, it held different meanings for various industry members. It has now been defined by SB 13 to mean “a territory in which a majority of the electorate voted to permit limited alcohol sales by any one (1) or a combination of special limited local option elections...” Limited alcohol sales (moist) elections are held only for limited restaurants, golf courses, small farm wineries, qualified historic sites, and horse race tracks. The local option election rules were also modernized to more closely follow KRS Chapter 117 dealing with primary and general elections. KRS 242.125, dealing with city elections to become wet separate from the county, was amended to be more comprehensible. All possible combinations of “wet,” “dry” and “moist” status of cities and counties to permit those cities and counties to hold full wet elections are now recognized under amended KRS 242.125.

PUBLIC SAFETY AND PROTECTION

SB 13 expanded the scope of the disorderly premises statute, KRS 244.120, to provide the Kentucky ABC and local ABC administrators with additional powers to protect the public. Specifically, KRS 244.120 was amended to prohibit disorderly conduct by licensees’ employees because the Franklin Circuit Court held in Hofbrauhaus Newport, LLC v. Department of Alcoholic Beverage Control, Civil Action No. 11-CI-1345, that the prior language of the statute only applied to patrons’ conduct, and not the conduct of the licensee's employees. The court held that the Kentucky ABC was powerless to reprimand a licensee whose premises became disorderly by virtue of the licensee's own employees' conduct, which was ironic since licensees can legally exhibit more control over an employee's behavior than they can a patron's behavior. Further, in addition to existing prohibitions, the acts constituting disorderly conduct were enlarged to include: creating a public nuisance; engaging in criminal activity that would constitute a capital offense, felony, or misdemeanor; and failing to maintain the minimum health, fire, safety, or sanitary standards established by the state or a local government, or by state administrative regulations, for the licensed premises.45

Following a rising trend in other states, SB 13 created a new medical amnesty law.46 Its purpose is to encourage individuals to seek needed emergency medical attention for a minor or others due to alcohol poisoning. If certain strict requirements are met, the law would provide immunity from criminal prosecution to both minors and adults for less serious offenses such as alcohol intoxication, drinking alcoholic beverages in a public place, and possession of alcoholic beverages by an individual under 21 years of age, but not for more serious offenses such as driving under the influence. Based on discussions with various university representatives, the task force learned that after a night of binge drinking, college students failed to call for medical help for themselves or for a friend because of the fear of punishment from law enforcement. The expectation is that the universities will educate their students about this law and it will save lives.

THREE-TIER SYSTEM PROTECTIONS RELATING TO MICROBREWRIES

To deter business activities and abuse which resulted from Prohibition, Kentucky and other states have adopted a three-tier alcohol distribution system. The basic structure of that system is that producers (the makers of the alcohol) can sell their products only to wholesalers or distributors who then sell to retailers, and only retailers may sell to consumers. The three-tier system is designed to encourage competition and protect a retailer from being forced to only carry one producer’s product.

Under prior law, a microbrewery produced malt beverages but was also granted the special privilege of obtaining the former retail malt beverage license to authorize retail beer sales at the microbrewery. Because of the separation of the former retail...
malt beverage license, microbreweries are now required to obtain one or both of the new retail malt beverage license types in order to sell malt beverages at retail. Furthermore, SB 13 now permits microbreweries to sell limited amounts of malt beverages (288 ounces per customer per day) produced on the premises without having to transfer physical possession of those malt beverages to a licensed distributor, and then back to itself as retailer. To protect the three-tier system, microbreweries are required to file monthly reports and collect and provide all taxes due to licensed distributors.

Although SB 13 corrected many of the problems and inconsistencies that troubled Kentucky’s statutory alcohol scheme, it did not solve all of them. Among others, the task force emphasized that further study was required to prevent abuses by applicants attempting to hide foreign or disqualifying ownership in multi-level entity structures. That said, the passage of SB 13, a bill devoted solely to alcohol, reduced state license types from 288 ounces per customer per day) produced on the premises without having to transfer physical possession of those malt beverages to a licensed distributor, and then back to itself as retailer. To protect the three-tier system, microbreweries are required to file monthly reports and collect and provide all taxes due to licensed distributors.

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Stacy Kula is an attorney at Stoll Keenon Ogden PLLC and focuses her practice on alcohol beverage control, hospitality and corporate law at Stoll Keenon Ogden PLLC. Kula received her J.D. from North Carolina Central University and her LL.M. in Taxation from the University of Florida. She is a member of the National Association of Alcoholic Beverage Licensing Attorneys (NAABLA) and the National Association of Licensing and Compliance Professionals (NALCP). Kula can be reached at stacy.kula@skofirm.com or 859.231.3054.

Steve Humphress is currently the general counsel for the Kentucky Department of Alcohol Beverage Control (ABC). Humphress received his law degree from the University of Louisville, School of Law in 1993 and was employed in private practice until 2001. From 2001 until 2007, he was employed by the ABC, and served as general counsel beginning in 2003. In 2007, he began employment at the Office of Attorney General as an administrative law judge. Humphress returned to the ABC in 2009. During his tenure at the ABC, Humphress has acquired a vast and unique knowledge about the alcoholic beverage laws.
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bourbon distilleries have become a symbol of the good life here in Kentucky. Tours and other bourbon-related activities. Much like the vineyards in Napa Valley, Kentucky’s bourbon distilling is big business. Kentucky distillers account for approximately 95 percent of all bourbon production in the United States. With the possible exception of horses and basketball, nothing is more uniquely Kentucky than bourbon. Bourbon distilling in the Commonwealth is big business. Kentucky distillers account for approximately 95 percent of all bourbon production in the United States. The bourbon industry employs thousands of workers within the state and has, in recent years, become a successful tourism driver, bringing visitors from all over the country and the world to Kentucky for distillery tours and other bourbon-related activities. Much like the vineyards in Napa Valley, Kentucky’s bourbon distilleries have become a symbol of the good life here in Kentucky.

It is important to remember, however, that bourbon distilling is an industry and, like all other industries, it is faced with a wide variety of environmental regulations that it must follow. The distilling process creates air emissions that are regulated under the Clean Air Act, and wastewater from the process is regulated under the Clean Water Act. In many ways, the issues faced by distilleries are no different than those faced by other industrial facilities. There are certain issues specific to the distilling industry that, from an environmental compliance perspective, merit special discussion. In particular, water discharges (both stormwater and process wastewater) and air emissions from the distilling process present unique circumstances for distillers to address.

WATER DISCHARGES

As with most other industrial facilities, a distillery’s water discharges come in two forms: stormwater discharges and process wastewater discharges. Stormwater is precipitation that falls onto a property and then runs off into a receiving water via either natural or man-made conveyances. As stormwater runs off a property, it collects pollutants off the ground along the way posing a significant threat to water quality in the state’s waterways. Process wastewater, on the other hand, fits the more traditional definition of wastewater – water used in the distilling process which often includes on-site sanitation water. Process wastewater often requires treatment prior to discharge to a receiving water (local stream) or to a publicly-owned treatment works if one is available. Both discharges require Kentucky Pollution Discharge Elimination System (“KPDES”) permits from the Kentucky Department of Environmental Protection’s Division of Water. KPDES permits include effluent limitations, which are limits on the amount of a particular pollutant that may be discharged to a receiving stream.

The Division of Water recently issued a new general permit authorizing the discharge of stormwater from industrial facilities (“Industrial Stormwater General Permit”). Under the terms of the Industrial Stormwater General Permit, owners and operators of industrial facilities who meet the requirements set forth in the permit (including distillery operators) can simply file a “Notice of Intent” with the Division of Water to obtain coverage under the general permit. By seeking coverage under the Industrial Stormwater General Permit, an industrial user can avoid the cost and effort of applying for an individual permit.

The Industrial Stormwater General Permit contains standard conditions with which the permittee must comply. First, while there are no effluent limitations, the permit requires effluent monitoring of identified parameters twice a year. The permittee must implement “best management practices” to minimize the potential for pollutants to reach waterways. Finally, and most importantly, the permittee must develop and implement a stormwater pollution prevention plan (“SWPPP”) to govern the facility’s stormwater management operations. A SWPPP must include the following: the identity of individuals on the stormwater pollution prevention team; a site description, including the location of potential pollutant sources and industrial activities exposed to precipitation; a description of best management practices (BMP) to be implemented on site; schedules and procedures for the removal of waste materials and BMP maintenance; certain documents specified in the general permit; inspection forms and schedules; and a way to track modifications and corrective actions. The SWPPP must be signed and must be available on-site for facility operators and regulator inspections. Obtaining coverage under the Industrial Stormwater General Permit is a relatively simple endeavor, as it is complying with the terms of the permit. That said, it is crucial for the permittee to review the requirements of the permit and ensure that they are being met. Failures to properly prepare, implement, or update a facility’s SWPPP are among the leading causes for cited violations.

A distiller will also likely need to obtain a KPDES permit to allow it to discharge process wastewater. To obtain a process wastewater KPDES permit, a distiller must submit an application to the Division of Water that identifies the sources of process wastewater and the levels of pollutants in its waste streams. The division then develops permit limits that protect water quality in the receiving stream and are based on implementing identified treatment technologies to reduce effluent pollution levels. KPDES permits require the permittee to monitor and report, via discharge

angel’s share (n. Informal): The quantity of an alcoholic liquor lost to evaporation during the distilling process.
monitoring reports, the levels of pollutants in its waste discharges to ensure that the effluent limits in the permit are not being violated.\(^8\)

Wastewater from distilling operations is unique from most other industrial operations because of the high levels of biological oxygen demand ("BOD") in the waste stream. BOD is a measure of the organic materials in water. Bourbon is made by fermenting corn and other grains. Not all of the organic material is consumed in this process, so the leftover organic material "feeds" microorganisms living in a water body which, as they develop and multiply, consume the dissolved oxygen in the water. As the dissolved oxygen is consumed, the water becomes less and less habitable to aquatic species.

The effects of BOD pollution on aquatic life were evident in the aftermath of the fire at a bourbon distillery in Kentucky in 2000. Efforts to put out the fire resulted in the discharge of bourbon and water (from fire hoses) into the Kentucky River. Several days later, a large fish kill occurred. The bourbon itself was not toxic to the fish; the alcohol and other organic materials, however, resulted in a high BOD in the discharge that dramatically increased the levels of microorganisms in the river, depleting the oxygen levels, and killed many fish. Many distilleries and warehousing areas have constructed berms and developed other techniques to keep spills from reaching nearby streams and rivers.

In developing limits for BOD in distillery KPDES permits, the Division of Water relies in part on a document prepared for the Environmental Protection Agency in 1975 titled "Development Document for Effluent Limitation Guidelines and New Source Performance Standards for the Miscellaneous Food and Beverage Point Source Category." Effluent limitation guidelines are standards adopted by the United States EPA that account for the amount of effluent reduction attainable through the implementation of the "most practicable control technology currently available."\(^9\) Effluent limitation guidelines are source (or industry) category based and, where they exist, inform the Division of Water's technology-based limit determinations. The effluent limitation guidelines for the distilling industry were never adopted as formal effluent limitation guidelines; however, the Division of Water still relies on them to inform their determination of effluent limits for BOD and total suspended solids. The BOD limits can present a challenge to distillery opera-

tors, but with modern treatment technologies, the levels can be managed.

**AIR EMISSIONS**

Production at a distillery also includes air emissions that are regulated under the Clean Air Act. Sources of air emissions at distilleries can include natural gas or coal-fired boilers; grain handling; drying and storage equipment; fermentation and distilling processes; and bourbon storage, processing, and bottling equipment. Distillery emissions from these processes must be authorized by a permit issued by the Kentucky Division for Air Quality, or by the Louisville Air Pollution Control District (for distilleries and other industries in Louisville). The type of permit and, therefore, the level of controls, monitoring, and reporting required depends on the amount of pollutants that will be emitted by the source. A facility's potential to emit is calculated using expected maximum operations levels, historical emissions levels, and data derived from similar operations.\(^10\) Anticipated reductions from pollution control equipment can be considered if the permit will mandate the use of such equipment.\(^11\)

No registration or permit is required if the source’s potential to emit is less than two tons per year ("tpy") of an individual hazardous pollutant ("HAP"), less than five tpy of combined HAPs, and less than 10 tpy of regulated, non-HAP pollutants (i.e., particular matter, carbon monoxide, sulfur dioxide, lead, volatile organic compounds and nitrogen oxides).\(^12\) As a facility’s potential to emit increase, the permitting requirements become more stringent. If the facility has the potential to emit more than 10 tpy of a single HAP, more than 25 tpy of combined HAPs or more than 100 tpy of a regulated, non-HAP pollutant, the facility is considered a major source and is required to obtain a Title V operating permit.\(^13\) A Title V operating permit is subject to review and comment by the United States EPA.\(^14\) If the facility is a major source for non-hazardous pollutants (emitting more than 100 tpy), the emissions limits will be set at a level that could be achieved by implementing the best available control technology or BACT.\(^15\) Determinations of what constitutes BACT account for the energy, environmental and economic impacts of installing the technology. If the source is a major source for hazardous pollutants (emitting greater than 10 tpy of any single HAP or more than 25 tpy of combined HAPs), emission limits will be set at levels that could be achieved by implementing the maximum achievable control technology or MACT.\(^16\)

**CONCLUSION**

The distilling industry plays a vital role in Kentucky’s economy and its identity. Like every other industry in the state, it must operate in the context of a complex regulatory framework designed to protect the environment of the Commonwealth. The challenges that this framework may pose to the distilling industry are, in many ways, no different than those posed to other industrial facilities in the state. With proper planning and a careful eye, distillers can maintain compliance with environmental regulations as they create the product that so many of us enjoy.\(^1\)

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2. Permit No. KYR000000, Agency Interest No. 35050.
3. Industrial Stormwater General Permit, Section 1.1.
4. Industrial Stormwater General Permit, Section 1.2.
5. Industrial Stormwater General Permit, Section 1.3.
6. 401 KAR 5:060.
7. 401 KAR 5:065.
8. 401 KAR 5:070.
10. 401 KAR 52:0015(6).
11. d.
12. 401 KAR 52:070, Section 1.
13. 401 KAR 52:020, Section 1.
14. 401 KAR 52:020, Section 25; 401 KAR 52:100.
15. 401 KAR 51:017, Section 8.

Ken Gish is a member of the Environmental, Natural Resources and Energy Service Group in the Lexington office of Stites & Harbison PLLC, where his practice focuses on complex facility permitting, electric utility regulation, sustainability, hazardous waste remediation, renewable and alternative energy development, compliance with regulatory requirements, and environmental litigation. Gish represents the firm’s clients in all stages of the permitting process from application to appeals and in matters before administrative bodies and in state and federal court. He also assists clients in managing regulatory compliance matters arising from federal, state and local laws.
TAKE A P.A.S.S. on your next legal document

by Melissa N. Henke
University of Kentucky College of Law

You’ve just received a new client or a new assignment for an existing client, and you are ready to start drafting the necessary legal document. The document may be a letter to the client, a contract, a memorandum in support of a motion, or a request for admissions. The document is either one you’ve drafted more times than you can count, or perhaps it is one you have never before drafted. Either way, I encourage you to take a P.A.S.S. on the document. Don’t worry; I am not suggesting that you take a pass on writing the requested document. Rather, before you put pen to paper or fingers to keyboard, I encourage you to step back and consider the P.A.S.S. of the particular legal document. In other words, ask yourself the following:

What is the PURPOSE of the document?

Who is the AUDIENCE for the document?

What is the SCOPE of the document?

What STANCE should I take in drafting the document?

The questions I have identified are not novel ones. Indeed, legal writing textbooks encourage law students to ask these questions each time they tackle a new writing assignment in a legal research and writing course. But even a busy, seasoned practicing lawyer could benefit from asking these big picture questions before turning to draft a new legal document. Doing so will ensure the lawyer makes good decisions about how to organize the document, what to include or omit from the document, how to best present the arguments, and what legal writing or formatting conventions to apply.

PURPOSE

First, ask yourself what the purpose of the document is, which will help you make effective decisions about what to include or omit from the document. For example, the primary purpose when drafting an internal office memorandum is to “give the attorneys in your law office the information they need to evaluate a case, advise a client, or draft another document.” This means you must provide a frank and neutral assessment of the client’s situation, even if that means the client may not like the answer. In contrast, the purpose of a trial or appellate brief is to inform and persuade.

While attorneys usually focus on the second purpose — persuasion — they sometimes forget that the first purpose is to inform the judge of the relevant law and facts in a way that is easy to follow and understand. Attorneys must never assume judges are experts in any given area of law. They must also remember that judges have numerous other cases involving a variety of areas of law. In addition, while the drafting attorney is intimately familiar with the facts of the client’s case, the judge is not. Thus, “you can help your cause immeasurably by briefly reorienting the judge to the fundamental principles and authority in your case” as you simultaneously and subtly persuade.

AUDIENCE

Second, ask yourself who the legal audience is for the document. This will ensure both the organization and content of the document is effective and appropriate. Legal writing professors and practitioners alike place the utmost emphasis on audience. Correctly so. In a book first published in 2003, Writing for the Legal Audience, Wayne Schiess emphasizes the importance of writing with a particular reader in mind. He offers practical advice on how to write to more than a dozen legal audiences, including opposing counsel, trial and appellate court judges, clients, mediators, and consumers.

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be the client, so keep that in mind in terms of how you frame the description of the client’s conduct or problem. Another con-
ideration that young lawyers should keep in mind is that when writing internal documents for a boss, the specific preferences of that more senior lawyer, one who may well sign your paycheck, should be kept in mind. In other words, until you have senior-
ity, you should conform to your boss’s ex-
-pectations to the extent possible from a professional and ethical stand point.10

Another common audience is the judges with whom you file a motion or brief. As you draft the legal document, always re-
-member that judges are very busy. “They are overburdened, underpaid, and, in gen-
eral, hate having their time wasted.”11 Select among the arguments to make and legal authorities to cite with this in mind. The judge won’t appreciate your “every-
thing but the kitchen sink” approach to the document.12 Lawyers should also keep in mind that important secondary audiences for court documents include the judges’ law clerks, the client, opposing counsel,13 and sometimes even the general public in high profile cases. This means that all facts should be conveyed accurately yet in the best light for the client, and all authorities relied on should be relevant and good law.

Overall, regardless of the specific legal au-
dience, every legal reader is a busy and critical one. She has expectations about how the arguments are organized and sup-
ported with legal authorities. She also ap-
preciates clarity, brevity, and use of “plain English” over legal jargon.14 Keep these expectations in mind to ensure your legal reader is left with a positive and confident reaction to your writing.

SCOPE

Third, ask yourself what the scope of the document is, and take care to stay within that scope. Otherwise, you may annoy your boss or waste your client’s money. If you be-
lieve that other issues might affect the outcome of the case, ask the assigning attorney or requesting client if the issues have already been considered or if someone else is handling them.15 This, in turn, will also save you time. Moreover, staying within the scope of the issue or case in a court document will show you respect the judge’s time and perhaps also her jurisdiction.16

STANCE

Finally, ask yourself what stance is required by the document – formal or informal and objective or persuasive – and stick with that requisite stance throughout.

While most legal writing is formal, your law office may expect more informal writing for internal documents. This could save you time and show you are aware of the preferences of those you work with. Documents filed with the court should always be more formal, and they should comply with the formatting requirements for the relevant court and perhaps also the specific judge.

When the document’s stance is objective, the facts should include both good and bad facts for the client and should be framed neutrally. You must give proper weight to arguments on both sides of the issue.17 In contrast, court documents should subtly persuade, which means including all of the facts yet characterizing them in the light most favorable to the client.

In conclusion, the next time you begin to draft a legal document, remember to take a P.A.S.S. Asking the questions demanded by this acronym will benefit new and experienced lawyers alike. The end product will be better organized and focused, will be appropriately formatted, and will more di-
rectly and effectively speak to the specific legal audience to whom it is directed.18

1 E.g., Laure P. Graham & Miriam E. Felsenburg, The Pre-Writing Handbook

2 Enquist & Oates, supra note 1, § 18.2.
4 Enquist & Oates, supra note 1, § 18.2; see also Donahoe, supra note 1, at 161.
7 Id.
8 Oates & Enquist, supra note 3, § 6.1.
9 Id. § 6.2.
11 Peddie, supra note 5, at 36.
12 Antonin Scalia & Bryan A. Garner, Making Your Case: the Art of Persuading Judges, § 12 (Thom-
son-West 2008).
13 Enquist & Oates, supra note 1, § 18.2.1.
14 E.g., Mark K. Osbeck, “What is ‘Good Legal Writing’ and Why Does it Matter?”, 8 Drexel L. Rev. 417, 427-40 (Spring 2012); Richard C. Wydick, Plain English for Lawyers, at 3-6 (Carolina Aca-
15 Donahoe, supra note 1, at 65.
16 Scalia & Garner, supra note 12.
17 Oates, supra note 3, § 6.2.
The first memories of Louis Brandeis, for whom our law school is named, were his mother serving food and coffee to Union soldiers on the front yard of his Louisville home. It is fitting that I focus my commentary during November, when Veterans Day is observed, on the University of Louisville Louis D. Brandeis School of Law and its attention to those who are serving and who have served in the military.

The growth of our law school was significantly affected by the return of soldiers from World War II. The enrollment of women began in 1911, and the enrollment of male students dropped dramatically during World War II, but resumed when the war ended. Today many of our enrolled students have served in the military, and with the return of soldiers from the Middle East, we expect that number to increase.

**1L Students Who Served in the Military**

We welcomed seven 1L students with military experience this year. All of their stories are fascinating! This class includes an intelligence analyst), and a 5811 (military as a Sergeant in the Army, a 35N (signals Airborne Division, an Infantry Team Leader stories are fascinating! This class includes...
Help Us Recruit

If you know anyone in the military who is thinking about coming to law school, please ask them to contact us. Veterans who are currently eligible to receive 100 percent of the Post-911 GI Bill benefits are also eligible to be considered for the Yellow Ribbon Program. Currently, there are five slots available for law students. The Yellow Ribbon is a program that UofL elects to participate in to offset the costs of out of state tuition for veterans and beneficiaries of the Post-911 GI Bill. This benefit covers the remainder of the mandatory fees and tuition that UofL charges to students after Chapter 33 benefits are calculated. And UofL is a wonderful place for Veterans to continue their education.

- UofL was named a Military Friendly School for 2013 by G.I. Jobs, a monthly magazine designed to help veterans make the transition from military service to the civilian workforce. UofL has made the magazine's list four years in a row.
- We are committed to providing services and programs, including counseling and academic support, designed to help military and veteran students succeed in their studies.
- In 2012, the university launched a program designed to help people with military experience start businesses and offered its first career fair specifically for veterans.
- We continue to form partnerships with local, state, and national organizations in order to promote an ongoing professional exchange among soldiers, their families, and university faculty, staff and students.

Brandeis School of Law takes great pride in our students who have given service in the military and looks forward to even more ways we will shape policy and contribute to solutions to the important issues facing the military today.

2013 1L Military Student Veterans
(From Left to Right): Kurt Egner, Benjamin Ambrose, Nathaniel Mitchel, David Cutt, Brent McGee, Thomas Walsh, Not pictured: William VonBrandenburg

UK LAW HOSTS TWO EVENTS IN SEPTEMBER

The UK College of Law Welcomed U.S. Supreme Court Justice Elena Kagan and state lawmakers for two separate events on Sept. 19, 2013.

The first full month of the academic year saw a number of panel presentations and guest speakers at the University of Kentucky College of Law. On September 19, United States Supreme Court Associate Justice Elena Kagan spent the day at the college. After a welcome reception from the Women's Law Caucus, and a lunch with the UK College of Law faculty, Justice Kagan guest taught in Professor Salamanca's Federal Courts class, answering a series of students' pre-selected questions.

Later that evening, she joined UK Law Dean David A. Brennen before a sold-out crowd at the University of Kentucky Singers' Center Recital Hall for a conversation about her experiences on the nation's highest court. Kagan spoke about her relationships with the other justices, and how "We disagree, but then we put things aside and come back the next day, fresh," she said.

Kagan's visit was part of the Roy R. and Virginia F. Ray Lecture Series. The Ray Lecture Series is the pre-eminent lecture series at UK Law. Established in 1977, the series has featured outstanding jurists and public figures discussing legal topics of current interest for 30 years. Recent guests have included Albie Sachs, Akhil Amar, Robert Post, and Clarence Thomas.

On that same day, the College of Law's Appalachian Law Caucus, American Constitution Society, and Kentucky Journal of Equine, Agriculture, and Natural Resources Law (KJEANRL) sponsored a Mountain Caucus Forum. The seven-member panel included Speaker of the House Greg Stumbo, Senator Robin Webb and State Representatives Leslie Combs, Tim Couch, Tanya Pullin, John Short, and Jimmy Stewart.

The lawmakers discussed important issues and public policy concerns facing the Appalachian region of Kentucky, how those issues impact the rest of the state, and legislation intended to improve them. Of particular concern was the trouble facing the coal industry and the resultant decline in available jobs in Eastern Kentucky.

Other topics included drug abuse, economic and infrastructure development, and education. Assistant Dean Danny Murphy introduced the panel, saying, "We hope this event inspires our students to seek resolutions and commit to helping resolve some of these issues in our state. The economy and state of affairs for Eastern Kentuckians has a direct impact on the economy of the Bluegrass Region."
The Chase Alumni Association presented its annual alumni awards at the association’s Chase Alumni Luncheon on Oct. 9, 2013.

The Chase Lifetime Achievement Award was presented to Timothy E. Eble ’81. His law practice in Mt. Pleasant, S.C., focuses on mass torts, product liability, and complex and class action litigation. Eble formerly served with the United States Court of Appeals for the Sixth Circuit, worked as an associate with a defense firm in Covington, and in 1986, moved to South Carolina to practice law with Ness, Motley, Loadholt, Richardson and Poole. He founded his own firm in 2000.

During his career, Eble tried cases to verdict for hundreds of personal injury clients in the state and federal courts of 10 jurisdictions. His trial experience resulted in numerous multimillion-dollar verdicts for the clients he represented. He also settled cases for thousands of clients through class action litigation cases filed in several states. His class action practice included claims arising from pesticide exposure, deceptive financial practices, bankruptcy fraud, and defective products. He also participated as counsel in tobacco litigation that ultimately resulted in a national settlement.

Eble has served as a contributing author to the Consumer Class Actions treatise published by the National Consumer Law Center for more than a decade, and serves as a member of the center’s partners council. He was a contributing author to the third and fourth editions of Newberg on Class Actions. Eble has published approximately 60 book chapters and articles in the field of federal practice and class action litigation. He has served as an expert on class action issues and the award of attorney’s fees as lead counsel, class counsel, administrative class counsel, and counsel for interveners and objectors, and has represented judges in mandamus proceedings arising from class action rulings. His most recent publication is Instant Evidence, second edition, published by the National Consumer Law Center.

The Chase Professional Achievement Award was presented to Ann G. Schoen ’94. Schoen is a member of Frost Brown Todd LLC, where she is chairperson of the intellectual property law practice group. She is a registered patent attorney, and she practices in the areas of patent, trademark, trade secret and copyright litigation, patent prosecution, intellectual property licensing, and intellectual property portfolio management (both domestic and international).

Schoen graduated from the University of Notre Dame with a bachelor’s degree in chemical engineering in 1984. She was a member of the 10th class of women to graduate from the university. Before enrolling at Chase, she worked as an engineer for General Electric in its carbonyl, plastics, and aviation divisions.

Schoen attended the Chase evening program while working full-time at GE. After graduation in 1994, she worked in GE’s Corporate Research Center as a patent attorney. She returned home to Cincinnati in 1995 to join Frost & Jacobs as a patent attorney. Her first patent litigation matter was working for fellow Chase graduate David Schmit ’75 on the landmark patent infringement case of Hilton Davis Chemical Co. v. Warner Jenkinson, Inc., before the Supreme Court of the United States.

Schoen teaches patent law as an adjunct professor at Chase. Schoen is a member of the Dean’s Advisory Council and the Transactional Law Center Board of Advisors. She is also a member of the board of directors for Cincinnati Opera. She was recognized in Chambers USA for patent law in 2011-13, and in Best Lawyers in America for patent litigation in 2013 and 2014.

The Chase Exceptional Service Award was presented to Gabrielle A. Summe ’00. Summe made history in 2010 when she was elected Kenton County Clerk. She is not only the first woman to serve in this position, but also the first attorney to serve as a county clerk in the Commonwealth of Kentucky. As Kenton County Clerk, Summe has made it a priority to preserve the county’s history by digitizing its records. She is a member of the Legislative Committee for the Kentucky County Clerks Association and was appointed to the Secretary of State’s Task Force on Elections.

While attending Chase, Summe worked for the Kenton County Child Support Office. Upon graduation in 2000, she remained with the office as an assistant Kenton County attorney, and also worked with her brother, Pete Summe, as a part-time associate in the areas of bankruptcy, real estate, and probate.

Summe served as CLE co-chair for the Kentucky Bar Association’s Annual Convention in 2009 and is the convention chair for the 2014 KBA Annual Convention to be held in Covington. She is a past member of the KBA’s CLE Commission, and has previously served as the chair of the Women Lawyers Section of the Northern Kentucky Bar Association (NKBA), and as a member of the Board of Directors for the NKBA. She is also a past recipient of the Judge Judy West Scholarship, which is awarded to a female Chase student in her last year of study, and has chaired the annual event which raises money for the scholarship.
Summe is also committed to her community. She is a board member of the Diocesan Catholic Children’s Home and Welcome House Outreach. She is involved with Kids Voting and often speaks at area schools and community groups about elections, and has volunteered for the Credit Abuse Resistance Education (C.A.R.E.) program.

She was a contributing author for the Northern Kentucky Encyclopedia and past secretary for Legacy, a premier organization for young professionals. She is a 2005 recipient of the Volunteer Leadership Award from the Greater Cincinnati Foundation and is a 2005 graduate of Leadership Northern Kentucky.

Summe is also a 2004 recipient of the Business Courier’s 40 Under 40 award, a member of the Kenton County Governance Study Group, a member of the Ft. Wright Ethics Board, a member the board of directors of Split Rock Conservation Park, co-chair of the Redwood Express for the Redwood School and Rehabilitation Center, and campaign manager for several local political candidates.

The Chase Outstanding Alumnus of the Past Decade Award was presented to John M. Dunn ’03. Dunn is a partner at Reminger Co., L.P.A., and practices in the firm’s Fort Mitchell and Cincinnati offices. His legal practice focuses on trucking and transportation litigation, professional liability, products liability, construction liability, general liability matters, and Kentucky workers’ compensation.

Dunn served as an active duty Army officer prior to attending Chase. While at Chase, he clerked for the Kentucky Court of Appeals, worked in the NKU Office of Legal Affairs, and served as the interim risk manager for NKU. He also served as the president of the Chase Student Bar Association. During his third year of law school, he took a leave of absence to serve in overseas combat during the initial invasion of Iraq.

Dunn currently serves as a lieutenant colonel in the U.S. Army Reserve. He recently left battalion command of the 2/398 Cavalry Squadron and presently serves as the brigade operations officer for the 3rd Brigade, 95th Division in Lexington. He is a graduate of the U.S. Army Command and General Staff College.

Since graduating from Chase, he has served the community as well as his country. A 2004 cancer survivor, Dunn became active in the American Cancer Society (ACS) and served on the ACS Southern Ohio Board of Directors for six years. In 2012, he was recognized by the Northern Kentucky Chapter of ACS as the outstanding volunteer of the year.

Dunn has taught legal writing as an adjunct professor at Chase, and has lectured on civil procedure, evidence, appellate advocacy, and national security law. He also coached and mentored the Chase Trial Advocacy Team in both state and national competitions and serves as a member of the Chase Alumni Board of Governors.

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Diversity matters. As the United States Supreme Court has observed, “[e]ffective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized.” Given its unique position as a training ground for our corporate and civic leaders, the legal profession must embrace diversity as a positive and indeed necessary goal. “In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.”

Diversity is about more than racial and ethnic groups. The American Bar Association diversity initiatives target “racial and ethnic minorities, women, persons with disabilities, and the LGBT community.” True diversity embraces the blend of traits, backgrounds, and experiences that makes America the melting pot of the world. A diverse community, for example, includes individuals of differing religious, socioeconomic, geographic, and political backgrounds.

There are several reasons why achieving a more diverse legal profession is important. In its 2010 report on the state of diversity in the profession, the American Bar Association Presidential Initiative Commission on Diversity identified four rationales: democracy, business, leadership, and demography.

First, the commission noted that democracy works best when a broad mixture of individuals are involved in the political and legal processes. “Without a diverse bench and bar, the rule of law is weakened because the people see and come to distrust the profession as the practice of law. The KLEO program improves the inclusion of minorities in the legal profession by helping individuals of diverse background to attend and succeed in law school. Each year, five individuals from each of the Commonwealth’s law schools are designated KLEO Scholars. In addition to a scholarship provided by the law school, each scholar attends the KLEO Summer Institute. The institute is a two-week residential program held during the summer before the 1L year; it provides a pre-law preparatory program to introduce the scholars to the curriculum they will encounter during law school. The institute also equips the scholars with study skills and strategies to help them successfully navigate the rigors of law school.

Locally, there is much work to be done. In the most recent demographic survey of the approximately 17,500 members of the Kentucky Bar Association (KBA), approximately four percent identified themselves as a member of a non-Caucasian racial group. In comparison, approximately 15 percent of Kentuckians identified themselves as a member of a non-Caucasian racial group in the 2010 census. Statistics examining measures of non-racial diversity among Kentucky lawyers are not readily available, but national numbers confirm a similarly gloomy status. The KBA recognizes diversity as important and, through its Diversity in the Profession Committee, is working to increase awareness of the importance of diversity and promote the full and equal inclusion of all diverse individuals in the legal profession.

One program that has been particularly successful in improving diversity in the profession is the Kentucky Legal Education Opportunity (KLEO) program. Patterned after the national Council on Legal Opportunities (CLEO) program, KLEO was founded in 2003 from the vision and determination of former Chief Justice Joseph Lambert and state Rep. Jesse Crenshaw of Lexington. The KLEO program seeks to improve diversity in the profession by helping individuals of diverse background to attend and succeed in law school. Each year, five individuals from each of the Commonwealth’s law schools are designated KLEO Scholars. In addition to a scholarship provided by the law school, each scholar attends the KLEO Summer Institute. The institute is a two-week residential program held during the summer before the 1L year; it provides a pre-law preparatory program to introduce the scholars to the curriculum they will encounter during law school. The institute also equips the scholars with study skills and strategies to help them successfully navigate the rigors of law school.

Former KLEO scholars serve as mentors to each year’s class of new scholars. The KLEO program works to date, well over 100 scholars have completed the KLEO Summer Institute. Participants in the program exhibit an 82 percent law school graduation rate—bringing additional diversity to Kentucky’s legal profession.

With tightening budgets, there is no longer public funding for the KLEO Summer Institute. Since state appropriations were eliminated in 2009, the program has continued thanks to the generous support of Kentucky lawyers individually and through law firms, the Kentucky Bar Foundation, and the foundations of local bar associations. The KLEO program needs our help. One way to support the program is by making a contribution on your annual KBA dues statement. Another way is to make a financial contribution directly to the KLEO fund at the Kentucky Bar Foundation. Your donation will be used to keep the KLEO Summer Institute going for years to come.

Diversifying the legal profession is up to all of us. While the KLEO program alone will not fully accomplish this important goal, it has a demonstrated track record of preparing new lawyers of diverse backgrounds for the practice of law. The KLEO program deserves our support. I hope you will join me and the Young Lawyers Division in helping to ensure that the KLEO program remains strong for future generations.

2. Id.
4. Id. at 9-10.
5. Id. at 9.
6. Id.
9. Id.
10. The respondents chose from the following categories: African American; Native American; Asian; Hawaiian; Hispanic; Other; and White.
11. See Kentucky State Data Center, 2011 Census Profile, available at ksd.c.louisville.edu/.

Donations to support KLEO can be made payable to the Kentucky Bar Foundation and “KLEO” in the memo line and mailed to the Kentucky Bar Association, 514 W. Main St., Frankfort, KY 40601.
A PLACE TO BEGIN FOR ADVISING ON CLOUD COMPUTING:
THOMAS SHAW’S Cloud Computing for Lawyers and Executives: A Global Approach, 2ND ED., ABA PUBLISHING

Shaw’s analysis moves into security and privacy concerns. Once a client begins using cloud services, they surrender significant control over security and privacy even where the user agreement leaves the risk with the client. He discusses the risks and responses for clients using the cloud, including breach notification obligations, insurance protection, and forensic discovery.

Wrapped around these issues are the contractual obligations of the cloud service provider and the client. The contracts—called Service Level Agreements, or SLAs—will, at the least, define areas of concern for the client with a particular provider. As implied from the legal discussion, contract concerns begin with the choice of law and venue and move through whose obligation it is to assure the security, integrity, privacy, and availability of data. Shaw’s discussion includes less obvious contract provisions, such as ongoing compliance audits for information assurance, duties for breach notification and discovery/warrant responses, subcontractor management, and dominion over client data in the event of disasters or cloud service provider bankruptcy.

Cloud Computing for Lawyers closes with practical application of this for lawyers, guidance for all lawyers even if their clients don’t realize they’ve any cloud involvement.

Cloud Computing for Lawyers is a very useful introduction to a complex area of human activity, one that involves new, sometimes non-intuitive technologies, new ways of human interaction, and laws both familiar and unfamiliar to a traditional lawyer. Shaw has built an orderly synthesis of the many issues with the cloud and cloud services that lets the reader prepare for competent and thorough client representation.

By: Michael Losavio

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KBA BOARD OF GOVERNORS MEETING: JULY 26, 2013

The Board of Governors met on Friday, July 26, 2013. Officers and Bar Governors in attendance were, President T. Rouse; President-Elect B. Johnson; Vice President D. Farnsley; Immediate Past President D. Myers and Young Lawyers Division Chair C. Frazier. Bar Governors 1st District – J. Freed, M. Pitman; 2nd District – J. Meyer; 3rd District – H. Mann, G. Wilson; 4th District – D. Ballantine, A. Cubbage; 5th District – A. Britton, W. Garmer; 6th District – D. Kramer, S. Smith; and 7th District – M. McGuire, B. Rowe. Bar Governors absent were: T. Kerrick.

In Executive Session, the board considered two (2) disciplinary default cases, one (1) reinstatement case and two (2) restoration cases. Brenda Hart of Louisville and Roger Rolfs of Florence, non-lawyer members serving on the board pursuant to SCR 3.375, participated in the deliberations.

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

- Young Lawyers Division (“Division”) Chair Carl Frazier reported on the highlights of the Division programs and activities from the annual convention. Mr. Frazier reported that the officers conducted a planning retreat earlier in July formulating some of its goals for the upcoming year. He reported that the Division is very passionate about leadership development and it is important that the Division recruit future leaders of the bar association. He advised that the Division is working on the following projects: a series of free CLE programs for its members statewide; presentation of two technology-related programs at each of the KLU programs this fall; continuation of the Brief Insights podcast series in which 10 to 15-minute interviews are recorded with senior lawyers and other leaders to provide tips about the practice of law to young lawyers; including an interview by Rebekkah Rechter of Governor Benton and Jerry D. Truitt of Lexington to serve on the Special Conflicts Committee for another one year term ending on July 1, 2014.

- Approved the recommendation of members to serve on the following Supreme Court Committees on behalf of the Board of Governors: Civil Rules Committee – David V. Kramer of Crestview Hills; Supreme Court Rules Committee - Thomas L. Rouse of Erlanger and Criminal Rules Committee - William E. Johnson of Frankfort.

- Approved the appointment of Roger Rolfs of Florence as a lay member on the Clients’ Security Fund Trustees for a three-year term ending on June 30, 2016.

- President Rouse reported that he was appointing a Task Force on Financial Summit to be chaired by President-Elect William E. Johnson which will consist of representatives from the various KBA funds to review and discuss KBA monies and its investments and how the funds are held and the reasons for the different processes.

- Approved the appointment of a Task Force on Closed and Abandoned Practices. Members of the Task Force will be representatives from each Supreme Court District. President Rouse reported that he anticipates the task force drafting a rule for appointment of a trustee who will be allowed to inspect the files to determine who they belong to.

- President Rouse reported that he has appointed Gabrielle Summe of Villa Hills to be the KBA 2014 Annual Convention Planning Committee Chair and Shane Sidebottom of Covington to be the KBA 2014 Annual Convention CLE Program Committee Chair. President Rouse further reported that he has appointed Bar Governors David Kramer and J. Stephen Smith to serve as Vice Chairs to the Planning Committee.

- President Rouse reported that he planned to have dinners instead of receptions at the upcoming KLU programs with the local bar presidents, former bar presidents, and KBA Board of Governors representatives to continue the efforts of the local outreach program in seeking input on how the association can better serve the attorneys across the state.

- Executive Director John Meyers reported that the KBA set a record attendance of 2,251 attendees at the 2013 Annual Convention held in Louisville on June 19-21 and was a financial success.

- Mr. Meyers reviewed the pending challenge to Ethics Opinion E-435 concerning plea bargains that include a contingency of the client waive their right to bring an ineffective assistance of counsel claim. Mr. Meyers advised that the oral argument has been scheduled for Sept. 19, 2013 at the University of Louisville Brandeis School of Law at 11:45 a.m.

- Mr. Meyers reported that an auditor has been hired to begin the work on the IT Audit. The auditor has met with the departments heads to obtain information as to how their current system operates and how the system could be improved. Mr. Meyers will have an updated report for the Board at the September meeting.

To KBA Members
Do you have a matter to discuss with the KBA’s Board of Governors? Board meetings are scheduled on January 17-18, 2014
March 21-22, 2014
To schedule a time on the Board’s agenda at one of these meetings, please contact John Meyers or Melissa Blackwell at (502) 564-3795.
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The Judicial Ethics Committee has been moved to Lexington. The email address is still the same: jeancollier@kycourts.net. The phone number is new: (859) 246-2296. The mailing address is also new:

ATTN: Jean Collier, Esq., Executive Secretary  
The Ethics Committee of the Kentucky Judiciary  
Robert F. Stephens Courthouse  
Suite 301, 3rd Floor  
150 N. Limestone  
Lexington, KY 40507

The Kentucky Bar Association is accepting nominations for 2014 Distinguished Judge and Lawyer, Donated Legal Services and Bruce K. Davis Bar Service Awards. Nominations must be received by December 31, 2013. If you are aware of a Kentucky judge or lawyer who has provided exceptional service in these areas, please call (502) 564-3795 to request a nominating form or download it from our website at www.kybar.org by choosing “Inside KBA" and clicking on “Public Relations – Distinguished Service Awards.”

Distinguished Judge Award  
Distinguished Lawyer Award

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

Donated Legal Services Award

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

Bruce K. Davis Bar Service Award

Many lawyers take time from their practices to provide personal, professional and financial support to the KBA. This award expresses the appreciation and respect for such dedicated professional service. All members of the KBA are eligible in any given year except for current officers and members of the Board of Governors.
With the support of the Kentucky Bar Association (KBA) Board of Governors, the Kentucky Supreme Court recently approved the formation of a new section of the KBA dedicated to Immigration & Nationality Law.

Attorney Brett Reynolds of English, Lucas, Priest & Owsley, LLP, in Bowling Green assembled the petition and obtained the signatures necessary to create the section in the spring of 2013, receiving broad-based support from fellow attorneys throughout the state. He is serving as chair of the section for 2013-2014. Other officers include chair-elect Cori Hash of Kozoll, Hash & Nett PLLC in Louisville; Vice-Chair David E. Funke of Kortz & Funke LLP in Crestwood; Kevin Beiting of The Beiting Law Center in Lexington; Treasurer Aida Babahmetovic of Fogle, Keller, Purdy PLLC in Louisville; and Member-at-large Ed Zuger of Zuger Law Office in Burnside.

Visit the Immigration & Nationality Law Section online here: http://www.kybar.org/785.

Dues to join this section are $20.

In his statement of need and purpose he submitted to the KBA, Reynolds argued that the need for an immigration section is great because of the increasingly diverse nature of the United States. “The demographic makeup of America is changing, and there is growing support in Washington, D.C., for new immigration laws on a national level, with new legislation likely in the near future,” Reynolds wrote. “Attorneys in Kentucky would be well-served by adding an immigration section to the Kentucky Bar Association. While immigration law is a federal practice, immigration laws affect Kentucky in every area of life on the local level, and the attorneys who practice immigration law, as well as government lawyers and judges, need a forum to interact and share information. We, as a Bar, benefit whenever government and private lawyers and judges have an opportunity to work together on a common goal, and this concept has an important role in immigration law.”

Kentucky has a large and ever-growing immigrant population. The percentage of those born outside of the United States grew to 3.2 percent in 2010 from 1.9 percent in 2000, with 140,583 people in Kentucky who were not born in the United States, according to an August 2012 report by the Center for Immigration Studies. That number does not account for those who are undocumented workers and who may not answer inquiries from the U.S. Census Bureau or other government officials.

In Kentucky, many foreign-born residents (undocumented or not) work in the agricultural industry, but there are several other industries that are growing and bringing in workers from around the globe. The automobile manufacturing industry is in growth mode in Kentucky, and many companies that operate plants in Kentucky have factory workers and executives in the Commonwealth. Universities are drawing international students, faculty, researchers and their families from all over the world. Immigration has a direct and important impact on Kentucky, and this is only going to increase as the United States becomes more diverse.

An immigration and nationality law section is committed to assisting practitioners in improving their skills concerning immigration law issues; promoting education to the public concerning immigration issues; and coordinating and informing members of the KBA who are not directly involved in the practice of immigration law concerning immigration issues as they arise in other areas of the law, such as criminal law and family law. This section will further assist practitioners and the public with communicating with governmental agencies charged with enforcement of the immigration laws and immigration-related issues and shall provide lawmakers and policy makers with information concerning immigration issues. Also, this section will promote cultural awareness in practitioners and judges.

For more information on the new Immigration & Nationality Law Section, contact Brett Reynolds at breynolds@elpolaw.com, or (270) 781-6500.
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I certify that all information furnished is true and complete.

John D. Meyers, Publisher, October 23, 2013
THE KBA CONGRATULATES ITS NEWEST ITS MEMBERS!

New attorneys received their oaths of office on Friday, October 18, in the Supreme Court of Kentucky Chamber in the state Capitol in Frankfort. The KBA continued its tradition of honoring its newest members, their families and friends with a reception in their honor throughout the day at the Kentucky Bar Center. A total of 294 new attorneys were recommended for admittance to the practice of law following the July 2013 bar examination.

Justice Bill Cunningham of the First Supreme Court District of Kentucky greets Zachary Brien of Benton following swearing-in ceremonies in the Supreme Court Chamber in the state Capitol on October 18.

Allison Kaitlin Page of Louisville proudly displays her “Certificate of Admission to The Practice of Law” as she celebrates after swearing-in ceremonies at the state Capitol in Frankfort with her father Harold Page, Jr., of Louisville, at left, and her grandparents Betty and Brent Hardin, also of Louisville.

Jessica Harvey of Paducah watches as her father, Kerry B. Harvey, U.S. Attorney for the Eastern District of Kentucky, provides a special introduction to the court during swearing-in ceremonies in the Supreme Court Chamber.

Zach Jones of Louisville celebrates his new law license with wife Beth Jones, son Aron Jones and daughter Georgia Jones at the Kentucky Bar Center in Frankfort. The Kentucky Bar Association hosted a reception at the bar center for its new members following their swearing-in ceremonies on October 18.

New attorney Olesja Cormney of Lexington, far right, attends a reception at the Kentucky Bar Center with her husband, Tim Cormney, far left, daughter Valesca Cormney and father, Vladimir Lukjanov.

From left, Samuel Jones, Whitney Jones, Lesley Stone and Aaron Roof, all of Paducah, prepare to enter the Supreme Court Chamber for swearing-in ceremonies at the state Capitol in Frankfort.
FORMAL JUDICIAL ETHICS OPINION JE-124

October 21, 2013

This opinion addresses the following question:

MAY A CANDIDATE FOR JUDICIAL OFFICE HAVE, AS THE CANDIDATE’S CAMPAIGN CHAIRPERSON, A PERSON WHO CURRENTLY SERVES AS A PUBLIC OFFICIAL AND WHICH OFFICIAL WAS ELECTED IN A PARTISAN ELECTION?

Answer: Qualified “yes.”

The Committee notes that the Code of Judicial Conduct makes no mention of a judicial candidate having a campaign chairperson, referencing only the establishment of “committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support for the candidacy.” Canon 5B (2) However, the question can properly be construed as asking whether any partisan-elected public official can serve on the candidate’s campaign committee.

In 1981, JE 30 was issued in response to a similar inquiry. The Committee was asked whether a judicial candidate could appoint as campaign chairman an unopposed candidate for election as Commonwealth’s Attorney. The Committee answered in the negative, on the grounds: (1) that judicial elections are to be non partisan, whereas elections for Commonwealth’s Attorney were distinctly partisan, so the situation was analogous to slating; and (2) that the appointment by the judicial candidate amounted to an endorsement by him of the candidate for Commonwealth’s Attorney, and that amounted to a violation of the prohibition against judges or judicial candidates endorsing other office-seekers.

In JE 66, the Committee reiterated the substance of JE 30 by saying “Endorsements by current public officials who run for office on a partisan ticket would violate the policy of nonpartisan elections in judicial campaigns.” And in JE 93, the Committee was of the view that a judicial candidate could not state that he or she was endorsed by a certain legislator.

The case of Carey vs Wolnitzek wound its way through the federal court system since the issuance of JE 30, 66 and 93, with the result that those opinions carry with them either a note of caution or disavowal. The Committee recognizes that Carey holds that a judicial candidate may disclose his or her party affiliation. Therefore, to the extent that any of our previous opinions touching on the subject at hand are based on content of previous versions of the Kentucky Code of Judicial Conduct declared invalid in Carey, those opinions cannot be considered to bar the appointment of a current public official as a member of the campaign committee of the candidate.

Likewise, as noted by the inquiring candidate, JE 30 can be distinguished from a situation where the person he wants to appoint as Campaign Chair will not himself stand for re-election for several years. Thus, the reasoning in the cited opinions, that the appointment would constitute slating, does not prohibit the appointment. Also, the concern expressed in JE 30, that the possible appearance by the Chairman in the inquiring judge’s court might promote an appearance of impropriety, does not seem pertinent. Even if the Chairman were to be involved in litigation before the judge he helped elect, the judge could simply recuse.

JE 105 dealt with restrictions on a judge's right to identify himself as a member of a specific political party and is invalid as far as its conclusion is concerned. However, the Committee finds pertinent the following statement in JE 105:

When presented with such a situation [ambiguity in a statute], courts are authorized to look to the intent of the legislature and the purpose of the statute. * * * The Committee believes that it is appropriate to do likewise in construing this canon. As we have already stated, the purpose of Canon 5 and the Code of Judicial Conduct as a whole is to preserve nonpartisan elections and the independence of the judiciary. Therefore, the only possible interpretation of Canon 5(A) (2) which satisfies these goals is to construe the last sentence of the paragraph to apply only to one-on-one situations or very small private informal groups. Any other construction would permit partisanship into Kentucky’s judicial elections....

This Committee pays due respect to decisions by the federal courts, but we have a limited remit. We are not empowered to render opinions that go beyond the mandates and verbiage of the Kentucky Code of Judicial Conduct, applicable statutes and the Kentucky Constitution, except as we are required to apply a rule of reason to unclear conditions. In considering the request for advice, we first look to the Canons and we are struck by the February 13, 2013 Order (2013-04) of the Kentucky Supreme Court, amending Canon 5A (1) (a), which now reads:

(A) Political Conduct in General:
(1) Except as permitted by law, a judge or a candidate for election to judicial office shall not:
(a) Campaign as a member of a political organization...

The Committee concludes that the Code of Judicial Conduct contains no absolute prohibition against the appointment of a current public official, elected in a partisan election, to the candidate's campaign committee, or otherwise be named as campaign “Chairperson”. However, it must be recognized that by selecting that person, the candidate might be deemed to have adopted the political affiliation of the official and thus be campaigning as such. Consequently, the Committee is of the opinion that neither the campaign committee nor the campaign candidate may make any reference to the official's public office or political affiliation in any official campaign materials, filings, press releases or similar information disseminated to the public. To the extent that news media or other third parties make such disclosures, this would be outside of the candidate's control or responsibility.

Sincerely,
Arnold Taylor, Esq.
Chair, The Ethics Committee of the Kentucky Judiciary

cc: Donald H. Combs, Esq.
The Honorable Jeff Taylor, Judge
The Honorable Jean Chenault Logue, Judge
The Honorable Jeffrey Scott Lawless, Judge
Jean Collier, Esq.
COMMONWEALTH OF KENTUCKY JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF HON. MARTIN F. MCDONALD FORMER SENIOR STATUS SPECIAL JUDGE

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

I

STATEMENT OF CHARGES

The Judicial Conduct Commission of the Commonwealth of Kentucky was created for the purpose of, and is vested with the jurisdiction to, initiate, hear and decide charges of official misconduct by any judge of the Court of Justice or lawyer while a candidate for judicial office, and upon a finding of such official misconduct, to impose sanctions pursuant to SCR 4.020. In furtherance of this authority and purpose, the Commission filed charges of judicial misconduct against Judge Martin F. McDonald, Senior Status Special Judge, (now a Former Senior Status Special Judge), on May 10, 2013. (Notice of Formal Proceedings and Charges dated May 10, 2013 is attached hereto and incorporated herein by reference).

II

PROCEEDINGS

1. The Respondent, Martin F. McDonald is now a Former Senior Status Special Judge, and was, on May 10, 2013, a Senior Status Special Judge.

2. The Commission authorized an investigation into the allegations contained in Count I of the Charges after receipt of a complaint from Edward J. Flint, and into the allegations contained in Count II of the Charges after receipt of newspaper articles pertaining thereto.

3. Judge McDonald was informed of the investigation and his counsel, Hon. Timothy Dennison, appeared before the Commission on March 29, 2013. Judge McDonald was then provided the factual information in the custody of the Commission for examination, pursuant to SCR 4.170(4) and was afforded an opportunity to present any other information bearing on the investigation. Judge McDonald requested to again appear before the Commission on May 10, 2013, but then informed the Commission that he would not attend the conference. Judge McDonald provided no additional information bearing on the Commission's investigation.

4. Notice of Formal Proceedings and Charges were filed against Judge Martin F. McDonald on May 10, 2013 under Supreme Court Rule 4.180.

5. A Notice of Hearing on Temporary Suspension was served on Judge McDonald on May 13, 2013, pursuant to SCR 4.020(1)(a)(ii), informing Judge McDonald that a hearing on his temporary suspension was scheduled for June 4, 2013.

6. The Commission's counsel submitted a Memo in Support of the Temporary Suspension on May 20, 2013, and Judge McDonald, by counsel, filed a Memo Regarding Hearing on Temporary Suspension on June 3, 2013.

7. Judge Martin F. McDonald filed his Answer to the Formal Charges by counsel on June 3, 2013. On June 4, 2013, Judge McDonald, by counsel, filed an Amended Answer and an Amended Memo on Temporary Suspension Hearing.

8. On June 4, 2013, following a hearing at which Judge McDonald and his counsel did not appear, the Commission voted to temporarily suspend Judge McDonald from acting in his official capacity as a Judge and from the performance of his duties, without affecting his pay status, until final adjudication of the pending proceedings.

9. Judge McDonald was provided a Notice of Hearing on June 18, 2013 setting the matter for formal hearing on August 7, 2013, at which time neither Judge McDonald nor his counsel appeared.

10. The six (6) voting members of the Commission in this case are as follows:

   Hon. Stephen D. Wolnitzek, Judge Janet Stumbo, Judge Eddy Coleman, Judge Susan Johnson, Diane E. Logsdon and Joyce King Jennings. Pursuant to SCR 4.220, the Commission proceeded with the hearing as required by said Rule, even though neither Judge McDonald nor his counsel appeared.

III

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Judicial Conduct Commission unanimously concludes that the following Findings of Fact and Conclusions of Law have been established by clear and convincing evidence.

CHARGE

COUNT I

In the case of Coach House, Inc. vs. Edward H. Flint, Jefferson Circuit Court Case No. 12-CI-03106, during a hearing on August 3, 2012, Judge Martin F. McDonald refused to allow a pro se defendant to present any argument because he was not a lawyer, and summarily entered an injunction against Mr. Flint, and awarded attorneys’ fees; and on August 8, 2012, pursuant to Judge McDonald's ruling on August 3, 2012, Judgment was entered for attorneys' fees and costs in the amount of $11, 579.20.

By a vote of 6-0, the Commission finds with respect to Count I of the Charges that Judge McDonald violated SCR 4.020(1)(b)(i) and (v) in that his actions constituted misconduct in office, and violated SCR 4.300, the Code of Judicial Conduct. In particular, by the above conduct, Judge McDonald engaged in misconduct in office, failed to observe high standards of conduct in violation of Canon 1, failed to respect and comply with the law and to act in a manner that promotes public confidence in the integrity and impartiality of the Judiciary in violation...
of Canon 2A; was not faithful to the law in violation of Canon 3A and B2; was not patient and courteous to a litigant in violation of Canon 3B(4); manifested bias and prejudice against a pro se litigant in violation of Canon 3B(5); failed to accord a person who had a legal interest in the proceeding the right to be heard according to law in violation of Canon 3B(7), and failed to dispose of judicial matters fairly, in violation of Canon 3B(8).

COUNT II

In the case of Commonwealth vs. Roger Dale Epperson, Warren Circuit Court Case No. 97-CR-00016, on September 28, 2012 in a hearing regarding Epperson’s request for relief from a death sentence conviction, Judge Martin F. McDonald engaged in the following conduct:

Judge McDonald addressed the attorney for the Defendant in an intemperate voice and, among other comments, stated “If you ever call me on my cell phone again, I’ll strangle you”, and that Judge McDonald would try to get the attorney’s law license “yanked” if he did it again. When the attorney attempted to explain that he had consent of opposing counsel to make the call, Judge McDonald stated, “negative”, “be quiet”. In directing the bailiff to bring the Defendant from the holding cell into court, Judge McDonald stated, “Bring his carcass out here.” After hearing from only one witness, Judge McDonald stated, “This has been a huge waste of time”, and that the Department of Public Advocacy (DPA) attorney’s allegations “Have bordered on the ridiculous”. Judge McDonald also stated that the DPA was “making a mountain out of a mole hill”. Judge McDonald also stated that the nature of ineffective counsel motions in general, “is distasteful to the court. The lawyers who do the work at trial now get criticized by backseat drivers who weren’t there, and who didn’t try the case”. Judge McDonald also stated to the DPA attorney, “You’ve never been in the heat of battle in one of these cases, and now you’re criticizing lawyers that actually are real lawyers that do the work, the dirty work, the down in the trenches work.” Judge McDonald’s conduct at the hearing in question generated negative coverage in the Courier-Journal, and other media outlets, and brought the Kentucky Judiciary into disrepute.

By a vote of 6-0, the Commission finds with respect to this Charge that Judge McDonald violated SCR 4.020(1)(b)(i) and (v), and that the actions of Judge McDonald constituted misconduct in office, and violated SCR 4.300, the Code of Judicial Conduct, in that Judge McDonald failed to observe high standards of conduct in violation of Canon 2A; was not faithful to the law in violation of Canon 3A and B(2); was not patient, dignified and courteous to a litigant and the litigant’s lawyer in violation of Canon 3B(4), and manifested bias and prejudice against attorneys of the DPA in claims of ineffective assistance of counsel in violation of Canon 3B(5).

ORDER

Judge Martin F. McDonald has been found guilty of violating the Code of Judicial Conduct and engaging in misconduct in this matter. Judge McDonald is a Former Senior Status Special Judge, who served on the Bench for many years. Judge McDonald’s actions in entering an injunction and awarding attorney fees against a pro se litigant without the taking of any proof, merely hearing argument of opposing counsel, is something the Commission would not expect from a seasoned veteran Judge. Judge McDonald completely disregarded his responsibility to provide access to the Court for all litigants in the Commonwealth of Kentucky, and his actions in this matter were so improper as to be reprehensible.

Judge McDonald’s actions in regard to Count II, which was a hearing relating to a request by the Defendant for relief from a death sentence conviction are likewise something the Commission would not expect from a veteran jurist. The seriousness of this type proceeding and the stakes involved, require the Court to consider the matter appropriately, and not act as Judge McDonald did in this instance.

It is important to note that during the pendency of this matter, the majority of the Commission voted to order a temporary suspension of Judge McDonald from acting in his official capacity as a Judge, and from the performance of his duties pending final resolution of this matter. A temporary suspension is only pursued in egregious cases. Suffice it to say that the actions of Judge McDonald in both of these cases were egregious.

Judge McDonald is no longer serving in the Kentucky Court of Justice. However, his conduct described in this Order violated the Code of Judicial Conduct and brought the Kentucky Judiciary into disrepute and should be sanctioned. Since Judge McDonald has completed his service, a public reprimand is the most severe sanction available. Were Judge McDonald still a member of the Kentucky Judiciary, a much more severe sanction, perhaps including removal from the Bench, would have been warranted, and would have been ordered.

Therefore, for the foregoing conduct, Former Senior Status Judge Martin F. McDonald is hereby publicly reprimanded.

DATED: August 12, 2013
______________________
/\s/______________________

STEPHEN D. WOLNITZEK
CHAIR OF THE COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law and Final Order were mailed to Hon. Timothy Dennison, Suite 320, Republic Plaza, 200 South Seventh Street, Louisville, Kentucky 40202, and counsel for the Commission Hon. George F. Rabe, 157 Kentucky Avenue, Lexington, Kentucky 40507, this 12th day of August, 2013.

______________________
/\s/______________________

MS. JIMMY SHAFFER,
EXECUTIVE SECRETARY
COMMONWEALTH OF KENTUCKY JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF MARTIN F. McDONALD SENIOR STATUS SPECIAL JUDGE
NOTICE OF FORMAL PROCEEDINGS AND CHARGES

Notice is hereby given of the initiation of formal proceedings under Rule 4.180 of the Rules of the Supreme Court. At the times set out in this Notice, you were Senior Status Special Judge in Kentucky’s Court of Justice. The charges are as follows.

COUNT I

In the case of Coachhouse Inc. v. Edward H. Flint, Jefferson Circuit Court Case Number 12-CI-03106, during a hearing on August 3, 2012, you refused to allow a pro se defendant to present any argument because he was not a lawyer and summarily entered an injunction against him and awarded attorney fees; and on August 8, 2012, pursuant to your ruling on August 3, 2012, judgment was entered for attorney fees and costs in the amount of $11,579.20.

In regard to the above matter, you violated SCR 4.020(1)(b)(i) and (v) in that your actions constituted misconduct in office and violated SCR 4.300, the Code of Judicial Conduct, Canons 1, 2A and 3A and B(2), (4), (5), (7) and (8) which read in pertinent part as follows:

**CANON 1: A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY**
An independent and honorable judiciary is indispensable to justice in our society. A judge should actively participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

**CANON 2: A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE’S ACTIVITIES**
A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

**CANON 3: A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY**
A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge’s other activities. The judge’s judicial duties include all the duties of the judge’s office prescribed by law. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge’s direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and in proceedings before the judge, shall not permit staff, court officials and others subject to the judge’s direction and control to do so.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law. With regard to a pending or impending proceeding, a judge shall not initiate, permit, or consider ex parte communications with attorneys and shall not initiate, encourage or consider ex parte communications with parties...

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

In particular, by the above conduct, you engaged in misconduct in office; failed to observe high standards of conduct in violation of Canon 1; failed to respect and comply with the law and to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary in violation of Canon 2A; were not faithful to the law in violation of Canon 3A and B(2); were not patient and courteous to a litigant in violation of Canon 3B(4); manifested bias and prejudice against a pro se litigant in violation of Canon 3B(5); failed to accord to a person who had a legal interest in the proceeding the right to be heard according to law in violation of Canon 3B(7); and failed to dispose of judicial matters fairly in violation of Canon 3B(8).
COUNT II

In the case of Commonwealth v. Roger Dale Epperson, Warren Circuit Court Case Number 97-CR-00016, on September 28, 2012, in a hearing regarding Epperson’s request for relief from a death-sentence conviction you engaged in the following conduct. You addressed the attorney for the defendant in an intemperate voice and, among other comments, you stated “if you ever call me on my cell phone again, I’ll strangle you,” and that you would try to get the attorney’s law license “yanked” if he did it again. When the attorney attempted to explain that he had consent of opposing counsel to make the call, you stated “negative” and “be quiet”. In directing the bailiff to bring the defendant from the holding cell into court, you stated “Bring his carcass out here.” After hearing from only one witness, you stated “This has been a huge waste of time” and that the Department of Public Advocacy (DPA) attorney’s allegations “have bordered on the ridiculous.” You also stated that the DPA was “making a mountain out of a molehill.” You also stated that the nature of ineffective counsel motions in general “is distasteful to the court. The lawyers who do the work at trial now get criticized by backseat drivers who weren’t there and who didn’t try the case.” You also stated to the DPA attorney “You’ve never been in the heat of battle in one of these cases, and now you’re criticizing lawyers that actually are real lawyers that do the work, the dirty work, the down-in-the-trenches work.” Your conduct at the hearing in question generated negative coverage in the Courier-Journal and other media outlets and brought the Kentucky judiciary into disrepute.

In regard to the above matter, you violated SCR 4.020(1)(b)(i) and (v) in that your actions constituted misconduct in office and violated SCR 4.300, the Code of Judicial Conduct, Canons 1, 2A and 3A and B(2), (4) and (5), which read in pertinent part as set out above.

In particular, by the above conduct, you engaged in misconduct in office; failed to observe high standards of conduct in violation of Canon 1; failed to respect and comply with the law and to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary in violation of Canon 2A; were not faithful to the law in violation of Canon 3A and B(2); were not patient, dignified and courteous to a litigant and the litigant’s lawyer in violation of Canon 3B(4); and manifested bias and prejudice against attorneys of the DPA and claims of ineffective assistance of counsel in violation of Canon 3B(5).

For your information, the Commission wishes to call your attention to the following Supreme Court Rule:

RULE 4.180 FORMAL PROCEEDINGS

If the Commission concludes that formal proceedings should be initiated, it shall notify the judge. He may file an answer within 15 days after service of the notice. Upon the filing of his answer, or the expiration of time for so filing, the Commission shall set a time and place for the hearing and shall give reasonable notice thereof to the judge.

Please mail your answer to: Ms. Jimmy A. Shaffer, Executive Secretary, Judicial Conduct Commission, P.O. Box 22208, Louisville, Kentucky 40252-0208.

Date: May 10, 2013

/s/
STEPHEN D. WOLNITZEK, CHAIR

I hereby certify that copy hereof was served on Martin F. McDonald, Senior Status Special Judge, by mailing same to his attorney, Timothy Denison, Suite 320, Republic Plaza, 200 S. Seventh Street, Louisville, Kentucky 40202 on the 13th day of May, 2013.

/s/
Ms. Jimmy A. Shaffer, Executive Secretary

Judge David Bowles recused from any consideration of this matter.
COMMONWEALTH OF KENTUCKY JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF FRANK A. FLETCHER, CIRCUIT JUDGE 39TH JUDICIAL CIRCUIT

AGREED ORDER OF PUBLIC REPRIMAND

Frank A. Fletcher is circuit judge for the 39th judicial circuit consisting of Breathitt, Powell and Wolfe counties. Judge Fletcher has waived formal proceedings and has agreed to entry of this order.

During a preliminary investigation resulting from a complaint, the Commission received information that indicated Judge Fletcher engaged in the following conduct. In May 2012 Judge Fletcher presided over a sentencing hearing in Breathitt County for a defendant who had pleaded guilty to 14 counts of sexual offenses: one count of sexual abuse in the first degree, five counts of rape in the third degree, three counts of sodomy in the third degree, and four counts of use of electronic means to procure a minor for a sexual offense, all Class D felonies; and one count of distributing obscene material to a minor, first offense, a Class A misdemeanor. The defendant was an adult male teacher. The victims were five 13- and 14-year-old girls who were his students. During the hearing, Judge Fletcher made comments which could be viewed as sympathetic to the defendant. During the sentencing hearing, Judge Fletcher commented that the defendant “was not blind and only human” and that some of the victims didn’t look their age. During that hearing, Judge Fletcher also discussed the lack of enforcement of the school dress code and said he didn’t think students should come into school wearing low-cut blouses and short skirts. Responding to a statement by defendant’s attorney, Judge Fletcher said “[t]his is a statutory offense, but is it your understanding that all of the acts that occurred were consensual?”

Kentucky Supreme Court Rule 4.300, the Code of Judicial Conduct, Canon 3B(5), provides:

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and in proceedings before the judge, shall not permit staff, court officials and others subject to the judge’s direction and control to do so.

The Commentary to Canon 3B(5) includes:

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

Judge Fletcher acknowledges that he made the comments in question during the sentencing hearing, but states that he was exploring the circumstances surrounding the commission of the offenses as he was required to do. However, because the victims were underage, they could not consent; nor was their manner of dress or not looking their age a defense to the sexual offenses committed by their adult teacher. Judge Fletcher’s comments were offensive to the victims and their families in that they suggested that the young girls were in some way at fault or complicit in the defendant’s offenses.

The sentence of seven years agreed upon by the Commonwealth and the Defendant was imposed by Judge Fletcher. Eight months later Judge Fletcher granted shock probation to the Defendant which was within his discretion. After the granting of shock probation, the Commission received a complaint relating to his comments at the initial sentencing. These comments manifested bias or prejudice in favor of the male defendant and against the female victims and created the impression for some that his disposition of the case was motivated by bias or prejudice. Canon 3B(5) prohibits such conduct. The Commission concludes that the conduct of Judge Fletcher during the sentencing hearing violated Canon 3B(5).

Therefore, for the foregoing conduct Judge Fletcher is hereby publicly reprimanded. In entering this order, the Commission duly considered that Judge Fletcher had no prior infractions and that he fully cooperated in the investigation. Judge Janet Stumbo disqualified herself from any consideration of this matter.

Date: October 7, 2013

______________________________
Stephen D. Wolnitzek, Chair

Agreed to:

______________________________
Jon L. Fleischaker, Attorney for Judge Fletcher

______________________________
Frank A. Fletcher

______________________________
George F. Rabe, Attorney for the Commission
THE CLE COMMISSION: THE KBA’S HIDDEN ASSET FOR KENTUCKY ATTORNEYS

By: Matthew P. Cook

Be honest, how many of you know what the Kentucky Continuing Legal Education (CLE) Commission is or what it does for Kentucky attorneys? My guess is not that many.

Before I joined the CLE Commission three years ago, I too knew very little about the commission. Like most of you, I knew that the end of June was the CLE deadline and that every year there was a mad rush by Kentucky attorneys to satisfy that requirement to keep their law license in good standing and to continue practicing.

I now know that the CLE Commission is comprised of seven dedicated attorney members who are each appointed by their district’s Supreme Court justice to represent each region of the Commonwealth. The CLE Commission is responsible for the administration and regulation of all continuing legal education programs and activities for KBA members. Practically, this means the commission, with the help of a very able CLE Department at the KBA in Frankfort, reviews and votes to approve or disapprove all proposed CLE programs and legal writings which are submitted for credit in Kentucky. We also work with the CLE staff to plan and approve programming for the KBA Annual Convention, the annual Kentucky Law Updates and the New Lawyer Programs which are held twice each year. The commission also helps Kentucky attorneys meet their annual CLE requirement by making DVD and web-based educational programming available.

A great resource for KBA members to learn more about the CLE Commission and all things CLE is the KBA’s website (www.kybar.org) where there is a dedicated CLE tab with available information. Here, you will find the name and contact information of your district’s CLE Commission member as well as forms and information about upcoming CLE programming.

The current members of the CLE Commission are: Deborah B. Simon of Paducah (1st Supreme Court District); Matthew P. Cook of Bowling Green (2nd Supreme Court District); Julie Roberts Gillum of Somerset (3rd Supreme Court District); Janet Jakubowicz of Louisville, chair, (4th Supreme Court District); Janis E. Clark of Versailles (5th Supreme Court District); Shane C. Sidebottom of Covington (6th Supreme Court District); and William Mitchell Hall, Jr., of Ashland (7th Supreme Court District). As you can see, the commission is represented by attorneys from all over the state; this allows us to hear and consider the views of attorneys who practice in both small, medium and large communities throughout our Commonwealth and to make decisions understanding that one size does not always fit all – law practice in Murray or London is not always the same as it is in bigger cities like Lexington or Louisville. Neither perspective is more important than the other; each deserves attention and consideration when policy decisions for attorneys are made. Commission members are Kentucky attorneys from all over the state and we try very hard to make CLE decisions to best serve all of our constituents.

Finally, should you ever have a question concerning CLE programming or the annual CLE requirement, please feel free to call or e-mail one of the Commission members listed above and we will help you get the answer to your question. I also encourage you to contact the CLE staff at the KBA Office, led by our fearless leader, CLE Director Mary Beth Cutter. We are here to help Kentucky attorneys and want to do so. Please take a few minutes and learn more about this hidden asset that exists to aid Kentucky attorneys.
Find a Mentor and Take Charge of Your Future!

Great Place to Start
Resource Center for New Attorneys in Kentucky

It pays to have a helping hand in the workplace when you're just starting out in the practice of law. Many of us can benefit from having a mentor at our back to guide, counsel and encourage us. The KBA Find a Mentor program is designed to connect experienced attorneys with new attorneys who are seeking advice and guidance in balancing the personal and professional demands of the practice of law.

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

This service is available to new attorneys admitted to practice in Kentucky for five years or less. For more detailed information visit www.kbagps.org and see what the program has to offer.

Kentucky Bar Association
2014 New Lawyer Program
Essential Fundamentals for the Professional and Ethical Practice of Law

"Within twelve (12) months following the date of admission as set forth on the certificate of admission, each person admitted to membership to the Kentucky Bar Association shall complete the New Lawyer Program."
SCR 3.652 New Lawyer Program

January 23-24, 2014
Lexington Convention Center
Lexington, KY

Program agenda and online registration is now available.
Visit www.kybar.org/195 for more information.
Looking for Upcoming KBA Accredited CLE Events?

Look no further...

Check out www.kybar.org/580

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

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

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

By: Thomas H. Glover

“Lawyer goes to work, assists his client, earns a reasonable fee, serves his community, and supports his family”

Not much of a headline for the local paper, but that is what most attorneys in the Commonwealth do every day. Accounting for normal fluctuations, there are 17,500 or so attorneys licensed in Kentucky at any given time. Sadly, the Office of Bar Counsel (OBC) has little contact with attorneys who follow the rules. It usually only interacts with attorneys who get in trouble, or those against whom a complaint has been made. The office compiles annual statistics on attorney discipline. The numbers include all of the cases opened, investigated, pending or completed during the fiscal year. According to those statistics the percentage of attorneys in Kentucky who have disciplinary charges pending equals .39 percent of the total number of attorneys. For those for whom math was a weak subject, that's less than one half of one percent of the total membership.

Where do those charges come from? All charges against lawyers accused of violating the rules originate from the Inquiry Commission (IC). Members of the IC are appointed by the Supreme Court of Kentucky to hear claims of misconduct asserted against members of the bar. The IC is a ‘probable cause’ panel, and is comprised of nine members. It has six lawyers and three laity appointed by the Court from around the state. It sits in panels of three to hear summaries of complaints against members of the bar. The phrase ‘charges pending’ means facts have been discovered suggesting that an ethical violation of the Rules of Professional Conduct has occurred, and the IC has authorized a formal charge to be issued asserting the violation against the attorney.

So, is that percentage of attorneys with ‘charges pending’ a good thing or bad thing? Well, to see how we stack up, we could compare our stats to the general adult population of the country. According to the U.S. Department of Justice, approximately seven million adults in the U.S. were on probation, parole or in prison at the end of last year. About three percent of the adult U.S. population is in trouble. Compare that to less than half a percent of the population of Kentucky attorneys. We lawyers are six times more ethical.

Not fair, you say; compare apples to apples. OK, try this: The total number of the adult population in the U.S. incarcerated at the end of last year was a little over 2½ million people. That's about .70 percent of the total U.S. population. Almost three quarters of one percent. Compare that rate to the Kentucky attorney discipline statistics. That national percent for people already in the criminal justice system is about twice the rate of those Kentucky attorneys who get into ethical trouble. Attorneys licensed in the state come from varied backgrounds, with diverse ethical and moral education and history, but lawyers are half as likely to risk their license as members of the general population are to risk their liberty.

Still not convinced? Let's compare those nation-wide statistics against the number of attorneys actually disciplined by the Court. The Kentucky Supreme Court disciplines attorneys under the authority granted by Section 116 of the Constitution. That Section says in pertinent part, “The Supreme Court shall, by rule, govern admission to the bar and the discipline of members of the bar.” That means the KBA doesn't, the OBC doesn't, and the IC doesn't. Since the Court issues the license to practice law, only the Court may discipline attorneys for their conduct which jeopardizes that license. Although the process of attorney discipline is detailed, all cases in which discipline is recommended end up before the Supreme Court. The Court entered orders last year in cases involving 87 lawyers. That represents .43 percent of the membership – still less than half a percent compared with the incarcerated .70 percent of the general population.

It’s a good number; worth bragging about. That statistic means that regardless of personal background, ethical training, legal practice area, individual motivation, fiscal temptation or financial opportunity, most attorneys obey the rules. Most attorneys don't get into trouble. Most attorneys return phone calls. Most perform the work they undertake. Most do the work on time, maintain competency in their areas of practice, charge reasonable fees, and most handle clients’ money and property appropriately. The attorneys who get in trouble don't do those things. Regardless of what lawyer jokes presume, reality shows that those lawyers who are inattentive or dishonest in their practice and get the bad press comprise a very small percentage of the membership. The lawyers who obey the rules never make the headlines.

To view statistical information regarding attorney discipline, visit http://www.kybar.org/234.

Thomas H. Glover
The Kentucky Lawyers Assistance Program (KYLAP) is excited to announce a new Lawyers in Recovery meeting! A monthly meeting (open to lawyers, law students, and judges) will begin in Hazard on December 2 at 6:30 p.m., at the Hazard City Hall, 700 Main Street. For more information on upcoming meetings in Hazard, please contact the KYLAP office at (502) 564-3795, ext. 266.

The Kentucky Lawyers Assistance Program offers weekly open recovery meetings for lawyers, law students and judges in Lexington and Northern Kentucky. The Northern Kentucky Lawyers in Recovery meeting is held 7:30 a.m., on Tuesdays at Lakeside Christian Church, 195 Buttermilk Pike, Lakeside Park, (Erlanger). The church is located off I-75 exit 186 for Kentucky 371/Buttermilk Pike. The facility will open at 7:15 a.m. Please bring your own coffee. The Lexington Kentucky Lawyers in Recovery meeting is held at 7:30 a.m. on Wednesdays at the Alano Club downtown, 370 East Second Street, Lexington, KY 40508. All meetings are open to law students, lawyers and judges who are already involved or who are interested in a 12-step program of recovery, including but not limited to Alcoholics Anonymous, Narcotics Anonymous, Overeaters Anonymous and Al-Anon. Come meet other attorneys and network. All meetings and contacts are confidential. SCR 3.990. For additional information, please visit www.kylap.org, call (502) 564-3795, ext. 266, or email abeitz@kylap.org.

The Louisville Lawyers in Recovery Open 12-Step Meeting will no longer meet. Any lawyers in the Louisville area who are interested in a lawyers, judges and law students-only recovery meeting, are invited to the recovery meetings in Northern Kentucky on Tuesday mornings or in Lexington on Wednesday mornings. If you have any questions, please do not hesitate to call the KYLAP office at (502) 564-3795, ext. 266.

KYLAP OFFERS SUPPORT/COUNSELING GROUP IN LOUISVILLE

The Kentucky Lawyers Assistance Program offers a Lawyers with Depression support/counseling group in coordination with Bradford Health Services and The InnerView of Louisville. The meetings are held 6-7:30 p.m., every Monday at The InnerView at 4229 Bardstown Road, Louisville. The group, which is led by certified mental health professionals, serves Kentucky law students, lawyers and judges who suffer with depression or other mental health issues. The weekly cost is $40 per person. Insurance can be filed for possible reimbursement but is not required to participate. Those who wish to pay privately may do so. A mental health assessment is required for participation. Assessments may be provided by your health care provider, or may be performed by the professionals at The InnerView. Lawyers from around the state are invited to participate in this wellness opportunity. For more information, contact Kathy at the InnerView office at (502) 499-8010 or the KYLAP office at (502) 564-3795.

The Kentucky Lawyer Assistance Program CONGRATULATES
KYLAP Commission Chairman

ASA P. “PETE” GULLETT

Winner of the American Bar Association’s Commission on Lawyer Assistance Program’s John W. “Jack” Keegan Award for Outstanding Service to a Lawyer Assistance Program

The award is given to a program volunteer in recognition of distinguished efforts, who has been an example for all to follow, who has brought honor to the lawyer assistance movement and who has demonstrated exceptional achievements or superior service to a lawyer assistance program.

CONGRATULATIONS TO PETE ON THIS NATIONAL RECOGNITION
KENTUCKY BAR FOUNDATION PARTNERS FOR JUSTICE SOCIETY RAISES MORE THAN $1,000,000

CHIEF JUSTICE FRED VINSON CIRCLE $50,000
Baird & Baird, P.S.C.
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* Includes a $5,000 donation from KBF 2012-2013 Board of Directors in honor of Todd S. Horstmeyer, Executive Director.
GRANTS AWARDED BY IOLTA TOTAL $500,000

The Kentucky Supreme Court has approved the 2013-2014 grant recommendations made by the IOLTA Board of Trustees for law-related programs in the sum of $500,000 with $425,000 of this sum going to the Commonwealth’s four regional legal services programs. The following grantees are receiving IOLTA grants during fiscal year 2013-2014:

LEGAL SERVICES PROGRAMS
• Appalachian Research & Defense Fund of KY, Inc. ($151,555)
• Kentucky Legal Aid ($91,035)
• Legal Aid of the Bluegrass ($94,605)
• Legal Aid Society, Inc. ($87,805)

IOLTA PUBLIC SERVICE FELLOWSHIPS
• Salmon P. Chase College of Law, Northern Kentucky University ($25,000)
• UK Student Public Interest Law Foundation ($25,000)
• U of L Louis D. Brandeis School of Law Research Foundation ($25,000)

For more information, please contact the Kentucky IOLTA Fund at 1-800-874-6582. If you are calling from outside of Kentucky, please call (502) 564-3795.

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Conley Salyer, Attorney, J.D., LLM.; Examiner, Malcolm Baldrige National Quality Award (MBNQA). csalyer@nonprofitattorney.net, (859) 281-1171, 710 E. Main Street, Lexington, KY 40502. www.nonprofitattorney.net
This is an advertisement.
I. CR 4.01(1)(b) and (c) Summons; issuance; by whom served
Subsection (b) and new subsection (c) of section (1) of CR 4.01 shall read:

(1)(b) Cause the summons and complaint (or other initiating document), with necessary copies, to be transferred for service to any person authorized, other than by paragraph (a) of this Rule, to deliver them, who shall serve the summons and accompanying documents, and his or her return endorsed thereon shall be proof of the time and manner of service; or

(c) At the request of the initiating party, return the summons and complaint (or other initiating document), with necessary copies, to that party for service.

II. CR 5.02(1) and (2) Service; how made
Sections (1) and (2) of CR 5.02 shall read:

(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, which shall not include a warning order attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Except as provided in paragraph (2) of this rule, service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the last known address of such person; or, if no address is known, by leaving it with the clerk of the court. Service is complete upon mailing unless the serving party learns or has reason to know that it did not reach the person to be served. Delivery of a copy within this rule means handing it to the attorney or to a party; or

(2) An attorney or party may elect to effectuate and receive service via electronic means to and from all other attorneys or parties in the action by filing a notice of such election with the clerk and serving a copy of such election by personal delivery or by mail as provided for in paragraph (1) of this rule, except that such notice may be sent electronically to any other party or attorney who has already filed and served a notice of election of electronic service hereunder. The notice must include the electronic notification address at which the attorney or party agrees to accept service. Methods of electronic service that may be elected under this rule include electronic mail or telecopy (facsimile). Documents sent through electronic mail shall be sent as an attachment in PDF or similar format unless otherwise agreed by the parties. Once an attorney or party files a notice of election of electronic service and serves the notice on all other attorneys or parties in the case, all other attorneys or parties shall promptly provide the requesting party or attorney with an electronic notification address at which the other attorneys or parties may be served, and shall thereafter serve the requesting attorney or party through electronic means whenever service of a document is required by these rules. Upon motion of an attorney or party and for good cause shown, the court may relieve the attorney or party of the obligation to make or receive service by electronic means. Unrepresented parties who are unable to utilize electronic service methods may continue to serve all other attorneys or parties through any method permitted by these rules. Electronic service of documents that are filed with the clerk shall be made on or before the day they are filed. Service is complete upon electronic transmission, but electronic transmission is not effective if the serving party learns or has reason to know that it did not reach the person to be served. When documents are too large or numerous to be processed electronically by the sender or recipient, the serving attorney or party shall serve them by mail or personal delivery. The signature of an attorney or party on a document served by electronic mail may be represented by “/s/” followed by the typed name of the person signing the document or by a scanned version of an original signature. Signature in such manner is equivalent to a hand-signed original signature for all purposes under these Rules.

III. CR 6.05 Additional time after service by mail
CR 6.05 shall read:

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or electronic service, 3 days shall be added to the prescribed period. This provision shall not apply to the service of summons by mail under Rule 4.01(1)(a).

IV. CR 7.03 (1)(a) Privacy protection for filings made with the court
Subsection (a) of section (1) of CR 7.03 shall read:

(1) Unless the court orders otherwise, in a civil filing with the court, excluding domestic violence matters, that contains certain personal data, including an individual’s social security number or taxpayer-identification number, or birth date, or a financial-account number, an attorney or party making the filing must redact the document so the following information cannot be read:

(a) all but the last four digits of the social-security number or taxpayer-identification number;

B. AMENDMENTS TO THE RULES OF THE SUPREME COURT (SCR)

I. SCR 2.018(1), (3) and (4) Application packets
Sections (1), (3) and (4) of SCR 2.018 shall read:

(1) All applications for admission to the Kentucky Bar shall be electronically submitted on forms approved by the Board and Committee. Application forms are available on the Kentucky Office of Bar Admissions website, www.kyba.org.

(3) Any applicant who submits an incomplete application will be notified of the error, and given an opportunity to upload a completed application within 30 days after the notification, and paying...
IV. SCR 2.111(1)(b)(iv), (2), (4)(a) and (c) and (5) Limited

not later than 5 days prior to the examination date or have a verified ex-

mitted in another jurisdiction must file a complete Application for Ad-

sent to indigent individuals within the Commonwealth of Kentucky,

under this rule is authorized to donate legal services in Kentucky

other individual or entity, except as permitted under paragraph (4)(c)

an attorney to whom this rule applies shall submit to the Office of Bar Ad-

of a Commonwealth’s Attorney or County Attorney, or an organized legal

matters within the professional responsibility of an organized public de-

award of a sentence. An application for admission to practice under this rule

(c) An attorney admitted with a limited practice certificate under this rule is authorized to donate legal services in Kentucky

through (i) a duly organized legal aid program offering pro bono repre-

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(4) Expiration of Admission. When an attorney admitted under this rule ceases to be employed in the program or office for which limited admission was granted a representative of the public defender program or legal services program or office of Commonwealth’s or County Attorney shall immediately and in writing, so notify the Clerk of the Supreme Court. Admission to practice under this rule shall expire after 18 months, or upon termination of the attorney’s employment with the program or office, whichever shall first occur.

(5) Rules Governing the Practice of Law. Except for Rules 2.110 and 3.030(2), the Rules governing the practice of law shall be applicable to an attorney admitted under this rule.

VI. SCR 2.300(1)(e) and (5) Reinstatement of persons to practice law Scope and Purpose of Reinstatement Guidelines

Subsection (e) of section (1) and section (5) of SCR 2.300 shall read:

(1) Initial Reinstatement Application Process:

(e) Upon receipt of a Reinstatement Application from the Kentucky Bar Association, the Kentucky Office of Bar Admissions, Character and Fitness Committee will instruct the applicant to electronically file a Character and Fitness Certification for Reinstatement Form in accordance with the instructions contained on it from the Office of Bar Admissions website, www.kyoba.org.

(5) Formal Recommendation:

Following the Formal Hearing if there are material factual disputes, the Character and Fitness Committee must resolve them by making findings of fact. Such findings of fact must be supported by the existence or absence of clear and convincing evidence. Such findings will be set forth in a formal recommendation. A formal recommendation will be issued within 60 days of the date of receipt of the hearing transcript.

VII. [SCR 3.026 Local divisions of the Kentucky Bar Association]

Delete SCR 3.026

VIII. SCR 3.030(1), (3), (4) and (5)(a) and (b) Membership, practice by nonmembers and classes of membership

Sections (1), (3), (4) and new subsections (a) and (b) of new section (5) of SCR 3.030 shall read:

(1) All persons admitted to the practice of law in this state shall be, and they are, members of the association.

(3) The association, by its bylaws, may create honorary memberships.

(4) A class of membership is established to be known as “Senior Retired Inactive Member.” Any member who reaches the age of 70 years and no longer is actively practicing law and who has met the necessary CLE requirements for inactive status pursuant to SCR 3.661, shall, upon notification to the Executive Director be classified as Senior Retired Inactive and shall not be required to pay annual dues.

(5)(a) A class of membership is established to be known as “Disabled Inactive Member.” An attorney admitted to practice in this state who has been, because of a mental or physical condition, judicially declared to be a person under a legal disability, or for whom probable cause exists to believe that the attorney has a mental or physical condition that substantially impairs his or her ability to practice law shall provide to the Court a detailed written report from a licensed qualified health care provider who has examined the attorney setting out the findings of the health care provider, including the results of all tests made, diagnoses and conclusions. The Court may enter an order transferring the attorney to Disability Inactive Status. An attorney classified under this subsection is not required to pay dues or obtain the annual CLE requirement pursuant to SCR 3.661. This status shall be reflected on the attorney’s membership record. No attorney classified under this status may engage in the practice of law in this state until restored to active status by the Court. Any disciplinary proceedings against the attorney shall be stayed while he/she is on disability inactive status. Any report and supporting records from a health care provider regarding the treatment of the attorney shall be confidential and sealed.

(b) An attorney transferred to disability inactive status may file a petition with the Court for restoration to active status. A copy of the petition shall be served on Bar Counsel, who shall have 20 days to file a response to the petition. If Bar Counsel objects to the petition, the matter shall be referred to the Character and Fitness Committee to conduct proceedings under SCR 2.300. If Bar Counsel has no objection to the petition the Court may enter an order restoring the attorney to active status with or without conditions. If an attorney is restored to active status, any disciplinary proceedings that have been stayed will be resumed.

IX. SCR 3.040(4) Dues: date of payment and amount

Section (4) of SCR 3.040 shall read:

(4) Unless the member has been classified under Senior Retired Inactive pursuant to SCR 3.030(4) or Disabled Inactive pursuant to SCR 3.030(5), the member may apply in writing to the Kentucky Bar Association to be relieved of the payment of dues by reason of undue hardship arising from disability, sickness or financial condition. The application shall be copied to the Governors from the district in which the attorney lives, who may or may not recommend in writing to the President that such relief be granted, giving the reasons therefor. Thereupon the President shall have the authority to rule on the application and notify the Treasurer by written order that the attorney is relieved of the payment of dues. The President shall file the order with the registrar along with the recommendation(s) of the Governor(s).

X. SCR 3.060(1)(h),(i), and (j) Records to show status of members

Subsections (h), (i) and (j) of section (1) of SCR 3.060 shall read:

(1)(h) Disciplinary complaints filed pursuant to Rule 3.160(1) against attorneys that have been dismissed by the Inquiry Commission shall be maintained for a period of 1 year after final disposition of the complaint.

(i) Those records which are disciplinary complaints against attorneys that have resulted in discipline of attorneys shall be maintained until 5 years after the death of the attorneys.

(j) At the end of the period stated in paragraphs (h) and (i) of this rule, the described complaints and/or records shall be destroyed.

XI. SCR 3.070 The board; functions and membership

SCR 3.070 shall read:

The Board is the governing body of the Association and the agent of the Court for the purpose of administering and enforcing the Rules. It shall consist of the President, the President-Elect, the Vice President, the immediate Past President, the Chair of the Young Lawyer’s Division, and 2 attorneys elected from the membership of the Association in each appellate district of the state as presently existing or hereafter created.
XII. SCR 3.120(1) and (10) Fiscal provisions
Section (1) and deletion of section (10) of SCR 3.120 shall read:

(1) The dues and bar registration fees prescribed in Rule 3.040 shall constitute a general fund to provide for the ordinary and necessary expenses of the operation of the Kentucky Bar Association, including, as appropriate, compensation of employees; expenses of the Board and officers; publications; maintenance of the client's security fund and the bar center fund and the discharge of the disciplinary, educational and other functions specified by these rules. Other fees, subscriptions, and contributions authorized by these Rules or approved by the court shall constitute a special fund or funds to provide for the specific purpose or purposes of each such collection including the annual conventions and other undertakings for which specific collections are authorized. Excesses in the special fund may be transferred to the general fund on order of the Board. Voluntary section or division funds or contributions may be retained by the sections or divisions annually with the approval of the Board.

[(10) Printing and purchasing shall be regulated by procedures established through the Administrative Office of the Courts.]

XIII. SCR 3.130(1.15)(b) and (c) Safekeeping property
Sections (b) and (c) of SCR 3.130(1.15) shall read:

(b) Upon receiving funds or other property in which a client has an interest, a lawyer shall promptly notify the client. Except as stated in this Rule or otherwise permitted by law or by agreement with the client a lawyer shall promptly deliver to the client any funds or other property that the client is entitled to receive and, upon request by the client, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of funds or other property in which the lawyer and client claim interests and are not in agreement regarding those interests, the funds or other property in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property in which the interests are not in conflict.

XIV. SCR 3.130(3.4)(g)(1) Fairness to opposing party and counsel
Subsection (1) of section (g) of SCR 3.130(3.4) shall read:

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

XV. SCR 3.130(7.02)(1)(a) and (f) Definitions
Subsections (a) and (f) of section (1) of SCR 3.130(7.02) shall read:

(a) A professional card of a lawyer identifying the lawyer by name and giving the lawyer's address(es); telephone number(s), fax number(s), e-mail address(es), website, jurisdictions in which the lawyer is licensed to practice, foreign language skills, office hours, additional office location(s), length of time practicing, photograph of lawyer with no accompanying scene in the background, and the designation of a law firm as a “debt relief agency” but no other information. A professional card of a law firm may also give the names of members and associates, and jurisdictions in which the lawyers are licensed to practice. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer may be designated “Of Counsel” on a letterhead if there is a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated “General Counsel” or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.

XVI. SCR 3.130(7.06)(2) Advisory opinions
Section (2) of SCR 3.130(7.06) shall read:

(2) If a lawyer has received an advisory opinion that an advertisement complies with the Advertising Rules and Advertising Regulations, that lawyer shall not be disciplined for any use of that advertisement, except as otherwise provided in SCR 3.130(7.06)(4).

XVII. SCR 3.130(7.09) Comment (3) Direct contact with potential clients
Section (3) of the Supreme Court Commentary to SCR 3.130(7.09) shall read:

Supreme Court Commentary

(3) The rule’s subsection (3) permits solicitations otherwise prohibited by the rule where the solicitation is not significantly motivated by the lawyer’s pecuniary gain, in compliance with In re Primus, 436 U.S. 412 (1978); Ohrailik v. Ohio State Bar Ass’n, 436 U.S. 447 (1978); and NAACP v. Button, 371 U.S. 415 (1963). There is far less likelihood that a lawyer would engage in abusive practices in situations in which the lawyer is motivated by considerations other than the lawyer’s pecuniary gain. Also, subsection (3) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

XVIII. SCR 3.130(7.20)(3), (5) and Comment (6) Advertising
Sections (3) and (5) of SCR 3.130(7.20) and new section (6) of the Supreme Court Commentary of SCR 3.130(7.20) shall read:

(3) Any communication made pursuant to these Rules shall include the name of at least 1 lawyer licensed in Kentucky, or the name of a law firm any of whose partners, or lawyers with an ownership interest are licensed in Kentucky. The lawyer or lawyers licensed in Kentucky shall be responsible for the content of the advertisement.

(5) If a lawyer or a law firm advertises legal services and a lawyer’s name or image is used to present the advertisement, the lawyer must be the lawyer who will actually perform the service advertised unless the advertisement prominently discloses that the service may be performed by other lawyers. If the lawyer whose name or image is used is not licensed to perform the services in Kentucky, such fact shall be disclosed in the advertisement. If the advertising lawyer or firm is advertising for clients for the purpose of referring the client to another lawyer or firm, that fact must be disclosed prominently in the advertisement.

Supreme Court Commentary

(6) Pursuant to SCR 3.130(5.1), it is the responsibility of partners, lawyers with an ownership interest in the firm and lawyers who possess managerial authority in the firm, to ensure that the firm has measures in place to assure conformance with the Rules of Professional Conduct.
XIX. SCR 3.160(3)(C) Initiation of disciplinary cases

Section (C) of Section (3) of SCR 3.160 shall read:

(3)(C) After review and such preliminary investigation as may reasonably be necessary, the Office of Bar Counsel may attempt informal resolution and subsequently close the Complaint. If the acts or course of conduct complained of merit referral under 3(A)(ii)-(vi), and do not warrant a greater degree of discipline, the Office of Bar Counsel may issue a warning letter, which will be maintained in the investigative file of the Office of Bar Counsel but not be considered as discipline, or it may recommend remedial ethics, related legal or management education programs, fee arbitration, or KYLAP, completion of which would result in the complaint being dismissed.

XX. SCR 3.175(1)(b), (c), (d), (e) and (3) Efficient enforcement; notice of attorney’s address

Sections (b), (c), (d) and (e) of section (1) and section (3) of SCR 3.175 shall read:

(1)(b) maintain with the Director a valid email address and shall upon change of that address notify the Director within 30 days of the new address, 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 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.

(3) After July 1, 2004, the Association may reject any communication 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.

XXI. SCR 3.210(2), (3) and (4) Processing cases of default, admissions of violations or answers raising only issues of law

Sections (2), (3) and (4) of SCR 3.210 shall read:

(2) After entry of the order of submission, the Board may rule on Motions to file late answers for good cause shown as set forth in CR 6.02. The Office of Bar Counsel shall have an opportunity to file a response. The entire Board shall rule on the Motion. If the Motion is granted, the Board shall return the entire record to the Disciplinary Clerk for further proceedings. If the Motion is overruled, the matter shall stand submitted to the Board.

(3) If the parties agree that the answer raises only issues of law, or the Respondent admits the violation, the case shall be submitted directly to the Board. Bar Counsel may file a brief within 20 days, and the Respondent may file a brief within 20 days, thereafter. After briefs are filed, or the time within which briefs may be filed has expired, the record and briefs shall be forwarded to the President for assignment to a member of the Board for a report.

(4) The Board, by a vote of a majority of the Board present and voting, may return the entire record to the Disciplinary Clerk for appointment of a Trial Commissioner pursuant to SCR 3.230 to conduct an evidentiary hearing, which proceeding will be confidential pursuant to 3.150.

XXII. SCR 3.225 Appointment of Trial Commission

SCR 3.225 shall read:

The Chief Justice shall appoint, subject to the approval of the Supreme Court, from among the membership of the Bar Association, a Trial Commission and shall designate a chair from the Commission. The Trial Commission shall consist of no more than 15 members. Members of the Trial Commission shall be lawyers licensed in the Commonwealth who possess the qualifications of a Circuit Judge. To the extent practicable, the Chief Justice shall, with the consent of the Court, appoint Trial Commissioners from each appellate district. Such Trial Commissioners shall serve 1 or more 4 year terms.

XXIII. SCR 3.240(1) and (2) Notice of appointment of Trial Commissioner and hearing

Sections (1) and (2) of SCR 3.240 shall read:

(1) Upon the appointment of a Trial Commissioner, the Disciplinary Clerk shall notify the parties of his/her name and address. The Trial Commissioner shall fix the time and place of the hearing and the Disciplinary Clerk shall give notice thereof to the parties. Such hearing shall occur not less than 30 days, nor more than 180 days, after the date of the notice, but for good cause shown, said time may be extended by the Trial Commissioner for a period not to exceed an additional 180 days.

(2) Any time, not later than 20 days after the appointment of a Trial Commissioner or at such point in the proceeding that facts become known sufficient for such challenge, the Respondent or Bar Counsel may, by motion, challenge for cause the Trial Commissioner. If the challenge is such as might disqualify a Circuit Judge, the Chief Justice shall relieve the challenged member and direct the Disciplinary Clerk to immediately fill the vacancy.

XXIV. SCR 3.320 Procedure where an attorney has been convicted of a misdemeanor or a felony

SCR 3.320 shall read:

Any member of the Association who is convicted of a felony or class “A” misdemeanor, within 10 days following the plea of guilty, finding of guilt by a judge or jury, or upon the entry of judgment, whichever occurs first, file a copy of the judgment with Bar Counsel. The prosecuting attorney shall also file a copy of said judgment with Bar Counsel for action under SCR 3.160. Bar Counsel shall submit copies of the judgment to the Inquiry Commission which may take action under SCR 3.165.

XXV. SCR 3.330 Order of proceedings and burden of proof

SCR 3.330 shall read:

The Trial Commissioner shall determine and regulate the order of proceedings at the hearing. Upon the application of a party or upon direction of the Trial Commissioner, the Disciplinary Clerk shall issue subpoenas for the attendance of witnesses or the production of evidence at the hearing. Prehearing discovery shall proceed in accordance with this rule as directed by the Trial Commissioner rather than by the Kentucky Rules of Civil Procedure. If reasonably necessary to prepare the case for hearing, the Trial Commissioner may allow the taking of deposition and require the production of documents. The burden of proof shall rest upon the Association in a disciplinary proceeding, and the facts must be proven by a preponderance of the evidence. In reinstatement hearings the burden shall rest upon the Applicant, and he/she must
dent guilty of unprofessional conduct shall provide for the recovery of
Sections (1), (2) and (3) of SCR 3.450 shall read:
proceedings, whichever is less.
upon by 11 or 3/4 of the members of the Board present and voting on the
shall not exceed 30 pages. No reply brief shall be permitted.
ponent shall file a brief supporting his/her position on the merits of the
have been filed and are in the possession of the Trial Commissioner.
pursuant to SCR 3.370(9).
The proceedings before the Trial Commissioner shall be electronically
XXVII. SCR 3.360(2), (4) and (5) Trial Commissioner
to file report with Disciplinary Clerk
Sections (2), (4) and (5) of SCR 3.360 shall read:
(2) The Trial Commissioner's report shall constitute a part of
The Trial Commissioner shall file the report with the Disciplinary
within 30 days after the record has been filed with the Disciplinary
If an extension is sought by the Trial Commissioner, a verified motion
The Trial Commissioner shall file the report with the Disciplinary
within 60 days after the record is filed with the Disciplinary
the entire record shall be forwarded to the Court for entry of a final order
(4) Within 30 days after the filing with the Disciplinary Clerk
of: (a) the report, (b) an order ruling on a motion under SCR 3.360(3), or
(5) Upon finality of the report, the Trial Commissioner shall
return to the Disciplinary Clerk the entire record and such papers as may have
been filed and are in the possession of the Trial Commissioner.
XXVIII. SCR 3.370(1) and (5)(c) Procedure before the Board
and the Court
Section (1) and subsection (c) of section (5) of SCR 3.370 shall read:
(1) Thirty days after the filing of the notice of appeal, the Appellant shall file a brief supporting his/her position on the merits of the case. Fifteen days thereafter, the Appellee shall file his/her brief. Briefs shall not exceed 30 pages. No reply brief shall be permitted.
(5)(c) Each roll call vote under (5)(a) or (b) shall be agreed upon by 11 or 3/4 of the members of the Board present and voting on the proceedings, whichever is less.
XXIX. SCR 3.450(1), (2) and (3) Recovery of Costs
Sections (1), (2) and (3) of SCR 3.450 shall read:
(1) In any case to be submitted to the Court, the Disciplinary Clerk shall file with the Court the entire record of the proceedings together with a certified bill of the costs incurred in connection with the investigation and prosecution of the matter.
(2) Every final order of the Court which adjudges the Respondent guilty of unprofessional conduct shall provide for the recovery of costs, which shall include the costs and expenses that a prevailing party in a civil action may recover pursuant to CR 54.04, and such other costs, including postage, certified mailing fees, service of process fees, and videographer charges, as may be ordered by the Supreme Court. Immediately upon the effective date of the order, the Clerk shall furnish a bill for said costs to the Respondent. If the bill is not satisfied within 10 days thereafter, upon which date the order is final, the Clerk shall notify the Director of the Association. The award set forth in the order and any costs shall bear interest at the judgment rate set forth in KRS 360.040.
(3) An order of the Court assessing costs as referenced above shall be enforceable in the same manner and by the same means as any civil judgment.
XXX. SCR 3.480(2) Withdrawal from the association; negotiated sanctions
Section (2) of SCR 3.480 shall read:
(2) The Court may consider negotiated sanctions of disciplinary investigations, complaints or charges prior to the commencement of a hearing before a Trial Commissioner under SCR 3.240. Any member who is under investigation pursuant to SCR 3.150(2) or who has a complaint or charge pending in this jurisdiction, and who desires to terminate such investigation or disciplinary proceedings at any stage of it may request Bar Counsel to consider a negotiated sanction. If the member and Bar Counsel agree upon the specifics of the facts, the rules violated, and the appropriate sanction, the member shall file a motion with the Court which states such agreement, and serve a copy upon Bar Counsel, who shall, within 10 days of the Clerk's notice that the motion has been docketed, respond to its merits and confirm its agreement. The Disciplinary Clerk shall submit to the Court within the 10 day period the active disciplinary files to which the motion applies. The Court may approve the sanction agreed to by the parties, or may remand the case for hearing or other proceedings specified in the order of remand.
XXXI. SCR 3.500(2)(d), (3)(d) and (4) Restoration to membership
Subsection (d) of section (2), subsection (d) of section (3) and section (4) of SCR 3.500 shall read:
(2)(d) Upon the filing of the foregoing items, the Office of Bar Counsel shall present the matter to the Board at its next meeting, or, if not contested, at any time by mail or electronic means. Within 30 days of its review of the complete application materials, the Board may restore the applicant to membership or refer the matter to the Character and Fitness Committee of the Kentucky Office of Bar Admissions for proceedings pursuant to SCR 2.040 and SCR 2.011, and subsequent review by the Supreme Court. If the matter is referred to the Character and Fitness Committee, the applicant shall pay a fee of $450.00 to the Kentucky Office of Bar Admissions. Upon completion of its review, the Character and Fitness Committee shall submit its recommendation to the Board for its action and recommendation to the Court.
(3)(d) Upon the filing of the foregoing items, the Director shall refer the application to the Character and Fitness Committee of the Kentucky Office of Bar Admissions for proceedings pursuant to SCR 2.040 and SCR 2.011. An additional fee of $750.00 shall be paid to the Kentucky Office of Bar Admissions. Upon completion of its review, the Character and Fitness Committee shall submit its recommendation to the Board of Governors for its action and recommendation to the Court.
(4) All costs incurred in excess of the filing fee shall be paid by the Applicant. Upon referral to the Character and Fitness Committee, a cash bond in the amount of $2500.00 to secure the costs to be incurred shall be paid to the Office of Bar Admissions by the Applicant.
XXXII. SCR 3.505(3) Character and Fitness Committee; reinstatements

Section (3) of SCR 3.505 shall read:

(3) The Applicant or Bar Counsel shall have the right to a hearing before the Character and Fitness Committee prior to the issuance of its decision. The hearing shall be held within 60 days from the request. The formal recommendation of the Committee shall be filed within 60 days of the filing of the record.

XXXIII. SCR 3.510(1), (2), (3) and (4) Reinstatement in case of disciplinary suspension

Sections (1), (2), (3) and (4) of SCR 3.510 shall read:

(1) No former member of the Association who has been suspended for a disciplinary case for more than 180 days shall resume practice until he/she is reinstated by order of the Court. Application for reinstatement shall be on forms provided by the Director and Continuing Legal Education Commission, filed with the Director, and shall be accompanied by a filing fee of $250.00 which shall be made payable to the Kentucky Bar Association. An additional filing fee of $1500.00 shall be made payable to the Kentucky Office of Bar Admissions. The Director shall not accept an application for filing unless all costs incurred in the suspension proceeding have been paid by the former member, the Office of Bar Counsel has certified to the Applicant that there is no pending disciplinary file, and the costs in the reinstatement proceeding (whether costs of the Association or of the Character and Fitness Committee or of the Kentucky Office of Bar Admissions) have been secured by the posting of a cash bond of $2500.00. Any additional costs will be paid by Applicant. The Director shall refer the application to the Continuing Legal Education Commission within 10 days of receipt for certification under Rule 3.675. The Continuing Legal Education Commission shall make its certification within 20 days of the referral which shall be added to the record in the reinstatement proceeding.

(2) If the period of suspension has prevailed for 180 days or less, the suspension shall expire by its own terms upon the filing with the Clerk and Bar Counsel of an affidavit of compliance with the terms of the suspension, which must include a certification from the CLE Commission that the Applicant has complied with SCR 3.675. The Registrar of the Association will make an appropriate entry in the records of the Association reflecting that the member has been reinstated; provided, however, that such suspension shall not expire by its own terms if, not later than 10 days preceding the time the suspension would expire, Bar Counsel files with the Inquiry Commission an opposition to the termination of suspension wherein Bar Counsel details such information as may exist to indicate that the member does not, at that time, possess sufficient professional capabilities and qualifications properly to serve the public as an active practitioner or is not of good moral character. A copy of such objection shall be provided to the Character and Fitness Committee, to the member concerned, and to the Registrar. If such an objection has been filed by Bar Counsel, and is not withdrawn within 30 days, the Character and Fitness Committee shall conduct proceedings under SCR 2.300. In cases where a suspension has prevailed for 180 days or less and the reinstatement application is referred to the Character and Fitness Committee, a fee of $1500.00 shall be made payable to the Kentucky Office of Bar Admissions.

(3) If the period of suspension has prevailed for more than 180 days, the matter shall be referred to the Character and Fitness Committee for proceedings under SCR 2.300. The Character and Fitness Committee will determine whether the application of a member who has been suspended 180 days or less but whose termination of suspension has been objected to, or a member who has been suspended for more than 180 days, should be approved. The Character and Fitness Committee shall file with the Director and the Clerk the entire record, including a written report and recommendation by the Character and Fitness Committee. Thirty days after the filing of the report, Bar Counsel and the applicant may each file briefs, not to exceed 30 pages in length. No further briefs may be filed. Upon motion of the parties or upon the Board’s own motion, oral arguments may be scheduled before the Board. The Board shall review the record, report and briefs and recommend approval or disapproval of the application to the Court. The Court may enter an order reinstating the Applicant to the practice of law or deny the application.

(4) If the period of suspension has prevailed for more than 5 years, the Director shall refer the application to the Character and Fitness Committee for proceedings under SCR 2.300. The Committee shall file a written report and recommendation with the Director and the Clerk. Thirty days after the filing of the report, Bar Counsel and the applicant may each file briefs, not to exceed 30 pages in length. No further briefs may be filed. Upon motion of the parties or upon the Board’s own motion, oral arguments may be scheduled before the Board. The Board shall review the record, report and briefs and recommend approval or disapproval of the application to the Court. If the Committee and the Board recommend approval of the application, the Committee shall refer the application to the Board of Bar Examiners for processing in accordance with Rule 3.500(3) and shall file the entire record with the Clerk, including the written report and recommendation of the Committee. The Board of Bar Examiners shall certify the results of the examination to the Director and the Court. If the Applicant successfully completes the examination, the Court may, at its discretion, enter an order reinstating the suspended member to the practice of law. However, if the Applicant fails to pass the examination, the Court shall enter an order denying the application.

XXXIV. SCR 3.600 Continuation legal education definitions

SCR 3.600 shall read:

As used in SCR 3.605-3.695, the following definitions shall apply unless the context clearly requires a different meaning:

(1) “Approved activity” is a continuing legal education activity that meets the requirements set forth in SCR 3.650 and has been approved for credit by the CLE Commission.

(2) “Attorney Identification Number” is the 5 digit number assigned to each member of the Association upon admission.

(3) “Award” is the Continuing Legal Education Award.

(4) “Commission” is the Continuing Legal Education Commission.

(5) “Continuing legal education,” or “CLE,” is any legal educational activity which is designed to maintain or improve the professional competency of practicing attorneys and is accredited by the Commission.

(6) “Credit” is a unit for measuring continuing legal education.

(7) “Educational year” is the reporting period for mandatory continuing legal education and runs from July 1st each year through June 30th of the successive year.

(8) “Ethics, professional responsibility and professionalism” is the category by which “ethics credits” shall be earned and includes programs or seminars or designated portions thereof with instruction focusing on the Rules of Professional Conduct independently or as they relate to law firm management, malpractice avoidance, attorneys fees, legal ethics, and the duties of attorneys to the judicial system, the public, clients and other attorneys.

(9) “In-house activity” is an activity sponsored by a single law firm, single corporate law department, or single governmental office for lawyers who are members or employees of the firm, department or office.
(10) “Legal writing” is a publication which contributes to the legal competency of the applicant, other attorneys or judges and is approved by the Commission. Writing for which the author is paid shall not be approved.

(11) “Non-compliance” means not meeting continuing legal education requirements set forth in SCR 3.645 and SCR 3.640 and includes both lack of certification and lack of completion of activities prior to established time requirements.

(12) “Technological transmission” is a CLE activity delivery method other than live seminars and includes video tape, DVD, audio tape, CD-ROM, computer on-line services, or other appropriate technology as approved by the Commission.

XXXV. SCR 3.605 The commission; functions and membership
New rule SCR 3.605 shall read:

The Continuing Legal Education Commission shall consist of 7 attorneys, 1 of whom shall be from each appellate district of the Commonwealth as presently existing or hereafter created. Under the policy direction of the Court and the Board, the Commission shall be responsible for the administration and regulation of all continuing legal education programs and activities for the members of the Association.

XXXVI. [SCR 3.610 The commission; functions and membership]
Deletion of SCR 3.610.

XXXVII. SCR 3.610 Selection and tenure of the Commission; filling vacancies on the Commission
New rule SCR 3.610 shall read:

The Court shall appoint all members of the Commission from a list consisting of 3 times the number to be appointed submitted to the Court by the Board. A chairman shall be designated by the Court for such time as the Court may direct. Of the members first appointed, 3 shall be appointed for 1 year, 2 for 2 years and 2 for 3 years. Thereafter, appointments shall be made for a 3 year term. Members may be reappointed but no member shall serve more than 2 successive 3 year terms. Each member shall serve until a successor is appointed and qualified. Vacancies occurring through death, disability, inability or disqualification to serve or by resignation shall be filled for the vacant term in the same manner as initial appointments are made by the Court. Members of the Commission shall serve without compensation but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. The Association shall have the responsibility of funding the Commission and any necessary staff who shall be employees of the Association.

XXXVIII. SCR 3.615 Commission member qualifications
New rule SCR 3.615 shall read:

Each Commission member must be a citizen of the United States, licensed to practice law in the courts of this Commonwealth and have been a resident in the appellate district from which nominated for 2 years immediately preceding the appointment.

XXXIX. [SCR 3.620 Selection and tenure of the commission; filling vacancies on the commission]
Deletion of SCR 3.620.

XL. SCR 3.620 Commission quorum
New rule SCR 3.620 shall read:

A quorum consisting of at least 4 Commission members is required for conducting the business of the Commission.

XLI. SCR 3.625 Commission staff
New rule SCR 3.625 shall read:

The Commission shall be provided with a Director for Continuing Legal Education and sufficient administrative and secretarial assistants as are from time to time required. Selection and qualifications of the Director for Continuing Legal Education shall be determined by the Board except that the person selected shall be an attorney licensed to practice law in the courts of this Commonwealth. The Director for Continuing Legal Education shall be responsible to the Commission for the proper administration of the rules applying to the Commission and any regulations issued by the Commission.

XLII. [SCR 3.630 Commission member’s qualifications]
Deletion of SCR 3.630.

XLIII. SCR 3.630 Commission duties
New rule SCR 3.630 shall read:

The Commission shall be responsible for the administration of these continuing legal education rules, subject to policy approval and other direction by the Board and the Court. In discharging this responsibility, the Commission shall:

(1) Encourage and promote the offering of high quality continuing legal education.

(2) Conduct, sponsor, or otherwise provide high quality continuing legal education, specifically including, but not limited to, one 12 credit seminar in each Supreme Court District each year.

(3) Encourage and promote quality legal writing.

(4) Approve or deny promptly all applications provided for by these rules.

(5) Establish standards, procedures, and forms to evaluate applications made pursuant to these rules.

(6) Promulgate rules and regulations for the administration of the mandatory continuing legal education program subject to approval of the Board and the Court.

(7) Report annually, on or before September 15, and as otherwise required, to the Board and the Court on the status of continuing legal education in the Commonwealth. Such report shall include recommended changes to these rules and regulations and their implementation.

(8) Submit to the Board annually, on or before November 1, a recommended budget for the succeeding year with any recommended changes in annual membership dues to cover costs of administering these rules.

(9) Perform such other acts and duties, not inconsistent with these rules, as are necessary and proper to improve the continuing legal education programs within the Commonwealth. When in the course of undertaking the duties set forth above, the Commission receives information which may raise questions regarding a member’s competence to represent clients or to otherwise practice law as defined at SCR 3.020, or which may raise any of the issues covered at SCR 3.165(b), the Commission has an affirmative duty to report such information to the Office of Bar Counsel for review by the Inquiry Commission.
XLV. SCR 3.635 Kentucky Law Update seminars in each appellate district

New rule SCR 3.635 shall read:

(1) Within 12 months following the date of admission as set forth on the certificate of admission, each person admitted to membership in the Association shall complete the New Lawyer Program requirement.

(2) At least twice each educational year, the Commission shall provide or cause to be provided a New Lawyer Program of not less than 12 credits. The Commission may in its discretion, accredit a New Lawyer Program proposed by other CLE providers.

(3) Continuing legal education credits for the New Lawyer Program shall be awarded in a number consistent with the award of credits for other continuing legal education programs.

(4) The New Lawyer Program shall include at least 2 hours of ethics, a course on law practice management and other subjects determined appropriate by the Commission.

(5) The Commission or other provider accredited under SCR 3.640(2) may charge a reasonable registration fee approved by the Court for the New Lawyer Program.

(6) Each individual attending the New Lawyer Program shall certify to the Director for CLE the completion of the Program on the attendance certificate provided for that purpose. Such certification shall be submitted to the Director for CLE upon completion of the program and in no case shall the certification be submitted later than 30 days after completion of the program. Continuing legal education credits awarded for the program shall be applied to the educational year in which the program is attended, and if applied to a year in which the individual so attending is otherwise exempt from CLE requirements under SCR 3.665(c), then said credits shall carry forward in accordance with SCR 3.645(3).

(7) A member required to complete the New Lawyer Program pursuant to paragraph (1) of this Rule may, upon application to and approval by the Commission, be exempted from the requirement if the member is admitted to practice in another jurisdiction for a minimum of 5 years, and will certify such prior admission to the Commission, or if the member has attended a mandatory new lawyer training program of at least 12 credits, including 2 ethics credits, offered by the state bar association of another jurisdiction and approved by the Director for CLE.

(8) The time for completion and certification set forth in paragraphs 1 and 6 of this Rule may, upon written application to and approval by the Commission or its designee, be extended. Written applications for an extension under this paragraph must be received by the Commission no later than 30 days after the member's deadline to complete the Program as set forth in paragraph (1) of this Rule. All applications must be signed by the member. The Commission may approve extensions for completing the Program under the following circumstances:

(a) Where the member demonstrates hardship or other good cause clearly warranting relief. Requests for relief under this subsection must set forth all circumstances upon which the request is based, including supporting documentation. In these circumstances, the member shall complete the requirement set forth in paragraphs (1) and (6) as soon as reasonably practicable as determined by the Commission or its designee; or

(b) Where the member fails to demonstrate hardship or other good cause clearly warranting relief, the member must pay a fee of $250.00 and complete the requirement set forth in paragraphs (1) and (6) at the next regularly scheduled New Lawyer Program.

(9) Non-compliance with the New Lawyer Program requirement: Failure to complete and certify attendance for the New Lawyer Program pursuant to this Rule shall be grounds for suspension from the practice of law in the Commonwealth or other sanctions as deemed appropriate by the Board.

(a) Ninety days prior to the end of the 12 month period all individuals not certifying completion of the New Lawyer Program pursuant to this Rule shall be notified in writing that the program must be completed before the end of the 12 month period, indicating the date.

(b) Names of all individuals not submitting certification of completion of the New Lawyer Program within the 12 month period or not being granted an extension of time, pursuant to paragraph (8) of this Rule, shall be submitted to the Board by the Director for CLE, certifying the member's failure to comply with the New Lawyer Program requirement.

(c) 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 attorney to show cause within 30 days from the date of the mailing why the attorney's license should not be suspended for failure to meet the New Lawyer Program requirement set forth in this Rule. Such response shall be in writing, sent to the attention of the Director for CLE, and shall be accompanied by costs in the amount of $50.00 payable to the Kentucky Bar Association.

(d) Unless good cause is shown by the return date of the notice, or within such additional time as may be allowed by the Board, the lawyer will be stricken from the membership roster as an active member of the KBA and will be suspended from the practice of law or will be otherwise sanctioned as deemed appropriate by the Board. A copy of the suspension notice shall be delivered by the Director of CLE to the member, the Clerk of the Kentucky Supreme Court, and in the case of suspension, to the Circuit Clerk of the district wherein the member resides for recording and indexing as required by SCR 3.480.

(e) A member suspended under this Rule may apply for restoration to membership under the provisions of SCR 3.500.

(f) A member may appeal to the Kentucky Supreme Court from such suspension order within 30 days of the effective date of the suspension. Such appeal shall include an affidavit showing good cause why the suspension should be set aside.
XLIII.  SCR 3.645 Continuing legal education requirements: compliance and certification
New rule SCR 3.645 shall read:

(1) Each educational year, as defined by SCR 3.600(7), every person licensed to practice law in this Commonwealth, not specifically exempted pursuant to the provisions of SCR 3.665, shall complete and certify a minimum of 12 credit hours in continuing legal education activities approved by the Commission, including a minimum of 2 credit hours devoted to “ethics, professional responsibility and professionalism” as defined by SCR 3.600(8). All continuing legal education activities must be completed by June 30 of each educational year.

(a) Integration of legal ethics, professional responsibility and professionalism issues into substantive law topics is encouraged, but will not count toward the 2 credit minimum annual requirement.

(b) It is the obligation of the attorney seeking credit to ensure the activity has been approved. Completion of a non-approved activity shall be at the risk of the attorney.

(2) Certification of completion of approved CLE activities must be received by the Director for CLE no later than August 10th immediately following the educational year in which the activity is completed.

(a) Certification shall be submitted to the Director for CLE by the sponsor of the accredited activity or by individual attorneys on approved KBA forms, uniform certificates, or other format adopted by the Commission.

(b) Any certification submitted after the August 10th deadline shall be deemed past due. All past due reports shall be accompanied by a late filing fee of $50.00 per certificate to cover the administrative costs of recording credits to the prior year. All past due reports must be received by the Commission with the late fee no later than the close of the educational year (June 30th) immediately following the year during which the activity was completed. This deadline will not apply in instances where the member or former member is in the process of removing an exemption per SCR 3.665 (2) or attempting certification per SCR 3.685.

(c) Sponsors submitting certifications to the Director for CLE shall comply with all requirements set forth in SCR 3.660(6).

(3) A member who accumulates an excess over the 12 credit requirement may carry forward the excess credits into the 2 successive educational years for the purpose of satisfying the minimum requirement for those years. Carry-forward credits are limited to a total of 24 credits, including 4 ethics credits. All excess credits above a total of 24 credits will remain on the member’s record but may not be carried forward.

(4) Failure to acquire a minimum of 12 credits, including 2 ethics credits, to meet the minimum, annual continuing legal education requirement and/or the associated certification requirements set forth herein, shall be grounds for suspension by the Board from the practice of law.

(5) Compliance and certification requirements concerning the New Lawyer Program requirement are set forth at SCR 3.640(1) and (6).

XLIX.  [SCR 3.650 Commission duties]
Deletion of SCR 3.650.

L.  SCR 3.650 Qualifying continuing legal education activity and standards
New rule SCR 3.650 shall read:

(1) Credit for completing qualifying continuing legal education activities, as set forth below in paragraphs 2 and 3 of this Rule, shall be calculated, reported and subject to the limitations set forth in SCR 3.655.

(2) A continuing legal education activity qualifies for accreditation if the Commission determines that the activity conforms to the following standards:

(a) The activity is an organized program of learning (including a course of study, workshop, symposium or lecture) which contributes directly to the legal competence of an attorney.

(b) The activity deals primarily with substantive legal issues directly related to the practice of law, or law practice management, and includes consideration of any related issues of ethics, professional responsibility, or professionalism.

(c) The activity has significant intellectual or practical content which is timely.

(d) The activity has as its primary objective to increase the participant’s professional competence as an attorney. Activities designed primarily for non-lawyers do not qualify for accreditation.

(e) The activity must be offered by a sponsor having substantial, recent experience in offering continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction and supervision of the activity.

(f) The activity itself must be taught and conducted by an individual or group qualified by practical or academic experience.

(g) The activity, including the named advertised participants, must be conducted substantially as planned, subject to emergency alterations.

(h) Thorough, high-quality, readable, timely, useful and carefully prepared written materials must be made available to all participants at or before the time the activity is presented. A brief outline without citations or explanatory notations is not sufficient.

(i) At the conclusion of the activity, each participating attorney must be given the opportunity to complete an evaluation questionnaire addressing the quality of the particular activity.

(j) The cost of the activity itself to participating attorneys must be reasonable considering the subject matter and instructional level.

(k) The activity may be presented live or by technological transmission as defined in SCR 3.600(12). Activities including audio components must have high quality audio reproductions so that listeners may easily hear the content of the activity. Activities including video components must have high quality video reproductions so that observers may easily view the content of the activity.

(l) In cases of an in-house activity, as defined in SCR 3.600(9), such activities may be approved if all standards set forth herein for accreditation are met. In addition, at least half the instructional hours must be provided by qualified persons having no continuing relationship or employment with the sponsoring firm, department or agency.

(3) Continuing legal education credit may be earned for the following additional activities subject to the limitations set forth in SCR 3.655:

(a) Teaching or participating as a panel member or seminar leader in an approved activity.

(b) Researching, writing or editing material to be presented at an approved activity.

(c) Publication of a legal writing as defined by SCR 3.600(10).

(d) Public speaking. Upon application, CLE credit may be earned by teaching or participating as a panel member, mock trial coach or seminar leader for law-related public service speeches to civic organizations or school groups. A maximum of 2 credits earned under this rule per educational year may be applied to meet the annual minimum requirement. Speaking for which the member is paid shall not be approved. Written copies of presentations must accompany such applications; provided, however, that, where appropriate, a narrative summary of the material presented may be sufficient.
LIII. [SCR 3.651 Kentucky law update seminars in each appellate district]
Deletion of SCR 3.651.

LIV. [SCR 3.652 New Lawyer Program]
Deletion of SCR 3.652.

LIII. SCR 3.655 Calculation and reporting of continuing legal education credits: formulas and limits
New rule SCR 3.655 shall read:

(1) All certifications and applications for credits shall be claimed on KBA forms, uniform certificates approved by the Commission, or other mechanism adopted by the Commission and shall be forwarded to the Director for CLE.

(2) Credits granted for continuing legal education activities vary depending on the nature of the activity. Credit will be granted, or is calculated, and in some instances limited, as set forth below.

(a) Members completing or participating in an approved activity will be granted 1 credit for each 60 minutes of actual instructional time. Instructional time shall not include introductory remarks, breaks, or business meetings held in conjunction with a continuing legal education activity.

(b) Members completing or participating in an accredited technologically transmitted, non-live activity will be granted credit as set forth in SCR 3.655(2)(a). A maximum of 6 credits may be applied to meet the annual minimum CLE requirement set forth in SCR 3.645. Credits earned by completing a non-live activity will be applied to the educational year in which such activity is completed. Activities presented by technological transmission with an attorney facilitator available for purposes of answering questions and leading discussions are considered “live.” Live webinars and teleseminars are also considered “live” programs and are not subject to this limitation.

(c) Members teaching or participating as panel members or seminar leaders in an approved activity will be granted 1 credit for each 60 minutes of actual instructional time.

(d) Members may be granted preparation credit as follows:

(i) One credit for each 2 hours spent in preparation for teaching or participating as a panel member or seminar leader in an approved activity, up to a maximum of 12 credits per educational year.

(ii) One credit for each 2 hours spent researching, writing or editing material presented by another member at an approved continuing legal education activity, up to a maximum of 12 credits per educational year.

(e) Credit for attending a law school class as set forth in SCR 3.650 shall equal twice the number of semester or credit hours awarded by the law school for successful completion of the course for credit or by audit. Actual instruction time shall not be used to determine continuing legal education credit for attending law school classes.

(f) Members may earn credits for publication of qualified legal writing pursuant to SCR 3.650(3)(c), up to a maximum of 6 credits per year. One credit is granted for each 2 hours of actual preparation time including research, writing, and editing. Any excess credits, up to 20 hours, will be applied toward the award established in SCR 3.690.

(g) The Commission shall grant a maximum of 2 credits to members teaching or participating as panel members or seminar leaders in an approved activity.

(h) For activities agreed upon by the Commission, businesses, or bar associations, up to a maximum of 12 credits per educational year.

(i) Business meetings or committee meetings of legal or law-related associations.

(j) The Commission may grant a maximum of 12 credits per educational year for attending law school classes.

(k) Business meetings or committee meetings of legal and law-related associations.

(l) Any activity completed prior to admission to practice in Kentucky except the program required pursuant to SCR 3.645(5) and 3.640(1).

(m) Law school classes attended by a member, provided that the member registers for the class with the law school and completes the course as required by the terms of registration, for credit or by audit.

(4) The following categories of activities shall not qualify as a continuing legal education:

(a) Seminars or meetings sponsored by law firms or other organizations which are determined by the Commission to be in the nature of client development and do not meet the requirements set forth in SCR 3.650(2).

(b) Passing a bar exam for licensure to practice law in a state or jurisdiction.

(c) Bar review courses taken in preparation for bar examinations for admission to the highest court in a state or jurisdiction.

(d) Correspondence classes.

(e) Any activity completed prior to admission to practice in Kentucky except the program required pursuant to SCR 3.645(5) and 3.640(1).

(f) Undergraduate law or law-related classes.

(g) Programs taken in preparation for licensure exams for non-lawyer professionals.

(h) Business meetings or committee meetings of legal and law-related associations.

(5) Seminars designed for non-lawyers which in case-by-case situations, will benefit the lawyer by allowing clients improved services in unique areas of practice. Credits earned for this category of seminar or activity shall not count toward the 12 credit annual minimum requirement but may count toward continuing legal education award credits as determined by the Commission.

(6) Accreditation of activities may be withdrawn by the Commission in cases where there is evidence that any of the above standards and criteria have not been met or that circumstances surrounding the actual content or transmission of the activity are not as originally represented to the Commission during the application process such that withdrawal of accreditation is warranted.

LIV. SCR 3.660 Procedure for accreditation of continuing legal education activities and obligations of sponsors
New rule SCR 3.660 is:

(1) Educational activities may be approved for credit upon application to the Commission. Application for accreditation may be made by a member or former member without involving the sponsor, or application for accreditation may be made by an activity sponsor.

(2) Application for accreditation of continuing legal education activities shall be made by members, former members or activity sponsors using forms provided by the Association or using uniform applications adopted by the Association. Applications must provide all information required by the form in order to be reviewed. All applications shall be accompanied by the appropriate application fee as follows:

(a) For applications submitted by sponsors for activities greater than 2 hours in length and submitted at least 30 days in advance of the activity, the fee is $50.00 per activity. If such application is submitted less than 30 days in advance of the activity, the fee is $100.00 per activity.

(b) For applications submitted by sponsors for activities 2 hours or less in length and submitted at least 30 days in advance of the activity, the fee is $20.00 per activity. If such application is submitted less than 30 days in advance of the activity, the fee is $40.00 per activity.

(c) For applications submitted by members or former members, regardless of length of activity and when submitted, the fee is $20.00 per activity.

(d) Activities repeated on different dates or at different locations are separate activities and require separate applications and separate fees.
LVIII. [SCR 3.665 Procedure for accreditation of continuing legal education activities and obligations of sponsors]  
Deletion of SCR 3.665.

LIX. SCR 3.665 Exemptions and removal of exemptions

New rule SCR 3.665 shall read:

1. For each educational year, the following members of the Association shall be exempt from the requirements of SCR 3.645:
   a. In recognition of their positions, which prohibit the practice of law and have significant continuing education requirements by statute or rule of court as a result of the positions they hold, members who, during any portion of that educational year, are serving as:
      i. Justices, Judges, or Magistrates of the Commonwealth or Court of the United States; or
      ii. full-time administrative law judges for an agency of the United States or Commonwealth of Kentucky executive branch.
   b. Justices and Judges of the Commonwealth leaving the bench will be allowed to use accumulated Continuing Judicial Education credits toward the required CLE minimum, up to 12 credits, including 2 ethics, for the first year they are subject to the CLE requirement after leaving the bench.
   c. New lawyers who have been admitted less than 1 full educational year as of the June 30th deadline. Such members shall be subject to the New Lawyer Program requirement, as set forth in SCR 3.640.
   d. Members who are at least 75 years of age or at least 50 year members, including members who will become 75 years of age and those who become 50 year members within the educational year.
2. Upon application to the Commission, the following members may be exempted from the requirements of SCR 3.645:
   a. Non-practice exemption: Members who do not practice law, as defined in SCR 3.020, within the Commonwealth and agree to refrain from such practice until the Commission approves an application for removal of the exemption.
   b. Practice of law as defined in SCR 3.020, within the Commonwealth, during the effective period of this exemption pursuant to SCR 3.665(2)(a) shall constitute the unauthorized practice of law. Information known by the Commission regarding the practice of law during any period for which a member has certified non-practice status pursuant to SCR 3.665(2)(a) shall not be deemed confidential as provided by SCR 3.695 and shall be provided along with the member’s continuing legal education transcript by the Director for CLE to the Office of Bar Counsel and the Inquiry Commission in writing.
3. A member seeking removal of a non-practice exemption shall be required to file a written application with the Commission, addressed to the Director for CLE, for the removal of said exemption. Required as an attachment to the application for removal of said exemption shall be certification of completion of sufficient continuing legal education credits to meet the minimum annual continuing legal education requirement for each educational year during which he or she was exempt, excluding the current educational year. In no case shall a member be required to certify completion of more than 12 credits, including applicable ethics credits, as a condition of removal of the exemption. Timely certification shall include only continuing legal education credits earned during the current educational year and 2 prior educational years. This Rule in no way affects the member’s responsibility to complete the current year minimum educational requirement by June 30th. The current year minimum educational requirement must be completed as set forth at SCR 3.645. The member shall be notified in writing, via certified mail, of the Commission’s action on the application for the removal of the exemption.
4. Application for removal of an exemption granted pursuant to SCR 3.665(2)(a) may not be made within 30 days of the granting of the exemption.


LXV. SCR 3.670 Extension of time requirements

New rule SCR 3.670 shall read:

(1) The time requirements associated with completion of continuing legal education and certification thereof, as set forth in SCR 3.645(1), may be extended by the Commission in case of hardship or other good cause clearly warranting relief. Requests for time extensions for completion of activities or certification thereof shall be made to the Commission in writing. All requests for time extension must be received by the Commission no later than the September 10th following the end of the educational year for which the time extension is sought. Requests must set forth all circumstances upon which the request is based, including supporting documentation. Applications for time extensions for completion of the New Lawyer Program may be submitted pursuant to SCR 3.640(8).

(2) A member who fails to complete the requirements of SCR 3.645 for any educational year, and who cannot show hardship or other good cause clearly warranting relief, may submit an application for a non-hardship extension of time in which to earn the annual minimum requirement. The application, which shall be made on KBA forms or by such other appropriate method approved by the Commission, must meet the following requirements:

(a) Each application must contain a detailed plan for completing the annual requirement.

(b) All required credits must be completed and reported by the September 10th deadline for the educational year for which an extension is sought.

(c) The application must be submitted to the Director for CLE and received by the September 10th deadline for the educational year for which an extension is sought; and

(d) The application must include the required application fee as set forth below:

   - (i) $250.00 for the first year for which a non-hardship time extension is sought;
   - (ii) $350.00 for the second year for which a non-hardship time extension is sought;
   - (iii) $500.00 for the third year and all years thereafter for which a non-hardship time extension is sought.

(3) Failure to comply with extended time requirements granted by the Commission pursuant to SCR 3.645 (1) or (2), including both completion of continuing legal education activities and certification thereof, shall subject the member to the sanctions of SCR 3.675: Suspension for Non-Compliance.


LXVII. SCR 3.675 Non-compliance: procedure and sanctions

New rule SCR 3.675 shall read:

(1) As soon as practicable after August 20th of each year, the Commission shall notify a member in writing of existing delinquencies of record. The writing may consist of a computer generated form setting forth said delinquency. If any statement incorrectly reflects the continuing legal education status of the member it shall be the duty of the member to promptly notify the Commission of any claimed discrepancy in the education statement.

(2) If, by the first day of November immediately following, a member has neither certified completion by the June 30th immediately prior, of the minimum continuing legal education requirements set forth in SCR 3.645, nor applied for and satisfied the conditions of an extension under SCR 3.670 or exemption under SCR 3.665, the Commission shall certify the name of that member to the Board.

(3) 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 attorney to show cause within 30 days from the date of the mailing why the attorney’s license should not be suspended for failure to meet the mandatory minimum CLE requirements of SCR 3.645. Such response shall be in writing, sent to the attention of the Director for CLE, and shall be accompanied by costs in the amount of $50.00 payable to the Kentucky Bar Association.

(4) Unless good cause is shown by the return date of the notice, or within such additional time as may be allowed by the Board, the lawyer will be stricken from the membership roster as an active member of the KBA and will be suspended from the practice of law or will be otherwise sanctioned as deemed appropriate by the Board. A copy of the suspension notice shall be delivered by the Director to the member, the Clerk of the Kentucky Supreme Court, the Director of Membership, and to the Circuit Clerk of the district wherein the member resides for recording and indexing as required by SCR 3.480.
LXXI. SCR 3.685 Continuing legal education requirements for precedent of restoration or reinstatement to membership.

A member may appeal to the Kentucky Supreme Court from such suspension order within 30 days of the effective date of the suspension. Such appeal shall include an affidavit showing good cause why the suspension should be set aside.

LXXII. [SCR 3.680 Continuing legal education award]
Deletion of SCR 3.680.

LXIX. SCR 3.680 Appeal of commission actions

New rule SCR 3.680 shall read:

(1) The Commission shall state the reason or reasons for any adverse Commission decision and shall notify the person or organization affected.

(2) Any person or organization may request in writing reconsideration of an adverse decision within 15 days of the notice of the decision. The Commission shall consider any pertinent material submitted and shall permit the aggrieved party the opportunity to appear at a meeting of the Commission for oral presentation of information to be considered.

(3) Any person or organization may appeal to the Board from an adverse decision of the Commission by filing a written notice in the Office of the Director within 30 days of the notice of the decision or of a refusal to reconsider a decision. The review of the Board shall be limited to the record considered by the Commission. The entire record, including a transcript of Commission proceedings, shall be submitted to the Board, with costs born by the unsuccessful party.

(4) Any person or organization may appeal to the Supreme Court of Kentucky from an adverse decision of the Board by filing a written petition, together with 10 copies, in the office of the Clerk of the Court, accompanied by a certificate of service on the Director and a filing fee of $100.00, within 30 days of the notice of the decision. The review of the Court shall be limited to the record considered by the Commission and the Board.

(5) Commission certification of non-compliance filed with the Board pursuant to SCR 3.640(9) or SCR 3.675 may not be appealed under Sections (3) and (4) of this Rule.

LXX. [SCR 3.685 Annual publication of educational achievement]
Deletion of SCR 3.685.

LXXI. SCR 3.685 Continuing legal education requirements for restoration or reinstatement to membership: procedures

New rule SCR 3.685 shall read:

(1) Every former member, applying for or otherwise seeking restoration or reinstatement to membership pursuant to Rules 3.500 or 3.510, shall be required to have completed the minimum annual continuing legal education requirement for each year during which he or she was not a member in good standing, including any year prior to disbarment, suspension or withdrawal under threat of disbarment or suspension, during which the minimum annual continuing legal education requirement was not fulfilled. Completion of such credits shall be certified to the Commission as a condition precedent to reinstatement or restoration. In no case shall a member be required to attend more than 60 continuing legal education credits, including applicable ethics credits, as a condition precedent to restoration or reinstatement to membership.

(2) The application or affidavit of compliance submitted for restoration or reinstatement shall include certification from the Director for CLE of completion of continuing legal education activities as required by these Rules, or otherwise specified by the Commission or Court. Applicants or affiants shall request said certification from the Director for CLE in writing and shall submit with said written request a fee of $50.00 to cover the expense of the record search and certification. Applications or affidavits of compliance submitted for restoration or reinstatement which do not include the required certification of continuing legal education credits, including verification of fee payment for the certification, shall be considered incomplete and shall not be processed.

(3) The requirements for completion of continuing legal education as a condition to restoration or reinstatement as set forth above may only be satisfied with credits earned in the current educational year during which the application is submitted and the preceding 2 educational years. Credits so earned shall be applicable to requirements imposed by the Commission upon application or other actions undertaken in pursuit of restoration or reinstatement.

(4) Approval of the application or provision of a certification for an affidavit of compliance shall satisfy the requirement of the applicant under SCR 3.645 for the current educational year.

(5) In the event that a new educational year begins after approval of the application or certification for an affidavit of compliance by the Commission, but prior to Supreme Court entry of an Order of Restoration or Reinstatement, or Registrar’s certification of member’s name to the active roster of membership the new year minimum continuing legal education requirement must be completed and the application updated before the reinstatement or restoration can proceed to the Board of Governors or to the Court, unless a maximum of 60 credits have been completed.

LXXXI. [SCR 3.690 Commission records confidential]
Deletion of SCR 3.690.

LXXII. SCR 3.690 Continuing Legal Education Award

New rule SCR 3.690 shall read:

(1) Any member who completes a minimum of 60 credit hours approved by the Commission within a period of 3 or fewer educational years, is eligible for a Continuing Legal Education Award which shall consist of a dignified certificate issued by the Association attesting to the educational accomplishment.

(2) The Commission shall notify the member and issue the award.

(3) Approved awards are valid for 1 year, beginning on the first day of July of the year of award notification.

(4) The validity of an award may be renewed for an additional year following the initial award date, in which the member who holds the award completes a minimum of 20 approved credits.

(5) Failure to earn 20 credits in any educational year following the initial award date shall disqualify the member from further renewals of that award. The member may only become eligible for another award by earning 60 approved credit hours in a period separate and distinct from the period for which a prior award was issued.

(6) Each member who holds a valid, unexpired award shall receive a 25% discount from the normal registration fee for the Kentucky Bar Association Annual Convention.

(7) The Association may publish annually in leading daily newspapers of general circulation throughout the Commonwealth an announcement of the members who during the preceding educational year have earned the Continuing Legal Education Award. The announcement shall describe the basis of the award and shall set forth in alphabetical order the name and geographical location of each recipient. A similar
LXXIV. SCR 3.695 Commission records confidential
New rule SCR 3.695 shall read:

The files and records of the Commission shall be deemed confidential and shall not be disclosed except in furtherance of the duties of the Commission, as set forth at SCR 3.630, of the Board, upon request of the member affected, or as directed by the Supreme Court of Kentucky. This rule specifically excludes from confidentiality information provided by a member to the Commission as a part of a member’s application for relief from the requirements of these rules.

LXXV. SCR 7.030(2) and (4) Nomination and election – regular elections

Election of Bar Representatives to Judicial Nominating Commissions

Sections (2) and (4) of SCR 7.030 shall read:

(2) On or before June 1 of the years in which regular elections are to be held under this rule the board shall by majority vote nominate candidates for election to the various commissions as specified in subsection 3 of this rule. The board shall immediately certify the names of its nominees to the director. On or before July 1 the director shall publish by appropriate means to the members specified in (3)(c) of this rule a list or lists of the candidates so nominated.

(4) Any other qualified member may file a written petition for candidacy for the commission for the Supreme Court and the Court of Appeals, signed by himself and not less than 10 other members residing in the Commonwealth of Kentucky, or may file a written petition for candidacy for the commission for a judicial circuit, signed by himself and not less than 2 other members residing in the circuit. In his petition the member shall state that he does not hold any other public office or any office in a political party or organization. All such petitions shall be filed with the director on or before August 15 of the year in which the regular election for members of the commissions is to be held. The director shall acknowledge receipt of each candidate’s petition by return mail. All petitions shall be considered public records and shall be available for inspection at reasonable hours. On or before September 1 the director shall publish by appropriate means to the members specified in (3)(c) of this rule a list or lists of the candidates, including those nominated by the board and those nominated by petition.

LXXVI. SCR 8.030 Staff for Commission

SCR 8.030 shall read:

The Manager of the Division of Judicial Branch Education of the Administrative Office of the Courts or designee as appointed by the Chief Justice of the Supreme Court shall serve as Executive Secretary to the Commission.

LXXVII. SCR 8.070 Continuing judicial education requirements

SCR 8.070 shall read:

(a) Every appellate judge and justice and every trial judge, not exempted, shall attend a minimum of 25 hours in continuing judicial education courses approved by the Judicial Education Commission each educational biennium.

(b) At least once every 2 years, a portion of the continuing judicial education provided for judges by the Administrative Office of the Courts shall consist of programs which focus on the dynamics and effects of domestic violence including the availability of community resources, victims services and reporting requirements. The minimum hours of judicial education credits need not include domestic violence programs credits.

(c) An educational biennium shall begin on July 1 and end 2 years later on June 30 of each even-numbered year.

(d) To satisfy the minimum attendance requirement for any educational biennium a judge is authorized to carry forward any excess attendance over 25 hours that was earned in the immediately preceding biennium.

LXXVIII. SCR 8.110 Sanctions

SCR 8.110 shall read:

As soon as practicable after July 31st of the educational biennium, the Commission shall request the Executive Secretary to notify a judge in writing of their delinquency unless prior to July 1st the judge has requested an exemption which has not been ruled on by the Commission. If such judge remains delinquent on the 30th day of August, the Commission Chair shall forthwith, in writing, report the judge’s name to the Chief Justice.

LXXIX. SCR 8.120 Expenses

SCR 8.120 shall read:

Judges attending judicial education programs sponsored by the Administrative Office of the Courts shall be reimbursed for their expenses in accordance with Court of Justice Travel Regulations. Expenses for attendance at any other education program shall be borne by the judge unless prior approval is obtained by the Manager of Judicial Branch Education of the Administrative Office of the Courts.

All sitting. All concur, except:

Cunningham and Scott, JJ. would not adopt the amendments to CR 5.02 (1) and (2).
Cunningham, J. would send Residual Funds to Kentucky Access to Justice Foundation.
Scott, J. would not adopt the amendments to SCR 3.450 (1), (2) and (3).
Cunningham, J. would not adopt the amendments to SCR 3.510 (1), (2), (3) and (4).

ENTERED: October 7, 2013.

[Signature] 

CHIEF JUSTICE
The following rules’ amendments shall become effective January 1, 2014.

I. CR 23.05(6) Disposition of Residual Funds

New subsections (a) and (b) to new section (6) of CR 23.05 shall read:

(a) “Residual Funds” are funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys’ fees, and other court-approved disbursements to implement the relief granted. Nothing in this rule is intended to limit the parties to a class action from agreeing to, or the trial court from approving, a settlement that does not create residual funds.

(b) Any order entering a judgment or approving a proposed compromise of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than twenty-five percent (25%) of the residual funds shall be disbursed to the Civil Rule 23 Account maintained by the Kentucky IOLTA Fund Board of Trustees pursuant to Supreme Court Rule 3.830(20). Such funds are to be allocated to the Kentucky Civil Legal Aid Organizations based upon the current poverty formula established by the Legal Services Corporation to support activities and programs that promote access to the civil justice system for low-income residents of Kentucky.

II. SCR 3.830 Kentucky IOLTA Fund

New section (20) to SCR 3.830 shall read:

(20) If the Kentucky IOLTA Fund receives residual funds as provided in Civil Rule 23.05(6), it shall deposit those funds into the Civil Rule 23 Account, an interest-bearing account maintained in a banking institution within the Commonwealth of Kentucky. Those funds are to be timely disbursed, in their totality, to the four Kentucky Civil Legal Aid Organizations in accordance with the current poverty formula established by the Legal Services Corporation in Washington, D.C. The Kentucky IOLTA Fund shall report to the Kentucky Supreme Court annually, on the first business day of September, regarding the status of the Civil Rule 23 Account, including all receipts and disbursements during the preceding year.

III. RCr 4.20 Use of uniform schedule of bail

Section (1) of RCr 4.20 shall read:

(1) The defendant may execute a bail bond in accordance with the uniform schedule of bail (Appendix A) for designated nonviolent Class D felonies, misdemeanors and violations without appearing before a judge. If a defendant chooses to execute a bail bond in accordance with the schedule without appearing before a judge and proceeds to do so, that defendant waives his or her statutory right to be considered for other authorized methods of pre-trial release. Before said waiver is effective, the defendant must be informed of his or her right to appear before a judge without unnecessary delay, and to be considered for release on personal recognizance.

All sitting. All concur, except Scott, J., who dissents as to CR 23.05(6) and SCR 3.830. Justice Scott would direct that the funds be allocated by the Kentucky IOLTA Fund Board of Trustees and would require that receipt of such funds be deemed to be consent for appropriate audits by the Auditor of the Commonwealth of Kentucky as to the expenditure of such funds.

ENTERED: October 22, 2013.

CHIEF JUSTICE
Supreme Court of Kentucky

IN RE:
ORDER AMENDING
RULES OF THE SUPREME COURT (SCR)
2013-15

The following rules’ amendments shall become effective January 1, 2014.

I. SCR 3.030(4) and (5)(a) Membership, practice by non-members and classes of membership
Section (4) and subsection (a) of section (5) of SCR 3.030 shall read:

(4) A class of membership is established to be known as “Senior Retired Inactive Member.” Any member who reaches the age of 70 years and no longer is actively practicing law and who has met the necessary CLE requirements for inactive status pursuant to SCR 3.665(2), shall upon notification to the Executive Director be classified as Senior Retired Inactive and shall not be required to pay annual dues.

(5)(a) A class of membership is established to be known as “Disabled Inactive Member.” An attorney admitted to practice in this state who has been, because of a mental or physical condition, judicially declared to be a person under a legal disability, or for whom probable cause exists to believe that the attorney has a mental or physical condition that substantially impairs his or her ability to practice law shall provide to the Court a detailed written report from a licensed health care provider who has examined the attorney setting out the findings of the health care provider, including the results of all tests made, diagnoses and conclusions. The Court may enter an order transferring the attorney to Disability Inactive Status. An attorney classified under this subsection is not required to pay dues or obtain the annual CLE requirement pursuant to SCR 3.645. This status shall be reflected on the attorney’s membership record. No attorney classified under this status may engage in the practice of law in this state until restored to active status by the Court. Any disciplinary proceedings against the attorney shall be stayed while he/she is on disability inactive status. Any report and supporting records from a health care provider regarding the treatment of the attorney shall be confidential and sealed.

II. SCR 3.390 Notice to client of suspension or disbarment
Section (b) of SCR 3.390 shall read:

(b) Within 10 days after the issuance of an order of disbarment, or suspension under SCR 3.050 or SCR 3.675(4), or upon issuance of an order of suspension from the practice of law more than 60 days, the disbarred or suspended lawyer shall notify, by letter duly placed with the United States Postal Service, all courts or other tribunals in which that lawyer has matters pending, and all clients of the lawyer’s inability to represent them and of the necessity and urgency of promptly retaining new counsel. The lawyer shall simultaneously provide a copy of all such letters of notification to the Office of Bar Counsel. Upon issuance of an order of disbarment or suspension, the affected lawyer shall immediately cancel any pending advertisements, to the extent possible, and shall terminate any advertising activity for the duration of the term of suspension or disbarment.

III. SCR 3.500(1), (2)(c) and (3)(c) Restoration to membership
Section (1), subsection (c) of section (2) and subsection (c) of section (3) of SCR 3.500 shall read:

(1) A former member who has withdrawn from membership pursuant to SCR 3.480(1), or who was suspended for failure to pay dues as provided by SCR 3.050, or for failure to comply with the continuing legal education requirements of SCR 3.645 may be restored to membership upon compliance with the conditions set forth in this rule. No application for restoration shall be effective until entry of an order of restoration by the Board of Governors or the Court, as provided herein. Until the entry of such an order, the suspension or withdrawal from membership remains in force.

(2) A former member whose withdrawal or suspension from membership has prevailed for less than 5 years may apply for restoration by:

(c) Submitting with the application a certificate from the Director of Continuing Legal Education pursuant to SCR 3.685.

(3) A former member whose withdrawal or suspension from membership has prevailed for 5 years or longer may apply for restoration by:

(c) Submitting with the application a certificate from the Director of Continuing Legal Education pursuant to SCR 3.685.

IV. SCR 3.510(1) and (2) Reinstatement in case of disciplinary suspension
Sections (1) and (2), of SCR 3.510 shall read:

(1) No former member of the Association who has been suspended for a disciplinary case for more than 180 days shall resume practice until he/she is reinstated by order of the Court. Application for reinstatement shall be on forms provided by the Director and Continuing Legal Education Commission, filed with the Director, and shall be accompanied by a filing fee of $250.00 which shall be made payable to the Kentucky Bar Association. An additional filing fee of $1500.00 shall be made payable to the Kentucky Office of Bar Admissions. The Director shall not accept an application for filing unless all costs incurred in the suspension proceeding have been paid by the former member, the Office of Bar Counsel has certified to the Applicant that there is no pending disciplinary file, and the costs in the reinstatement proceeding (whether costs of the Association or of the Character and Fitness Committee or of the Kentucky Office of Bar Admissions) have been secured by the posting of a cash bond of $2500.00. Any additional costs will be paid by Applicant. The Director shall refer the application to the Continuing Legal Education Commission within 10 days of receipt for certification under Rule 3.685. The Continuing Legal Education Commission shall make its certification within 20 days of the referral which shall be added to the record in the reinstatement proceedings.

(2) If the period of suspension has prevailed for 180 days or less, the suspension shall expire by its own terms upon the filing with the Clerk and Bar Counsel of an affidavit of compliance with the terms of the suspension, which must include a certification from the CLE Commission that the Applicant has complied with SCR 3.685. The Registrar of the Association will make an appropriate entry in the records of the Association reflecting that the member has been reinstated; provided, however, that such suspension shall not expire by its own terms if, not later than 10 days preceding the time the suspension would expire, Bar Counsel files with the Inquiry Commission an...
opposition to the termination of suspension wherein Bar Counsel details such information as may exist to indicate that the member does not, at that time, possess sufficient professional capabilities and qualifications properly to serve the public as an active practitioner or is not of good moral character. A copy of such objection shall be provided to the Character and Fitness Committee, to the member concerned, and to the Registrar. If such an objection has been filed by Bar Counsel, and is not withdrawn within 30 days, the Character and Fitness Committee shall conduct proceedings under SCR 2.300. In cases where a suspension has prevailed for 180 days or less and the reinstatement application is referred to the Character and Fitness Committee, a fee of $1500.00 shall be made payable to the Kentucky Office of Bar Admissions.

V. SCR 3.970 Agency Referrals

Subsection (d) of section (1), of SCR 3.970 shall read:

(1) A member of the Kentucky legal community who is the subject of a pending admission, disciplinary or continuing legal education proceeding before an agency of the Supreme Court of Kentucky may authorize that agency to make a confidential request for assistance from KYLAP in evaluating or addressing any actual or potential impairment that may be relevant to the issues which the agency is charged with considering in the proceeding. In particular:

(d) A member or former member of the Association who is the subject of a continuing legal education proceeding pursuant to SCR 3.675 by the Continuing Legal Education Commission may authorize the Director for Continuing Legal Education to communicate in confidence with KYLAP for the purpose of requesting assistance from KYLAP in evaluating and addressing any actual or potential impairment that may be relevant to the CLE Commission’s recommended disposition of that proceeding.

ENTERED: November ___1___, 2013.
ON THE MOVE

Dressman Benzing LaVelle announces two new attorneys: associate Justin Knappick and partner Michael Schmidt. Knappick practices primarily in the area of commercial and collections litigation in the Crestview Hills office. He obtained his law degree in 2011 from the University of Cincinnati College of Law, where he graduated cum laude, and his bachelor’s degree in finance, with a minor in political science, in 2008 from the University of Dayton, where he graduated magna cum laude. While in law school, Knappick was a member of the Moot Court Honor Board and was named to the Dean’s Honor List. He also served as an Extern for the Hon. Thomas M. Rose at the United States District Court for the Southern District of Ohio. Knappick received the Henry Otterman Real Property Prize and the Ohio State Bar Association Labor and Employment Law Achievement Award.

Schmidt concentrates his practice on complex commercial real estate transactions and corporate law, drawing on 12 years legal experience and his engineering background. His representation includes commercial real estate acquisitions, development, leasing and financing. Schmidt also assists corporate clients with mergers and acquisitions, corporate governance and compliance, shareholder relations, and dispute resolution. Schmidt obtained his law degree in 2001 from the Salmon P. Chase College of Law, and a bachelor’s degree in 1995 from the University of Kentucky. Schmidt received a CALI Award for Legal Research and has presented to a number of professional groups in Greater Cincinnati on pertinent commercial real estate issues.

The Louisville office of Quintairos, Prieto, Wood & Boyer, P.A., is pleased to announce our newest lawyer, Francisco D. Savinon, Jr. Savinon recently relocated to Kentucky, his wife’s home state. He will focus his practice on insurance defense and personal injury litigation, handling various types of claims including long-term care and medical malpractice, products liability, premises liability, and general negligence. Prior to joining QPWB, Savinon practiced in the area of civil litigation at a mid-size New York City law firm. He gained extensive experience handling a multi-faceted practice that included acting as both plaintiff’s and defense counsel in a broad range of matters.

He received his J.D. in 2006 from Syracuse University College of Law, New York, and a bachelor of arts degree in 2003 from Binghamton University, New York. While attending law school, he was an associate editor of the Syracuse Law Review and a member of the Dean’s List. Savinon is licensed to practice law in the Commonwealth of Kentucky and New York, and is a member of the Kentucky Bar Association and Louisville Bar Association. He is also admitted to practice in the U.S. District Courts for the Southern and Eastern Districts of New York.

The Louisville office of Quintairos, Prieto, Wood & Boyer, P.A. (QPWB), welcomes John S. Wathen as an associate attorney. Wathen, an Owensboro native and Owensboro Catholic High School alumnus, graduated from Vanderbilt University with a degree in history. He is a 2013 graduate of the University of Kentucky College of Law.

John S. Wathen has joined the law firm of Sullivan, Mountjoy, Stainback & Miller PSC, as an associate attorney. Wathen, an Owensboro native and Owensboro Catholic High School alumnus, graduated from Vanderbilt University with a degree in history. He is a 2013 graduate of the University of Kentucky College of Law.

Johnson Newcomb, LLP, announces that Nathan H. Goins has joined the firm as an associate attorney. Goins’ practice will focus primarily on family law, criminal law, civil law, estates (probate and planning) and real estate transactions. Goins graduated in 2011 from the University of Kentucky College of Law. In 2004, he received a bachelor of arts in English from the University of Kentucky. Goins is a member of the American, Kentucky, and Franklin County Bar associations.

Law firm Frost Brown Todd continues to expand its Commercial Mortgage-Backed Securities (CMBS) practice by welcoming Tanner Nichols, Meghan Tyson, Shawn Spalding and Doug Walter to the Louisville office. Frost Brown Todd’s CMBS group is led by partners Barry Hines and John Gragg. Nichols is joining as a member, having previously worked with Hines and Gragg at Stites & Harbison and as in-house counsel at Farm Credit Services. Tyson, Spalding and Walter, all recent law school graduates, are joining the firm as staff attorneys.

The Law and Mediation Offices of Michal Guilfoil have expanded to serve Southcentral Kentucky with the opening of the Louisville office at 113 West Public Square, Suite #304, Glasgow, KY 42141. (Phone 270-629-5050). The Louisville office has moved to 4965 US Highway 42, Suite #1000, Louisville, KY 40222. (Phone 502-897-6133).

O’Brien Law Group is pleased to announce that Blake Gilbert has joined the firm as an associate attorney. Gilbert joins O’Brien Law Group after previously practicing in the area of immigration law in Lexington. He is a graduate of the University of Kentucky College of Law, and he holds undergraduate degrees in Spanish and English literature. In addition to his undergraduate studies, Gilbert also lived and studied comparative literature in Seville and Madrid, Spain for his graduate studies. As a result, he is also fluent in Spanish. Gilbert is a member of the Kentucky Bar Association, and he practices primarily in the areas of immigration law and criminal defense.

The law firm of Bradley, Freed & Grumley, P.S.C., announces David Riley as a new attorney. Prior to joining the firm, Riley served as a two-year law clerk for the Hon. Thomas B. Russell, United States District Court Judge for the Western District of Kentucky. Riley completed his graduate education at the University of Kentucky in 2010, receiving a J.D. from the College of Law and a mas-
He is a 2007 magna cum laude graduate of Transylvania University, where he double majored in economics and Spanish. While at Transylvania, David served as president of the student body. He was born in Graves County and is a 2003 graduate of Mayfield High School. Riley’s practice will concentrate on the defense of healthcare providers, railroads, and other industries.

Bruce E. Smith Law Offices, PLLC announces that Henry E. Smith has joined the practice in Nicholasville and will work on planning and zoning issues, elder law, and education law, as well as general civil litigation. Smith holds an undergraduate degree from Case Western Reserve University and his J.D. from the University Of Kentucky College Of Law. He previously worked as a staff attorney in Fayette Circuit Court for Chief Regional Circuit Judge Thomas L. Clark.

Jennifer L. Brinkley has accepted a position with Martin Management Group in Bowling Green as manager of human resource administration. Brinkley will be responsible for the administration of Martin Management Group’s employee benefit programs for 450 employees in six states. She will provide guidance on employment-related issues and will be responsible for the organization’s compliance with labor rules and regulations. Brinkley has a diverse background in domestic relations, litigation, and criminal law. She recently completed her master of arts degree in criminology at Western Kentucky University and was named Criminology Graduate Student of the Year. Brinkley is a 2005 graduate of the University of Kentucky College of Law.

Colby B. Cowherd has joined the Northern Kentucky law firm of Taliaferro, Carran & Keys, PLLC, as an associate, practicing primarily in plaintiff’s personal injury law. In 2004, Cowherd received a bachelor of arts degree in anthropology from the University of Kentucky and graduated fourth in his class from the Salmon P. Chase College of Law.

J. Paul Allen has been promoted to vice president and general counsel at Contech Engineered Solutions LLC in West Chester, Ohio. His duties will also include all human resource functions. Allen is a graduate of Transylvania University and the Salmon P. Chase College of Law.

O’Hara, Ruberg, Taylor, Sloan & Sergent announce the addition of attorney Megan E. Mersch as an associate. Prior to joining the firm, Mersch gained extensive litigation experience as a felony prosecutor in Kenton County. She previously worked for circuit and appellate court judges and a medical malpractice firm in Northern Kentucky. In 2005, she graduated magna cum laude from Clemson University and cum laude in 2009 from the Salmon P. Chase College of Law. She will initially work in general litigation, employment, and family law matters with the firm.

Jennifer Kincaid Adams is a partner in the Louisville office of Quintarios, Prieto, Wood & Boyer, P.A. (OPWB). She focuses her practice in the areas of medical malpractice defense, professional liability, premises liability, products liability and criminal defense. Adams represents doctors, lawyers, health professionals, psychologists, nurses, and other professionals in matters ranging from general negligence to intentional torts to alleged criminal acts. Her experience also includes insurance defense and personal injury litigation, and matters involving insurance coverage issues and bad faith claims. In the area of criminal defense, her practice focuses on white collar theft and embezzlement, government health care fraud and abuse, and administrative disciplinary actions that frequently accompany criminal charges. Adams also handles special investigations of fraud claims such as arson cases related to structures and vehicles, homeowners’ and automobile theft cases, suspicious automobile liability claims, and PIP claims. Prior to joining OPWB, Adams was a partner with a large law firm in Louisville, where she tried numerous cases in state and federal courts. In 1995, she received her J.D. from the University of Louisville Louis D. Brandeis School of Law and a bachelor of arts degree in 1991 from the University of Kentucky. Adams is licensed to practice law in Kentucky and is admitted to the U.S. District Court for the Eastern and Western Districts of Kentucky, the U.S. District Court for the Southern District of Indiana, and U.S. Court of Appeals for the Sixth Circuit. Adams is a member of the Kentucky, Louisville, and American Bar associations. Additionally, she is a member of the Kentucky Defense Counsel, Defense Research Institute (DRI), and National Association of Criminal Defense Lawyers. She is a graduate of Ignite Louisville, serves on the Steering Committee of Citizens for Better Judges, and is a member of the Alumni Council Board of the Brandeis School of Law.

Reed Weitkamp Schell & Vice PLLC (RWSV) announces that Megan L. Renwick has joined the firm as an associate. She will concentrate her practice in civil litigation. Before joining RWSV, Renwick served as a clerk to United States District Judge Danny C. Reeves. In 2009, she earned her J.D., cum laude, from the University of Louisville.

Sittingler McGlincy & Theiler is pleased to announce that John Gilliam has joined the firm as an associate practicing in the field of personal injury and insurance defense litigation. Gilliam is a graduate of the University of Louisville Louis D. Brandeis School of Law.

Adams has been promoted to senior vice president and general counsel at Contech Engineered Solutions LLC in West Chester, Ohio. The National Protection and Programs Directorate (NPPD), a component of the Department of Homeland Security, where he is the primary legal advisor to the under secretary for the National Protection and Programs Directorate. The NPPD focuses on cybersecurity, biometrics, and chemical security. Previously, Sutherland served in the Senior National Intelligence Service at the National Counterterrorism Center. Wired magazine described Sutherland as “one of the government’s point people on stemming the appeal of al-Qaida.”

Fisher & Phillips LLP, a national labor and employment law firm, announces that Alina Klimkina has joined the firm’s Louisville office as an associate. She will represent employers in employment litigation, the Family and Medical Leave Act, retaliation, breach of contract, and wrongful termination claims. In addition, she will also train employers on employment policies and procedures. She attended law school at the University of Kentucky, where she was an articles editor.
for the Kentucky Law Journal. Following law school, she clerked for the Hon. Edward B. Atkins, United States Magistrate Judge for the Eastern District of Kentucky. Prior to joining Fisher & Phillips, she practiced with a large regional law firm in its labor & employment department. She is a member of the Junior League of Louisville, serves on the board of ECHO, the Exploited Children’s Help Organization, and is fluent in Russian and Ukrainian.

Tom Van De Rostyne has joined the Office of Attorney General Jack Conway as an attorney in the criminal appeals division. Van De Rostyne practices in both state and federal courts. He received his J.D. from the University of Louisville Louis D. Brandeis School of Law, a B.S. in equine administration from the University of Louisville School of Business, and a B.A. in geography from the University of Oklahoma. He is an active member of the Louisville and Kentucky bar associations.

Appalachian Citizens’ Law Center is pleased to announce that Evan Barret Smith has joined the non-profit firm as a staff attorney. Smith received a 2013 Skadden Fellowship to build upon the firm’s representation of coal miners and their families in mine safety and black lung cases and to specialize in appellate advocacy. Smith attended law school at the University of Pennsylvania where he graduated magna cum laude, served as an articles editor on the Law Review, and received a master’s degree in public administration. For his undergraduate studies, he attended Oberlin College. During the past year, Smith clerked for the Hon. John M. Rogers of the United States Court of Appeals for the Sixth Circuit. Smith is from Whitesburg, where Appalachian Citizens’ Law Center is located.

The law firm of O’Bryan, Brown & Toner, PLLC, announces that Colleen Hartley has joined the firm’s Louisville office as an associate attorney. In 2006, Hartley graduated, cum laude, with a bachelor of arts degree in political science from Auburn University. During her undergraduate studies, she studied abroad at the University of St. Andrews, Scotland, as well as in Spain and Greece. She obtained her law degree, cum laude, from the University of Louisville Louis D. Brandeis School of Law in 2009, where she competed on the mock trial team and served as a constitutional law student-teacher for the Marshall Brennan program. Currently, Hartley serves as a board member for the Women Lawyers Association of Jefferson County. Her primary areas of practice include insurance defense litigation cases involving matters of medical malpractice, bad faith and tort claims.

Kentucky ElderLaw, PLLC, in Louisville announces attorney John L. Dotson has joined the firm. Dotson will assist older citizens and family members on a wide range of issues, including those related to Medicaid, asset preservation, legal documents, nursing home issues, guardianship and probate. Prior to joining Kentucky ElderLaw, Dotson was a civil litigator for over 25 years. He holds finance and black lung cases and to specialize in appellate advocacy. Smith attended law school at the University of Kentucky College of Law, where he served as editor-in-chief of the Kentucky Law Journal. After graduation, he clerked for Justice Mary C. Noble of the Supreme Court of Kentucky and was admitted to the Kentucky Bar in 2012. He currently serves on the board of directors of the University of Kentucky College of Law Alumni Association, as president of the Kentucky Law Journal Association, Inc., and is a member of the Kentucky and Fayette County Bar associations. Bing’s practice focuses on commercial, probate and appellate litigation.

Ewing primarily practices in the areas of domestic relations, estate planning, and estate administration. Prior to joining the firm he was a solo practitioner at the University of Kentucky College of Law. Ewing is past chairman of the Fayette County Bar Association’s Domestic Relations Section and was named Kentucky Attorney of the Year in 2010 by the FCBA Pro Bono Program, Inc.

Brian Lowder and Matt McGill recently formed a new law firm in Bowling Green. Their contact information is Lowder & McGill, PLLC, 537 E. 10th St., Suite 200, P.O. Box 900, Bowling Green, KY 42102-0900. Office: (270) 842-3924; fax: (270) 282-2085; email: matt@lowdermgllc.com; brian@lowdermgllc.com.

The firm will represent clients throughout Southcentral Kentucky, with a focus on handling serious injury and wrongful death cases for plaintiffs, including motor vehicle and tractor trailer accidents, products liability, nursing home negligence and medical malpractice, general civil litigation, criminal defense, family law, employment law and the representation of small businesses. Lowder and McGill both have extensive experience representing clients in these areas over the last eight years.

Dressman Benzinger LaVelle announces a merger with Reed Wicker, one of Louisville’s most experienced law firms. The combined firm adds white collar criminal defense and additional litigation experience to DBL’s full service offerings. Kent Wicker and Jennifer Schultz will be joining DBL Law, which already has offices located in Northern Kentucky and Cincinnati. Wicker has been a courtroom attorney for his entire career, prosecuting and defending in the most challenging, high-profile and complex commercial and white collar criminal cases in Kentucky and around the country. Before entering private practice, Wicker served as first assistant U.S. attorney and criminal division chief for the Western District of Kentucky, where he also tried criminal fraud and public corruption cases. Wicker, recognized as a Best Lawyer in America, in SuperLawyers, and in Louisville Magazine’s “Top Lawyers in Louisville,” teaches courses in corporate and white collar crime and trial practice at the University of Louisville Louis D. Brandeis School of Law. Also joining the firm from Reed Wicker is litigation attorney, Jennifer Schultz. Schultz’s broad Department of Defense (DoD) and government background, along with her legal and consulting experience, provide valuable insights into complex administrative, commercial, and criminal cases. Prior to entering law school, Schultz had a distinguished civilian career with DoD that earned her the Office of the Secretary of Defense Civilian Career Service Award. Schultz also achieved the department’s highest level of certification (Level III) in contracting in 2002 and completed the DoD Executive Leadership Development Program in 2002. During and after law school, Schultz served as an independent consultant to various defense contractors on acquisition-related matters, change management, and business development. In 2009, Schultz became a research staff member of the Institute for Defense Analyses’ Studies and Analyses Center in Alexandria, Va., a federally funded research and development center sponsored by DoD, where she continues to consult on cyber- and information technology-related policies and acquisition issues (e.g., government contracts).
IN THE NEWS

Hundreds of solo and small-firm lawyers from the U.S. and abroad learned about ethical issues in the use of legal technology, practice empowerment, the purchase and sale of thoroughbred horses, and the Affordable Care Act during the 8th annual National Solo and Small Firm Conference held October 5-8 at the Lexington Convention Center hosted by the American Bar Association Solo, Small Firm and General Practice Division. Former ABA President William T. Robinson III (2011-12) served as keynote luncheon speaker on October 3, with special guest ABA President-elect William Hubbard. Networking breakfasts on October 4 and 5 featured Robert Carlson, chair of the ABA House of Delegates, and retired Judge Lewis G. Paisley. In addition, John M. Rosenberg, of counsel at Pillersdorf, DeRossett & Lane and emeritus director of the Appalachian Research and Defense Fund of Kentucky Inc., spoke at the Difference Makers Awards Luncheon on October 4. The annual Difference Makers Awards program recognizes extraordinary lawyers who make a difference by breaking barriers, through community service, through pro bono work and through service to the profession. The 2013 Difference Makers Award recipients are: John M. Rosenberg, Prestonsburg (Difference Makers Award); Bernice B. Donald, Memphis, Tenn. (Making a Difference by Breaking Barriers); Palmer Gene Vance II, Lexington (Making a Difference through Community Service); Council on American-Islamic Relations, Minnesota chapter (Making a Difference through Pro Bono Work); Marcia Milby Ridings, London, (Making a Difference through Service to the Profession).

The American Association for Justice (“AAJ”) recently selected Jennifer Lawrence and Jennifer A. Moore to co-chair a new national litigation group focused on investigating the da Vinci Surgical Robot and any injuries the use of the robot allegedly causes during surgery.

Lawrence practices at The Lawrence Firm, PSC.

Moore represents individuals and families who have been injured as a result of harmful drugs, products and medical devices, medical negligence, nursing home neglect and abuse, and automobile and truck wrecks. She is a founding partner of Grossman & Moore, PLLC in Louisville.

Dinsmore & Shohl’s Angela L. Edwards has been appointed to the University of Kentucky Board of Trustees by Gov. Steve Beshear. Edwards will serve a six-year term replacing Pamela R. May, Edwards’ husband, Jefferson County Circuit Court Judge Brian Edwards, presided over swearing-in ceremonies for the new trustees on August 13 on the UK Campus, with their first board meeting following on September 10. Edwards will continue to serve as a trustee for St. Catharine College and is a former board of trustee member for Transylvania University. In 2008, Gov. Beshear appointed Edwards to the Executive Branch Ethics Commission. Edwards is a partner in Dinsmore’s litigation department. She practices in the areas of ERISA litigation and commercial litigation. Edwards counsels clients with business disputes and represents employee benefit plans, claim administrators and employees with benefits issues. She earned her J.D. from the University of Kentucky College of Law and her B.A. from Transylvania University.

McNair Law Firm, P.A. is pleased to announce that attorney Gillard “Gil” B. Johnson, III, has been appointed to the Western Kentucky University (WKU) Board of Regents. Board members are selected by the governor and serve up to two six-year terms. Johnson graduated from WKU in 1970, earning a bachelor of science degree in business. As a former Hilltopper, Johnson is excited for this opportunity to serve his alma mater. He has been practicing law in Kentucky for more than 40 years and presently heads the Lexington office of McNair Law Firm, P.A. As an attorney in McNair’s public finance practice group, he brings an extensive background in tax-exempt and industrial development bond financing, as well as experience in mergers, tax-free reorganizations and commercial/corporate litigation. In addition to his newest role, Johnson is actively involved in the National Association of Bond Lawyers and the University of Louisville Law Review.

Stacy H. Tapke, of Edmondson & Associates, has been recognized by the Cincinnati Business Courier as among the Class of 2013 “Forty Under 40.” According to the Cincinnati Business Courier, “Forty Under 40” recognizes greater Cincinnati’s next generation of young leaders and innovators – “people who have already made a mark professionally and in the community.” Tapke also serves as an assistant Kenton County attorney where she prosecutes misdemeanor offenses and handles civil matters for Kenton County. She was previously recognized for similar service with the Kentucky Bar Association Young Lawyers Division’s inaugural “Service to Community” award in 2012.

Margaret “Maggie” Keane, partner at Bingham Greenebaum Doll, has been named chair of the Legal Aid Society 2013 Justice for All Campaign. Proceeds from the 2013 campaign will help the Legal Aid Society continue its mission of pursuing justice for people living in poverty. Keane is a member of Bingham Greenebaum Doll’s Litigation Practice Group. Her practice focuses on defense of products, liability actions, general commercial litigation, defending employers in various employment actions, and repre-
senting parties in family law actions. Keane is past president of the Kentucky Bar Association and a current member of the Ethics Committee. She is also a past board member at the Kentucky Bar Foundation and the Lawyers Mutual Insurance Company of Kentucky, and past president of the Louis D. Brandeis American Inn of Court of the Louisville Bar Association. Keane was honored with the Judge Benjamin Shobe Civility and Professionalism Award presented in 2012 by the Louisville Bar Association and the Louis D. Brandeis American Inn of Court. Other members of the 2013 Justice for All committee include: David Armstrong, Kentucky Public Service Commission; John A. Bahe, Jr., Bahe Cook Cantley & Nefzger, PLC; Jeremiah A. Byrne, Frost Brown Todd; Christopher L. Campbell, Yumi Brands; Robert M. Connolly, Stites & Harbison; John R. Crockett, III, Frost Brown Todd; Mandy Wilson Decker, Stites & Harbison; Peter G. Diakov, Wyatt, Tarrant & Combs; Darryl W. Durham, Weber & Rose; W. Bryan Hudson, Atria Senior Living; Eric L. Ison, Bingham Greenebaum Doll; Justice Martin E. Johnstone, Kentucky Supreme Court (Ret.); Mary K. Keyer, AT&T Kentucky (Ret.); Michael Kleinert, Stites & Harbison; James T. Blaine Lewis, Dinsmore & Shohl; Colín H. Lindsay, Dinsmore & Shohl; Michael O’Connell, Jefferson County Attorney; Kendrick R. Riggs, Stoll Keenon Ogden; John Selent, Dinsmore & Shohl; Melanie Siemens, Stoll Keenon Ogden; Bobby Simpson, General Electric; Lee Stittler, Stiltzer McGlincy & Theiler; R. James Straus, Frost Brown Todd.

Douglas McSwain, a partner at Wyatt, Tarrant & Combs, LLP, was recently honored for 27 years of service as founder and long-standing chair of Kentucky’s Joint Local Rules Commission, a body that maintains uniformity in federal court rules, enabling attorneys to practice with ease in both the Eastern and Western Districts of the Commonwealth. Because few other multi-district states have such a body, Kentucky’s commission has served as a model for other federal courts around the nation. Kentucky’s commission traces its roots to 1984, when McSwain was serving as a law clerk for the Hon. Henry R. Wilhoit, Jr. He began writing a local practice handbook for the Eastern District, which later became the foundation for the first rules of the Eastern District. At the request of then-Chief Judges Eugene Siler and Edward Johnstone, McSwain called together a select group of Kentucky attorneys to review the local rules of other courts around the country, draft the proposed rules, and establish a governance structure. The courts of both the Eastern and Western Districts then adopted the recommended Joint Local Rules, and Kentucky’s federal bench and bar have been using the commission’s uniform rules ever since. Over the years, the commission has grown, and is now comprised of 12 members, with six representatives from Kentucky’s Eastern and Western Districts – four attorneys and two federal judges from each district. Attorney members are appointed by the Kentucky Bar Association, but the chairmanship serves at the pleasure of the chief judges of each district. During his 27-year tenure as chair, McSwain has served under 13 chief judges from both districts. McSwain stepped down earlier this year and was recently honored in a ceremony at the U.S. federal courthouse in Louisville, receiving an Outstanding Service Award from current Chief Judges Karen Caldwell and Joseph McKinley of the Eastern and Western Districts. McSwain will be succeeded by Brian Haara of Louisville.

Robert D. Lewis, Jr., an attorney with The Lawrence Firm, P.S.C., has been selected as a board member of the Medical Negligence Litigation Group at the summer convention of the American Association of Justice. Lewis, a 1997 graduate of the University of Cincinnati College of Law, serves as president of the U.C. Law Alumni Association. Lewis has devoted his career to representing families affected by medical negligence and, most notably, children that have suffered brain injuries.

Stoll Keenon Ogden PLLC is proud to announce that attorney David Royse has been nominated for fellowship in the Litigation Counsel of America (LCA) and will be inducted in October at the LCA annual meeting. The LCA is a highly-selective honorary trial lawyer society with a membership limited to less than one-half of one percent of American lawyers. Fewer than 50 private practice Kentucky lawyers have been admitted as fellows. Fellowships are selected based on excellence and accomplishment in litigation, both at the trial and appellate levels, and superior ethical reputation. Royse was nominated by Lexington attorney and LCA President Peter Perlman. Royse serves as chair of the eminent domain & real estate practice at SKO. He also practices equine litigation, business torts, class action, banking litigation, trust & estate litigation and tort, trial & insurance services law.

Stiles & Harbison, PLLC, has named Richard Wehrle as the firm’s Trusts & Estate Planning Service Group chair. Wehrle succeeds J. David Porter, who has served in that capacity for 13 years. Porter, who was recently elected as chair of the Western Kentucky University Board of Regents, will continue his trusts and estate planning and fiduciary law practice at the firm. Wehrle is a member (partner) of the firm based in the Lexington office. He concentrates his practice on trusts and estate administration, estate planning and charitable giving, charitable and non-profit organizations, estate and gift taxes, probate, and fiduciary law. His background includes more than 20 years of experience in trusts and estate planning. He is also a certified public accountant. Outside of Stites & Harbison, Wehrle is a member of a variety of accounting and financial service organizations, including the American Institute of Certified Public Accountants, the Kentucky Society of Certified Public Accountants, and the Society of Financial Service Professionals. He also serves on the foundation board of Bluegrass Community Technical College.

Dressman Benzing LaVelle Partner Joseph A. Cleves, Jr. was recently appointed to the board of directors at Cancer Support Community. The Cancer Support Community is an international non-profit dedicated to providing support, education and hope to people affected by cancer. Keeping individuals from facing the disease alone, the organization’s services are offered through a network of community-based centers, hospitals, oncology practices and online supports. In addition to his community work, Cleves is the head of DBL’s construction law practice. He has extensive experience in developing and revising contract documents and procedures for construction and real estate clients. Cleves was recently named the 2013 “Lawyer of the Year” in Cincinnati construction law by Best Lawyers and is the co-founder of the Lean Construction Institute’s Ohio Valley Chapter.

Lawyer Monthly has selected attorney Andy Beshear of Stites & Harbison, PLLC, as the 2013 winner for Consumer Lawyer of the Year – USA. The award honors the top consumer lawyer in the country. Nominations for the Lawyer Monthly Legal Awards are accepted from both law firms and clients. Nomination emails are also sent to the readership of Lawyer Monthly, which includes more than 108,000 contacts. Only one winner is selected for each legal category. Winners are chosen based on a strict set of criteria to include: the number
of nominations received, supporting material supplied, amount of documented activity in the last 12 months when compared to industry peers, involvement in significant legal cases, legal expertise and innovation, innovation in client care, value of transactions, deals and cases, peer recognition and personal achievement, strategic thinking and planning, and previous accolades and entries within the international legal guides. Beshear is a member of Sites & Harbison whose practice includes litigation, business and finance, non-profit, environmental, and economic development work. His litigation practice includes general litigation, administrative law, antitrust, and environmental law. In his business and finance work, Beshear represents start-ups, utilities, banks, manufacturers, healthcare providers, transportation companies, and international distributors. Beshear’s practice also includes consumer law. He recently secured an $11.4 million unanimous jury verdict for his technical school client, the largest jury verdict ever rendered in that venue.

Morgan & Pottinger, P.S.C., is pleased to announce that John McGarvey has been appointed chairperson of the Legislative Council of the National Conference of Commissioners on Uniform State Laws. He also received a 2013 Uniform Law Commission Legislative Award for advocacy on behalf of Article 9. The 2010 Amendments to Article 9 of the Uniform Commercial Code went into effect in Kentucky, and most other states, July 1, 2013. McGarvey was a member of the national Drafting Committee for the 2010 Amendments to Article 9 and was named co-chair of the American Bar Association’s Enactment Committee for the 2010 Amendments.

Dinsmore & Shohl’s Michael G. Adams has been elected to the Jefferson County Republican Party Executive Committee, the governing body of the Republican Party in Louisville and Jefferson County. The executive committee elected Adams to a term as at-large member ending in 2016. Committee members are responsible for fundraising and administration of party affairs. Adams is a partner in the government relations practice group and practices out of the Louisville and Washington, D.C., offices. His political law practice focuses on counseling and representing candidates, PACs, issue groups, donors and political consultants, in both federal and state elections. He also counsels clients in other federal and state constitutional and regulatory matters. Adams previously served as in-house general counsel of the Republican Governors Association (RGA), and continues to serve as general counsel from Dinsmore. Prior to joining the RGA, he served at the U.S. Department of Justice as deputy chief privacy & civil liberties officer and counsel to the deputy attorney general. From 2004-06, Adams served as deputy general counsel to former Kentucky Gov. Ernie Fletcher. He earned his J.D. from the Harvard Law School and his B.A. from the University of Louisville.

College of Law. The University of Kentucky explains the Legacy Award as an award that “…may be bestowed upon an individual who graduated from the University of Kentucky College of Law 50 or more years ago, who has demonstrated exceptional leadership in his or her profession and/or community, and who has made a positive impact on the well-being of the UK College of Law, the Commonwealth of Kentucky, or elsewhere in the nation.” Schrader served 22 years in the U.S. Air Force. He was also a staff judge advocate, Alabama State Defense Force colonel. Schrader has six degrees from five universities and is the author of over 50 articles on law and management. He previously served on the faculty at Auburn University Montgomery, retiring as professor emeritus. Schrader also helped establish the legal assistance section of the Montgomery County Bar Association.

Dan Mistler, partner at Dressman Benzinger LaVelle (DBL), was recently inducted into the Holmes High School Hall of Distinction. The Holmes Hall of Distinction honors distinguished graduates and friends of Covington schools in recognition of their achievements and contributions to society. It was founded to recognize the history of Holmes High School and its continuing impact on the community and the education of our students. From the class of 1961, Mistler was honored because of his strong belief in “paying it forward.” He serves on several local boards and is president of the board of trustees of the Children’s Home of Northern Kentucky where he and his siblings resided in the 1940s when it was an orphanage. Mistler has also represented a local housing authority for 15 years and has provided assistance to indigent tenants on a pro bono basis. In the recent past, he was also awarded the Nick of Time Award from the Northern Kentucky Volunteer Lawyers for his work with three clients with disabilities. In his practice at DBL Mistler represents plaintiffs in litigation regarding auto accidents, personal injuries, residential real estate closing issues, consumer protection issues, small business litigation, and other general civil litigation.

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Donovan, among the 100 early- to mid-career attorneys under 40 from the southern region to its inaugural Hot List. Donovan focuses on mergers & acquisitions, banking, and securities and corporate governance at SKO. She is a member of the business litigation, securities litigation and real estate practices. Donovan has been with SKO since 2006. The honorees were chosen through a two-pronged process. The selection committee for Lawyers of Color spent months reviewing nominations and researching bar publications and legal blogs in order to identify promising candidates. Lawyers of Color accepted nominations from mentors, peers, and colleagues and made editorial picks based on research of attorneys who had noteworthy accomplishments or were active in legal pipeline initiatives. Founded in 2008 as a news and resource center, Lawyers of Color has been recognized by the American Bar Association, National Black Law Students Association and the National Association of Black Journalists. The company has grown into a social media firm providing research, career development and brand marketing opportunities to clients.
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<th>City</th>
<th>State</th>
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<td>Karen L. Burris Baker</td>
<td>Covington</td>
<td>KY</td>
<td>August 28, 2013</td>
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<td>Junius Verne Beaver</td>
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<td>August 12, 2013</td>
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<td>Stanley Benovitz</td>
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<td>Terry Bernard Boeckmann</td>
<td>Bowling Green</td>
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<td>Rodney S. Bryson</td>
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<td>Darryl Ray Callahan</td>
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<td>April 9, 2013</td>
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<td>Robert B. Hensley</td>
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<td>Jennings H. Kearby</td>
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<td>Frederick William Krieg</td>
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