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NO SMALL ACHIEVEMENT:
STAYING IN MOTION

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A recommendation from the Kentucky Bar Association (“KBA”) Board of Governors (the “Board”) to raise bar dues is a difficult and unpopular decision. But with our bar facing the same financial challenges confronted by each of us in the profession—whether in private practice, public service, or as in-house counsel—the Board, fulfilling its fiscal responsibilities, had the courage to recommend a dues increase to the Kentucky Supreme Court (the “Court”) on Dec. 9, 2011.

KBA dues are set by the Court based upon a recommendation of the Board (Supreme Court Rule 3.040(1)). The last dues increase ordered by the Court occurred on July 1, 2004. That increase was expected to fund the operations of the KBA only through the 2010-2011 fiscal year. Your Board members and the KBA staff, being good stewards of KBA funds, have worked diligently to reduce costs, successfully delaying the need to seek a dues increase.

Since 2004, the KBA’s expenses for its “overhead costs,” including employee retirement contributions, employee health insurance, liability insurance, taxes, energy and similar recurring and non-controllable costs, have increased by more than 40 percent. For example, the KBA’s portion of the health care insurance cost for our employees has increased 91 percent and the KBA’s contribution to the Kentucky Employees Retirement System for our employees has increased 400 percent.

In addition to these operating costs, Court rules require a portion of our KBA dues to fund certain public service programs. For example, the 2004 Dues Order requires that $7 of the dues paid by every practicing attorney and $6 of the dues paid by every judge be allocated to the Clients’ Security Fund. Pursuant to SCR 3.820, these funds are to provide “indemnification to clients who may suffer pecuniary losses by reason of fraudulent or dishonest acts” by a KBA member. From 2004 through June 30, 2011, the Fund has paid over $840,000 to members of the public. The KBA’s total exposure for the fiscal year ending June 30, 2011, was $563,150, while the amount collected from dues was only $110,283. At its November and December 2011 meetings, the Fund made awards of approximately $280,000.

Confronted with these financial realities, in 2011 the Board appointed a Task Force on Dues Structure Evaluation, comprised of Board members from various areas of the state. At its Nov. 19, 2011, meeting, the Board voted unanimously to accept the Task Force’s recommendation to seek a dues increase. The Board recommended that the KBA dues be increased, as detailed in a Dec. 9, 2011, letter to the Court:

(i) for lawyers admitted to practice for five (5) years or more, dues would be increased from $270 to $350 per year;

(ii) sensitive to the financial challenges faced by new lawyers, dues for new attorneys (those admitted to practice for less than five (5) years) would remain at the current rate of $220; and

(iii) the separate dues category for judges (who now pay $110 in dues) would be eliminated and judges’ dues would be set at the same level as other attorneys, that is either $350 or $220, depending upon the date of the judge’s admission to practice.

The recommendation asks that the dues increase become effective July 1, 2012.

If the Court orders a dues increase in the amount requested, the cost of being a KBA member will still be a “good deal.” As KBA members, we enjoy a benefit no other mandatory bar does. Our Court rules require that dues payments cover the costs of providing each KBA member with sufficient CLE hours to comply with education requirements to maintain a high standard of competence. In 2011, we had the highest number of attendees at the Kentucky Law Updates, 5,191 attorneys (almost one third of our members).

Also, all the KBA officers and Board members serve without pay, devoting a significant amount of time preparing for and attending Board meetings, including hearing and deciding discipline matters.

President’s Notes: (1) The Board at its Nov. 18, 2011, meeting approved a Resolution in Support of the Report of the KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents. Turn to page 27 in this issue of the Bench & Bar or visit www.kybar.org to read the Resolution.

KBA members who serve on the Inquiry Commission, CLE Commission, Ethics Committee and Ethics Hotline, as well as the Clients’ Security Fund Trustees, IOLTA Board, Kentucky Bar Foundation Board, Bar Center Trustees, Unauthorized Practice Committee, Attorney Advertising Commission, and Volunteers For Kentucky Lawyers Assistance Program, devote innumerable hours of service to KBA members without pay.

We have a great bar but we need sufficient funding to maintain it and to fulfill our mission under SCR 3.025: to “maintain a proper discipline of the members of the bar in accordance with these rules and the principles of the legal profession as a public calling, to initiate and supervise, with the approval of the court, appropriate means to insure a continuing high standard of professional competence on the part of the members of the bar and to bear a substantial and continuing responsibility for promoting the efficiency and improvement of the judicial system.”

For most lawyers and judges, the increase would result in our paying less than $1 a day for the privilege of practicing law in the courts of Kentucky—a small price for such an honor. As commented by one attendee of the 2011 KLUs, a dues “increase is justified and overdue.”

Bar associations across the Commonwealth are invited to enter the 2012 Law Day Competition! A $300 award is given to the first place winner in three bar categories with winners receiving recognition during the KBA Annual Convention. Entries are judged on original, creative, educational events that foster a greater public understanding of the law day objectives by involving the community and bar membership.

To learn more about this year’s theme — “No Courts, No Justice, No Freedom” — and download your planning guide, visit www.lawday.org. Materials for the KBA competition will be mailed to bar organizations in the weeks ahead. For more information, contact Shannon Roberts at sroberts@kybar.org or (502) 564-3795, ext. 224.
You may not be aware of their plight, but chances are that you know someone who is the victim of abuse at home. Statistics show that one in four American women is the victim of domestic violence in her lifetime. Kentucky women face a higher risk: one in three women in the Bluegrass is, at some point in her lifetime, a victim of domestic violence. An estimated 10 million children are exposed to domestic violence every year. And child abuse occurs in an estimated 70 percent of homes where domestic violence is present. Of course, domestic violence is not confined to marital relationships or even adults. In a survey conducted of Kentucky high school students, one in 10 girls answered “yes” when asked if a boyfriend had ever forced sex against her will.

With numbers this staggering, it is impossible to assume that education or wealth insulates from abuse. The fact is abuse victims cannot be pigeonholed according to race, ethnicity, occupation, socio-economic status, education or age. The only real commonality among abuse victims is the shame and isolation that results. These feelings of hopelessness and embarrassment lead to silence. And that is why, though you may be unaware, chances are you know someone who is abused or witnesses abuse at home.

In 2008, the American Bar Association Young Lawyers Division introduced Voices Against Violence, a public service project aimed to raise awareness of and prevent domestic violence. Through the leadership and dedication of former YLS Chair Jennifer H. Moore and Committee Chair Roula Allouch, the KBA Young Lawyers Section has implemented the Voices Against Violence project in Kentucky since 2009. Our goals are simple, though ambitious: to raise awareness and understanding about the domestic violence epidemic, and to encourage attorneys to provide pro bono assistance to victims and survivors.

The Voices Against Violence program continues to fulfill this mission. During the second half of the bar year, the Young Lawyers Section has a number of fundraisers planned throughout the state to benefit local domestic violence shelters. The Section also presented a CLE at the New Lawyers Program in January, which highlighted the domestic violence epidemic in Kentucky and reviewed the basic legal devices used to protect abuse victims.

In addition, we will continue to work with our panel of volunteer attorneys to provide pro bono assistance to victims in Domestic Violence Order (DVO) hearings in Lexington, Louisville and Covington. Abuse victims petitioning the court for protection are desperate. They are in need of your unique expertise as an attorney, in addition to a sympathetic and caring voice. While all attorneys are welcome to place their name on our roster, we especially encourage the KBA’s newest admittees to volunteer their time and status as a member of the Bar. By representing a client at a DVO hearing, you will gain valuable courtroom experience while providing hope and protection to a domestic violence victim.

Please contact YLS Voices Against Violence Committee Chair Roula Allouch at rallouch@ortlaw.com for further information about any of these efforts. In addition, the Young Lawyers Section would like to thank the Voices Against Violence Committee members for their dedication to this important public service project: Jennifer Parker, Tara Pope, Liz Younger, Anna Dominick, Katherine Finnell, Carey Aldridge, Brandie Ingalls, Claire Brickman, Maria Ante, Chris Rambicure, Corinne Tirone, Farrah Vaughn and Megan Linder.

**Call For Nominations**

**Young Lawyers Section Annual Awards**

**Outstanding Young Lawyer Award**
Honoring the exemplary accomplishments of a Kentucky lawyer who is 40 years of age or under or who has practiced law for 10 years or less.

**Nathaniel R. Harper Award**
Honoring individuals or groups that have demonstrated commitment to changing the face of the Kentucky Bar by promoting full and equal participation in the legal profession through the encouragement and inclusion of women, minorities, persons with disabilities, members of the lesbian, gay, bisexual and transgendered community, and/or other underrepresented groups.

**Service to Young Lawyers Award**
Honoring individuals or groups that have made exceptional contributions to the professional and personal advancement and mentorship of young lawyers.

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

Nominations are due April 2, 2012. Visit www.kbayls.org for nomination forms and further details. Contact Carl Frazier, YLS vice chair, with any questions at Carl.Frazier@SKOfirm.com or (859) 231-3968.
Review by Judge John G. Heyburn II

Let me recount the reasons why one should read Mark Davis’ recently published “Life of William Marshall Bullitt”:

- Learn the blueprint for becoming one of the nation’s great lawyers.
- Understand the origins of many of Kentucky’s major law firms.
- Get an illuminating peek at Kentucky’s and particularly Louisville’s history in the first half of the Twentieth Century.
- Learn about Mark Davis’ first unusual encounter with Mr. Bullitt.
- Read a captivating and well-written story.

Many of you may not have heard of William Marshall Bullitt. Though his name has now vanished from the letterhead of Kentucky’s major law firms, for over 50 years he dominated the Kentucky legal landscape by force of his great intellect, indefatigable work ethic, and business connections. It would require more space than permitted here to begin describing all the anecdotes and stories which Mark Davis has uncovered in recounting the life and times of Marshall Bullitt. He was a larger than life personage, born to the manor and self-made all at once. Even Mark Davis’ conclusion that Mr. Bullitt was likely more feared than beloved, only makes the story of his life all the more interesting.

William Marshall Bullitt began practicing law with his father in 1895. He made a name for himself by trying cases for insurance companies and banks. He pioneered the use of trial display exhibits, once carting a hog’s carcass into the courtroom to show the effects of a shotgun blast. In 1905 at the tender age of 32, he argued his first case before the United States Supreme Court. Though he lost, Bullitt came to the attention of William Howard Taft, then Roosevelt’s Secretary of War.

In 1907 Bullitt led a team of lawyers who convinced the Kentucky Court of Appeals to throw out the fraudulent election of the local Democratic Party incumbents. Under the new Fusion Party administration, Bullitt won more plaudits as the city’s aggressive new safety director. This is a recurring theme: Bullitt making a strong impression in whatever endeavor he chose.

In 1908 Taft faced a tough fight for the Republican presidential nomination. Remembering the young Bullitt from the earlier Supreme Court appearance, he sought his help to secure the votes of the Kentucky’s delegation to the Republican National Convention. With his typical ruthless efficiency, Bullitt succeeded in securing the Kentucky delegation for Taft, thus furthering his already growing reputation for succeeding in virtually any challenge that he undertook.

Bullitt was not hesitant about using his presidential contacts to further his growing law practice. He operated on a national scale. It did not hurt when the word got out that he had spent the night in the Lincoln bedroom at President Taft’s invitation. In 1912, Taft asked Bullitt to move to Washington for longer than an evening—as Solicitor General of the United States. Bullitt remains today, one of only three Kentuckians to have held that position. Though he held the position less than a year, Bullitt made a huge impression.

Building on his reputation as Solicitor General, Bullitt returned to Kentucky with few legal peers. For the next 40 years he stood astride Kentucky’s legal community; representing more national clients than anyone; arguing more big cases around the country; raking in unprecedented legal fees; and bull-dozing and offending many of his fellow partners. For a long time, he had argued more cases before the Supreme Court than any other lawyer, save the legendary John W. Davis.

I will leave to each of you to decide what part of Bullitt’s life is most fascinating: convincing Princeton University to award him a B.A. degree though he never finished its requirements; saving two major Louisville banks during the depression; his unusual advisory role in the Alger Hiss espionage trial; his stubborn fight to save a tiny portion of the Oxmoor Farm which stood in the path of the Watterson Expressway; or the sensational burglary of $274,000 (the equivalent of about $2,000,000 today) in cash from his home library safe.

William Marshall Bullitt was a man of many remarkable qualities and a few eccentricities. Mark Davis has woven a wonderful portrait of the man and the era in which he lived. Read it and enjoy. 

Solicitor General Bullitt: The Life of William Marshall Bullitt
By Mark B. Davis, Jr.
Crescent Hill Books
www.solicitorgeneralbullitt.com

Judge John G. Heyburn II grew up in Louisville. He received his A.B. degree from Harvard University in 1970 and his J.D. degree from the University of Kentucky College of Law in 1976. For 16 years, Judge Heyburn was associated with the law firm of Brown, Todd & Heyburn, where he was a partner at the firm from 1982 through 1992. On March 20, 1992, President Bush nominated Judge Heyburn to the United States District Court for the Western District of Kentucky.
By Bradley R. Hume

Be brief, be pointed;
Let your matter stand lucid in order,
solid, and at hand;
Spend not your words on trifles,
but condense;
Strike with the mass of thoughts,
not drops of sense;
Press to the close with vigor,
once begun;
And leave — how hard the task! —
leave off when done.

Justice Joseph Story
Advice to a Young Lawyer, 1835

When I shared an early draft of this article with a friend and fellow litigator, he suggested that I title it “Ten Commandments for an Effective Appellate Brief,” with a nod to the late great Irving Younger and his famous lecture, “The Ten Commandments of Cross-Examination.” I demurred for two reasons. First, I would consider it sacrilege to associate “Ten Commandments” with any subject other than cross-examination (although, if pressed, I might be persuaded to grant a religious exception). Any attempt to borrow “Ten Commandments” for a different purpose would surely cause the ground to buckle and splinter and gape wide at the author’s feet. I am sufficiently content with the current state of my existence as to elect not to throw myself willingly into that abyss.

Second, with apologies to Lloyd Bentsen and Dan Quayle, I knew Irving Younger (from his tapes, at least), and I am no Irving Younger. That confession, woefully understated as it may be, is sufficient to convey the essence of the advice I am now about to offer. Accordingly, I wish for the reader the benefit of my experience without the attendant pain of trial and error. To achieve this goal, some elaboration as to each suggestion is warranted.

Thus I am content to offer the following “Ten Suggestions” for an effective appellate brief. The logic inherent in each may appear transparent; however, like many lawyers who have labored in the ring over a long career, I carry in my mind’s eye remnants of psychic scars caused by episodic neglect of the very advice I am now about to offer. Accordingly, I wish for the reader the benefit of my experience without the attendant pain of trial and error. To achieve this goal, some elaboration as to each suggestion is warranted.

Before embarking upon an exploration of my Top Ten list, I deem it important to indulge in one additional detour, namely, to define the purpose of the appellate brief, and to make a case for its importance. As to purpose, the brief has a dual function: first, to educate the court about the case; second, to persuade the court that one’s position is correct, and all competing positions mere imposters.

That the brief is important requires little elaboration, for the reader understands that many appeals are decided on the basis of the briefs, without oral argument. For this reason alone, the brief demands a quality effort. Yet even if oral argument is held, the importance of the brief can scarcely be overstated, for at a minimum the brief serves to introduce the case to the appellate court, and forms the foundation for a favorable or unfavorable first impression. Moreover, law clerks and judges preparing bench briefs for the appellate panel are apt to recommend certain legal conclusions, including perhaps the suggested outcome, based upon the relative persuasiveness of the briefs before them. In this manner, a good appellate brief affords the advocate a “head start” at oral argument, whereas a poor brief distracts the court’s attention from the advocate’s position.

With the above as an introduction of the subject matter, I now turn to my Ten Suggestions, as below:

1. Be compelling. This is my first suggestion, and intentionally so. Above all, you are an advocate, and an advocate advocates. Never forget that your job is to win the case for your client, or that...
The advocacy process starts with your brief. The brief is your first and best opportunity to convince the appellate court of the correctness of your position because it affords you the opportunity to say whatever you want, without fear of objection by your adversary or interruption by the court, and without a stopwatch ticking in the background. If the court does not allow oral argument in your case, it will also be your last opportunity. Accordingly, your brief should be cogent and convincing. Furthermore, it should be argumentative, because your adversary is certainly going to argue against you.

This is not to imply that you should argue throughout the brief. There is a place for argument, and logically enough, that place is in the “Argument” section. There you should advance your arguments forcefully, and without equivocation or apology. However, a caution is warranted: You should not argue your case, at least overtly, in the other sections of the brief, and especially not in the Statement of the Case (or Statement of the Facts) in federal court. The judge who reads your Statement of the Case must have confidence that you are actually dispensing facts, not opinions or hyperbole. She must also have confidence that your summary of those facts is accurate and reasonably complete.

That said, your choice of words and your choice of facts, while not argumentative in tone or inaccurate in substance, can and should be persuasive in effect. A well-written Statement of the Case can persuade even without the adjectives and adverbs which transform it into impermissible argument. If done properly, the reader will begin leaning your way even before turning her attention to the first word of your Argument. That should be your goal. Then you can complete your reader’s indoctrination in the Argument.

2. **Be clear.** By this I mean, primarily, be clear of your purpose, because without clarity of purpose all hope is lost. You must determine where you are going and how to get there prior to embarking on your journey. Before typing the first word of your brief, you need to have a vision for what the brief is to accomplish; thereafter, every section of the brief should be crafted in a manner consistent with that vision. Your Introduction, Statement of the Case (Statement of the Facts), Statement of Issues, Argument, and Conclusion should all claim a common theme, and each contribute to the message that your client’s position must be sustained if justice is to be served. Every word, fact, issue, argument and authority should be marshaled in pursuit of that theme, and any tangential or antithetical to your purpose should be cast aside.

Next, be clear in your manner of expression. Effective briefs employ simple words, straightforward sentence structure, active verbs, frequent and descriptive headings and subheadings, regular paragraphs, topical sentences at the beginning of paragraphs, proper grammar and spelling and accurate and correctly-styled citations. Conversely, ineffective briefs include slang, jargon, hyperbole, legalese, meandering sentences, endless paragraphs, passive verbs, sentence fragments and frequent use of contractions.

Finally, be clear about the relief you seek. Your Introduction and Conclusion should spell out what steps you want the Court to take. Should the Court affirm in full, or only in part? Should it reverse, or reverse and remand? Should it reinstate a lower court judgment? To avoid any misunderstanding by the court, be specific.

3. **Be Concise.** As an English major, I have always found myself challenged by this suggestion. My law professors spent three years trying to pound adjectives and adverbs out of my vocabulary, with limited success. When I started my practice at a litigation firm, the draft of my first brief was 20 pages, and I was well satisfied with the final product. Certain of the quality of my effort, I mistakenly assumed the brief would be submitted to the Court without substantial modification. Instead, following my mentor’s editing, the brief as submitted was a mere five pages long (or more accurately, five pages short), and it was decidedly better than my draft. Wounded pride prevented me from embracing that conclusion at the time, but eventually I came to acknowledge the truth, painful though it was.

So my advice here is simple, straightforward and, yes, concise: Be succinct. When drafting your brief, say it once; say it well; move on. Then pull up the draft a day or two later and cut it down to size, because your original draft is too long. Trust me.

4. **Be candid.** Your effectiveness as an advocate depends on your credibility with the court. In turn, your credibility with the court depends upon whether the judges perceive that you have repre-
sented the facts, issues and authorities accurately and honestly. If there are facts or cases which undermine your position, you must not deny them, misrepresent them or attempt to sweep them under the rug. This is not only your ethical duty as an officer of the court (see Rule 3.3 of the Kentucky Rules of Professional Conduct); it is also sound strategy, because your client’s case will be undermined if you attempt to hide troublesome facts or cases and are exposed in the attempt. It is better to acknowledge the flaws in your case and deal with them forthrightly than be chastised in your opponent’s brief (or worse, at oral argument) for having dishonestly avoided or denied them. Moreover, it is always a Devil’s Bargain to sacrifice your credibility, and with it, your reputation, on the altar of a client’s case. No case, and no client, is worth that.

5. Be conscientious. Writing an effective appellate brief demands a generous investment of time and a sustained effort. It requires detailed review of the trial record, diligent research of the legal issues, painstaking drafting and redrafting of the brief, and seemingly endless proofreading of those drafts. To do it properly, you must dot all of the “i’s” and cross all of the “t’s.” There are no acceptable short-cuts.

Dealing with the modern trial record is both a curse and a blessing. Certainly there are advantages: the videotape trial record is almost immediately available; it affords an eyewitness view of the trial, and it costs a mere pittance, relatively speaking. However, unless you can afford to have the record transcribed by a court reporter (an expensive proposition, to be sure), that same convenient and inexpensive video transcript is often a bear to use on appeal, particularly when the underlying trial was lengthy.

Documenting testimony from the trial videotape is long, tedious, mind-numbing work, yet it must be done, and it must be done well. The facts you reference in your brief must originate from the record, and it is your job to tell the court where to find them. Allow plenty of time to “proof” your citations and references, as this process always takes longer than you anticipate. Diligence is required and will be rewarded. Conversely, there is little of value to be offered beyond an abject apology if the judge cannot locate the witness’s testimony you referred to because your citation to the record was inaccurate, or cannot locate the case you relied upon because the volume or page number you cited was wrong. Judges have little patience with misstated or omitted citations, nor should they. You have to get them right.

6. Be compliant. By this I mean, know the applicable rules and comply with them as though the very success of your appeal depends on it, because it does. In Kentucky state court, that means adhering to Rules 72 through 76 of the Kentucky Rules of Civil Procedure. In federal court, you must follow both the Federal rules of Civil Procedure and the Rules of the Sixth Circuit Court of Appeals (or whichever circuit applies).

To the inexperienced appellate practitioner (and even at times to the experienced practitioner), the appellate rules often seem a patchwork quilt of confusing and overly-technical requirements, fraught with danger lest you file your brief late, organize the sections of your brief incorrectly, exceed the applicable page limitation, attach the wrong-colored cover, establish incorrect page margins, use the wrong-sized font, omit a required document in the Appen-

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ple, instead of asserting that your adversary has “misrepresented” the facts or law, or worse, that he has “intentionally misrepresented” them, state less judgmentally and less pejoratively that the facts or law set out in your opponent’s brief are “incorrect” or “inaccurate,” then cite chapter and verse. The facts alone will speak volumes for you, and against your opponent, and you can trust the court to draw any warranted conclusions. Moreover, if your opponent’s overreaching is egregious enough, you can reasonably expect that the court will also take appropriate action.

Bottom line: This is called “civil” litigation, so be civil, even if you have to bite your tongue to do so.

8. Be confident. Sure, you may have doubts about the strength of your appeal, or about certain arguments you are making, but the place for those doubts is in your office, not in your brief. Let the judges judge; your job is to champion your client’s cause. Once you have decided what issues to address, every sentence of your brief should reflect a conviction that your client has justice on her side.

Of course, unless you are careful, confidence can sometimes become (or appear to become) arrogance, even on the pages of a brief. If you sense that your position is too inflexible or extreme, or even seems that way, soften the harder edges of your brief. An unreasonable position is a losing position, and may taint the court’s impression of your other arguments, including those which might otherwise have a greater chance of success.

9. Be Choosy. Pick your battles. Just because you could argue 10 issues doesn’t mean you should do so. In many instances the inclusion of weaker arguments will diminish the overall impact of your brief. Unless you happen to have a large number of outstanding issues (which is rare), it is often better to pick your best three or four issues and concentrate on them, to the exclusion of the others; otherwise, you risk wasting your time and the court’s attention on issues that are unlikely to succeed, anyway. “Throw-away arguments” are called that for a reason, so throw them away, lest they clutter up your brief.

Caveat: If you are concerned that you will waive certain issues by not including them, insert them at the end of your brief to protect the record, but severely limit the amount of space and attention you allot to them.

10. Be considerate. Most of us are busy, and judges are no exception. As such, they will appreciate anything you can do to make their jobs easier or save them time. One suggestion is to include within the Appendix of your brief any documents the judges will need to review in order to properly understand and evaluate your position. This saves them the time and trouble of having to search the official court record for these documents, which they might or might not do if the documents are not readily available. An added benefit is that the judges will appreciate, and perhaps later favorably recall, the consideration you extended to them.

Three cautionary notes: First, it is easy to succumb to the temptation to be over-inclusive. Unless the document is required by the Rules (e.g., the underlying judgment or opinion under review), I recommend that you include only those documents which the judge will actually find helpful while reviewing your brief. There is little sense in cluttering up a 15-page brief with a 300-page Appendix for the sake of “impressing” the panel. Second, if you include multiple documents in your Appendix, be sure they are separately side-tabbed, to facilitate access and review. Finally, include an index or table of contents at the front of your Appendix, itemizing each exhibit and referencing the location of that document in the court record.

That completes the Ten Suggestions. Admonished as I am by the words of Justice Story, I shall now “leave off,” for I am done.

Brad Hume is Of Counsel at the Louisville firm of Thompson Miller & Simpson PLC, where he practices in the areas of medical and legal malpractice defense, health care law, professional licensure litigation, and appellate practice. He is president-elect of the Louisville Bar Association, past president of the Kentucky Defense Counsel, Inc., and former chairman of the 1999 KBA Annual Convention. He has taught as an adjunct professor at the University of Louisville Louis D. Brandeis School of Law, where his courses have included medical-legal issues, medical malpractice, and trial practice. Hume is a graduate of Princeton University and Vanderbilt Law School.
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Since its inception in 1976, the Kentucky Court of Appeals has utilized staff attorneys in two primary capacities: 1) as traditional “elbow clerks” in the chambers of each of the 14 Judges; and 2) as part of the Court’s central office legal staff in Frankfort. This intermediate appellate court was created by a group of amendments to the Kentucky Constitution, known collectively as “The Judicial Article,” in an effort to ease the increasingly heavy workload that burgeoning litigation had imposed on the former Court of Appeals, which became the Kentucky Supreme Court by the same Judicial Article. The newly-created intermediate Court of Appeals quickly became the workhorse of the appellate courts—the court of last resort for most matter of right appeals. Over the past decade, the Judges of the Court of Appeals have disposed of an average of over 2600 filings per year. In that time frame, the Court of Appeals rendered an average of 1600 opinions per year and disposed of the remainder by order, primarily in original actions, interlocutory appeals, and motions for discretionary review. In addition, each year, the Judges must review and resolve 4500 to 5500 procedural motions as part of their merits review of an appeal or as part of the Court’s monthly motion docket.

Merits review cases are divided monthly among four three-Judge panels assigned to hear appeals which originate in four distinct geographical areas of the Commonwealth. Oral arguments are conducted every month by the four panels throughout the state. For those cases that originate in central Kentucky or Jefferson County, panels often hear oral arguments in Frankfort or Louisville. Currently, each panel member is assigned approximately 10 cases as presiding Judge, who assumes primary responsibility for researching the record and drafting a proposed opinion for circulation to the other two associate Judges. Thus, on a monthly basis, each panel member reviews approximately 30 appeals—10 as presiding Judge and 20 as associate Judge. The presiding Judge screens his or her cases to decide whether oral argument would assist the Court in resolving the appeals. Some Judges will grant oral argument if requested by the attorneys. While oral argument can be extremely beneficial to the Court’s review, time consumed in travel to the various oral argument locations obviously limits the time each Judge can devote to a monthly docket of 30 cases.

Without experienced staff attorneys, the volume of work alone would quickly overwhelm even the best and brightest judicial minds. Primarily due to this heavy workload, almost all Court of Appeals Judges have abandoned the practice of replacing staff attorneys each year. Most Judges retain their staff attorneys on a continuing basis, allowing them to develop considerable expertise in appellate work.

Historically, the position of law clerk originated in the United States Supreme Court after the Civil War. In his critique of two recent books on Supreme Court law clerks, Sorcerers’ Apprentices: 100 Years of Law Clerks at the United States Supreme Court and Courtiers of the Marble Palace: The Rise and Influence of the Supreme Court Law Clerk, David Stras offers an interesting view of the origins of the position and its duties:

Although the Supreme Court has been assisted by support staff throughout its history, the origins of the law clerk may best be described as a historical accident. Scholars have opined that the impetus for the creation of the law clerk position...
Elbow clerks

To assist in the efficient processing of assigned appeals, each Court of Appeals Judge employs two in-chambers staff attorneys. Each Judge enjoys total discretion as to the utilization of staff to best accommodate his or her needs. However, two almost universal functions of any Judge’s staff attorney are the time-consuming tasks of researching legal issues and checking citations to the circuit court record. As part of their duties, staff attorneys often answer questions about the record from the other panel members and provide copies of important record documents to the associate Judges’ chambers. Appellate attorneys should be mindful that only one of the panel members has access to the record and accordingly may wish to consider including crucial aspects of testimony or documents in the appendix to their briefs so that information is literally at all three Judges’ fingertips.

In general, staff attorneys are called upon to analyze the issues presented in light of their own independent research in order to provide working memoranda or pre-oral argument draft opinions to the presiding Judge of the panel. Of course, the final opinion is always the responsibility of the Judge. The precise extent or nature of a staff attorney’s participation in the drafting of an opinion is a decision as individual as each of the 14 Judges. When the presiding Judge is satisfied that a working draft is ready for circulation, the proposed opinion is forwarded to the other panel members who respond with suggestions, both substantive and stylistic, until a majority decision is reached. Substantive suggestions may be assigned to the staff attorney for additional research or record review. Should one of the associate Judges dissent, his or her staff attorney may assist the Judge in preparing the dissent. It is not unusual for a dissenting opinion to change the mind of one of the other panel members, resulting in the dissenter becoming the author of the majority opinion and the original author becoming the dissenting. Staff attorneys are often called upon to assist his or her Judge in making changes during this process until the panel is satisfied that the opinion is ready for rendition. A similar procedure is followed if a petition for rehearing is filed.

This may be a good opportunity to point out the confidential relationship a staff attorney enjoys with the Judge. Discussions between a Judge and staff attorney concerning an appeal remain confidential even after the opinion is rendered. Although the opinion speaks for itself, any discussions between the Judge or Judges and the staff attorney will not be disclosed except by direction of the Judge. Attorneys should never contact a staff attorney with questions that they would not address.

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to the Judge. Questions of appellate procedure may be addressed to the Court’s central legal staff.

Centralized staff attorneys

The Court of Appeals central office legal staff consists of two prehearing conference attorneys, a chief staff attorney, civil and criminal motions attorneys, and four attorneys who assist with research and drafting opinions. Pursuant to CR 76.03, the conference attorneys screen specified appeals to determine whether a prehearing conference will assist the Court or the parties by 1) facilitating a mediated settlement of the appeal; or 2) refining or simplifying the issues or briefing schedules.

By far, the bulk of the work of the central legal staff is devoted to guiding appeals through the appellate process to prepare them for presentation to a merits panel. Record and briefing issues, as well as finality issues, must be resolved before an appeal is ready for assignment—and these tasks are handled primarily through the Court’s motion practice. A three-Judge motion panel meets monthly to review and resolve dispositive motions, original actions, motions for discretionary review, interlocutory appeals, and procedural motions related to the three-Judge motions. The civil and criminal motions attorneys review, research, and make recommendations to the motions panel concerning these matters. After the motions panel has reached a consensus, the motions attorneys prepare orders in accordance with the panel’s decision. Three-Judge motion panels resolve in excess of 100 substantive motions or actions each month. These panels sit on a rotating basis, and motion panel duties are in addition to the Judge’s regularly assigned caseload.

Resolution of procedural matters consumes a significant portion of the Chief Judge’s time as well. A central staff attorney prepares a separate docket devoted to purely procedural or one-Judge motions. This one-Judge docket is handled by the Chief Judge or, in his or her absence, by the Chief Judge pro tem. In 2010, over 1650 procedural motions were resolved by the one-Judge docket, in addition to the more than 1000 administrative rulings that were handled pursuant to strict guidelines established by the Court.

An additional 500 motions were resolved by merits panels in cases in which motions were filed after the appeal had been assigned to a merits panel. One final area in which the central legal staff assists the Court is in the handling of expedited matters such as emergency motions, election appeals, and parental bypass appeals. These matters are usually presented to the Court by the chief staff attorney. Without the assistance of motions attorneys, the appellate process would slow to a standstill, resulting in substantial delay for litigants.

Staff attorneys’ contribution to the judicial system

Putting all these numbers in perspective, John Bilyeu Oakley and Robert S. Thompson, in their work, Law Clerks and the Judicial Process: Perceptions of the Qualities and Functions of Law Clerks in American Courts, observed that:

modern American judging in all courts of national significance – the federal courts and the more prominent state appellate courts – staggers along despite the burden of bloated caseloads and the shortcomings of distinctly human judges only by the delegation of a great deal of the labor of judging to law clerks: subordinate, anonymous, but often quite powerful lawyers who function as the noncommissioned officers in the army of the judiciary.

Given the volume of the Court of Appeals’ caseload, it seems clear that staff attorneys are essential in affording Judges the time required to perform their essential, deliberative function. Judge Glenn Acree of Lexington sums up the work of the appellate staff attorney in these terms:
If you have a superior intellect and the skills set valued highly by the best law firms, and a passion for jurisprudence, justice, and problem-solving, and also a talent for written and oral communication, you could rise to the upper echelon of the legal profession. But these attributes are not enough if you want to be a good staff attorney. Good staff attorneys must find professional fulfillment in knowing that their unsung work contributes to the advancement of the law, for there is little else other than low pay, low prestige, and the infrequent thanks of a few.

Some have questioned the process of allowing staff attorneys to assist in drafting preliminary documents. Dahlia Lithwick, Supreme Court commentator for the online magazine Slate, recounts the following anecdote which should allay that fear:

Which gets us to Page 60 of this 125-page document. Where the court makes use of the word ‘edentulous.’ Writing as a former law clerk, I confess that [use of] the word ‘edentulous’ probably means a law clerk somewhere on the D.C. Circuit is getting a lot of free pizza and beer tonight. The game is Opinion Bingo.

Points are earned for working a randomly selected word from Webster’s into any published opinion. Here I must also add that such words never have made it past my judge’s ruthless editing.

Returning to the words of Justice Brandeis, the point is that judges utilize staff attorneys to assist them, in so far as possible, in “getting it right.” Melvin Urofsky, in an article titled Brandeis and his Clerks, emphasized that while judges often respect and encourage their clerks to bring to the table a different perspective on a case, the judge’s opinion is the one that matters:

Once clerks had proven that they could do the work, the Justice showed himself quite receptive to their ideas, and as Landis described it, “he took you in, substantially as a junior partner of his firm.” When a clerk raised what Brandeis considered a legitimate argument, he willingly delayed circulating or even handing down an opinion until the two of them came to some settlement. If they could not agree, the clerk understood that the ultimate responsibility lay with the man in the robe.

In order for the appellate system to continue to function as it should, the Judges of the Kentucky Court of Appeals must have staff attorneys to assist them with the laborious and time-consuming aspects of appellate work. This allows the Judges to devote more time to study, deliberate, and discuss the legal issues presented on appeal with staff and fellow Judges.

ENDNOTES

Ann Swain is currently serving as chief staff attorney for the Kentucky Court of Appeals. Prior to her tenure with the Court of Appeals, Swain was executive director of the Louisville Bar Association. She received her B.A. and Master’s in library science from the University of Kentucky and her J.D. from the University of Louisville Louis D. Brandeis School of Law, where she was a member of the Brandeis Society. Swain is a member of the National Association of Appellate Court Attorneys.

Additional articles have been placed on the KBA website under Hot Topics.

Look for this logo at www.kybar.org to find these items.
DISCRETIONARY REVIEW PRACTICE IN THE KENTUCKY SUPREME COURT

By C. Theodore Miller

In an effort to enhance the understanding of the discretionary review process in the Kentucky Supreme Court, I have been asked to share some observations and practical pointers based upon my experience in serving the Court in central staff for over 28 years. In doing so, my comments of course are my own and not those of the Court.

The Decision Whether to Seek Discretionary Review

Several factors should be considered before filing a motion for discretionary review, which rarely succeeds as a mere “knee jerk” reaction to having lost an appellate decision in the Court of Appeals. To begin, a prospective movant must make sure that the Court of Appeals has rendered a final decision as envisioned by CR 76.20(2)(b).1 Further, although cases imposing sanctions for failure to seek discretionary review in “good faith” have not been cited in recent years, the provisions of CR 73.02(4) apply to motions for discretionary review and bear consideration.2

The most common questions involving discretionary review are, not surprisingly, what constitute CR 76.20(1) “special reasons”3 and what are the statistical chances of not only procuring review but also ultimately prevailing. In attempting to describe the Court’s case-by-case exercise of discretion in continuing education seminars and otherwise over the years, my best response regarding what constitutes “special reasons” has been as follows in § 10:1 of Baldwin’s Kentucky Lawyer’s Handbook, Appellate Practice:

Although “special reasons” escapes precise definition, generally if a novel question of statewide significance, a legal proposition that requires reexamination, or a matter in which lower courts have conflicted is raised, the granting of review is more likely. A contention that the appellate court has clearly erred is not necessarily persuasive.4

The percentages tell more of the story. Since 1983, when the Kentucky Supreme Court began requiring four votes (rather than three) to grant discretionary review, only 15 percent of nearly 17,000 motions for discretionary review have been granted.5 In the three years since the most recent change on the Court, 18 percent of over 1,600 motions for discretionary review have been granted. Although the decision to grant review involves far more than assessment of whether the Court agrees with the Court of Appeals decision in question, reversal statistically is more likely than is affirmance after review has been granted. Still, the statistical chance of procuring discretionary review and ultimately prevailing is approximately 10 percent.

Over the years, some justices in opinions and in publications or seminars have offered their individual opinions regarding their concepts of “special reasons.” The best evidence of the Court’s collective consideration, however, comes from reviewing which motions have been granted. In that regard, an indication concerning current trends may be gleaned from reviewing the regularly updated synopses of pending granted motions on the Supreme Court’s website at www.kycourts.net, under the “Discretionary Review” resource heading.

Highlights Concerning Contents of Motions and Responses

CR 76.20(2)(b) requires the filing of a motion for discretionary review within 30 days after a final Court of Appeals decision. If a timely petition for rehearing of an opinion or motion for reconsideration of a final order (or opinion and order) has been filed in the Court of Appeals, the 30-day period runs from the disposition of such a petition or motion. CR 76.20(2)(c) mandates dismissal of an untimely motion for discretionary review. Extensions of time requested prior to expiration of the pertinent period are not precluded.

With regard to the contents of the motion, many motions continue to contain narratives not complying with the CR 76.20(3)(d) requirement of a “clear and concise statement of (i) the material facts, (ii) the questions of law involved, and (iii) the specific reason or reasons why the judgment should be reviewed.” Such a statement should be included even for relatively short motions. As with all other considerations concerning
motions for discretionary review, case-by-case circumstances control. As a general rule, though, a page or two rarely will suffice to provide the Court with sufficient information regarding a request for review. Neither, however, should a movant feel compelled to write to the full extent of the CR 76.20(3) 15-page limit when five pages suffice to accomplish the task.

CR 76.20(4) specifies the minimum attachments to be appended to the motion. Although the decisions of the lower courts (including final post-decision rulings) and any administrative agency decisions are required, inclusion of a pertinent pretrial ruling or, for example, a particular contract or will at issue also should be considered. In that regard, although the Court can and does frequently request the record for review in considering whether to grant discretionary review, the record otherwise remains at the Court of Appeals unless the motion is granted. If a “not to be published” opinion rendered since 2003 is “cited for consideration” as permitted by CR 76.28(4)(c) when “there is no published opinion that would adequately address the issue,” a copy of the opinion must be included with the motion.

Although responses to motions for discretionary review are permissive rather than mandatory under CR 76.20(5), respondents always should take the opportunity to tell the Court concisely why review should not be granted under all the circumstances of the case. A one-sentence “no special reasons” response, though, is not helpful.

The Decision-Making Process

The Kentucky Supreme Court’s decision-making process regarding motions for discretionary review has remained essentially unchanged from that documented in 1985 in the Kentucky Appellate Handbook published by the Kentucky Bar Foundation and Banks-Baldwin Publishing Company. Specifically, upon submission motions generally are assigned randomly to one of the Court’s several (currently four) central staff counsel for preparation of a written recommendation regarding disposition. Such recommendations are circulated, together with the motion and any response(s), for initial consideration by each justice individually prior to collective consideration by all seven justices during the next Court conference week. Each motion is called on the docket and discussed during conference to the extent that any justice desires to address any aspect of the case. A minimum of four votes are necessary in order to grant discretionary review. Similarly, four votes are necessary in order to modify the publication status of a Court of Appeals opinion upon denial of discretionary review.

What Happens After Review is Granted

If the motion is granted, unless the order indicates otherwise the case will proceed to briefing pursuant to CR 76.12 and subsequently to oral argument pursuant to CR 76.16 prior to assignment to a justice in the majority for preparation of a draft opinion. If, however, the Court is convinced that oral argument seems unnecessary in order to decide the case, the order granting discretionary review will indicate that briefing will proceed pursuant to CR 76.12 but that no oral argument will be scheduled. When a recent opinion of the Court potentially impacts a pending motion for discretionary review, the pending motion may be granted in an order summarily vacating and requiring reconsideration by the appropriate lower court.

Briefing time is suspended if the respondent files a CR 76.21 cross-motion. The respective time requirements for a cross-motion and cross-response are only 10 days. The standard for a cross-motion is not “special reasons” but a much more easily satisfied standard specified in CR 76.21(1) as “designating issues raised in the original appeal which are not included in the motion for discretionary review but which should be considered in reviewing the appeal in order to properly dispose of the case.” Although the 1986 adoption of CR 76.21 solved problems relating to whether parties needed to file “protective” motions for discretionary review which were frequent in the first decade after the passage of the Judicial Article creating an intermediate
In pertinent part, CR 76.20(1) provides as follows: “A motion for discretionary review by the Supreme Court of a decision of the Court of Appeals . . . shall be prosecuted as provided by this CR 76.20 and in accordance with the Rules generally applicable to other motions. Such review is a matter of judicial discretion and will be granted only when there are special reasons for it.”

4. Baldwin’s Kentucky Lawyer’s Handbook with Forms, 2011 Edition (Thomson Reuters). The author has updated “Appellate Practice” Chapters 9 and 10 of that publication, entitled “Pleadings and Practice in the Supreme Court,” since 1984. The quoted statement regarding “special reasons” has been included in that material since 1984.

5. From 1983 until the present, the percentage of motions for discretionary review granted has varied only several percentage points from the 15 percent average. This has been the case even though 30 justices have served on the Court in that time and even though the number of such motions filed has varied over the years from less than 500 to over 900.

6. The Kentucky Appellate Handbook, updated with cumulative services in 1989 and 1993, was the precursor of the current Kentucky Practice, Appellate Practice, Volume 19, which also addresses the Kentucky Supreme Court’s deliberative process in Chapter 1:2.

7. The full time for briefing the previously granted discretionary review starts again upon entry of an order granting or denying the cross-motion. See CR 76.21(3).

8. If a cross-motion is granted, CR 76.21(4) provides that briefing pursuant to CR 76.12 is expanded to permit the cross-motion issues to be addressed in the combined appellee/cross-appellant’s brief, with the response to those issues being addressed in the combined cross-appellee/reply brief.

9. Although far fewer in number, CR 74.02 motions to transfer from the Court of Appeals and CR 76.37 motions for certification of questions of law also are matters within the Kentucky Supreme Court’s discretion, as are CR 65.09 injunction proceedings. The majority of opinions rendered by the Court, however, involve appeals as a matter of right in (1) RCr 12.02 appeals in criminal cases from judgments imposing sentences of death, life or 20 years or more, or (2) CR 76.36(7) appeals in cases filed as original actions in the Court of Appeals, including workers’ compensation cases and original actions in the nature of petitions for writs of prohibition or mandamus sought against circuit judges. In addition, the Kentucky Supreme Court has original jurisdiction over cases commenced in the Kentucky Bar Association and the Judicial Conduct Commission.

ENDNOTES

1. CR 76.20(2)(b) provides as follows: “A motion for discretionary review by the Supreme Court of a Court of Appeals decision shall be filed within 30 days after the date of the order or opinion sought to be reviewed unless (i) a timely petition under Rule 76.32 or (ii) a timely motion for reconsideration under Rule 76.38(2) has been filed or an extension of time has been granted for that purpose, in which event a motion for discretionary review shall be filed within 30 days after the date of the order denying the petition or motion for reconsideration or, if it was granted, within 30 days after the date of the opinion or order finally disposing of the case in the Court of Appeals.” CR 76.20(3)(b) also provides in pertinent part that a motion for discretionary review “shall contain . . . the date of final disposition by the Court of Appeals.”

2. In Freeman v. Commonwealth, 697 S.W.2d 133 (Ky. 1985) and Walker v. Commonwealth, 714 S.W.2d 155 (Ky. 1986), attorneys for movants were sanctioned for filing “frivo-

lous” motions for discretionary review. In Prater Creek Processing Company v. McClanahan, 741 S.W.2d 278 (Ky. 1987), the Court dismissed a motion for discretionary review requesting further review only of an order denying a motion not to publish a Court of Appeals opinion.

In pertinent part, CR 76.20(1) provides as follows: “A motion for discretionary review by the Supreme Court of a decision of the Court of Appeals . . . shall be prosecuted as provided by this CR 76.20 and in accordance with the Rules generally applicable to other motions. Such review is a matter of judicial discretion and will be granted only when there are special reasons for it.”

4. Baldwin’s Kentucky Lawyer’s Handbook with Forms, 2011 Edition (Thomson Reuters). The author has updated “Appellate Practice” Chapters 9 and 10 of that publication, entitled “Pleadings and Practice in the Supreme Court,” since 1984. The quoted statement regarding “special reasons” has been included in that material since 1984.

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“Penpoint” Citations

By Cher Eaves

In 1990 my first legal writing professor started the class with this play on words:

“When I say ‘pinpoint cite,’ I mean ‘penpoint cite.’ In a legal document, the recipient should be able to point her pen at the page you have cited.”

In legal writing today, I do not see much of that precision. As clerk for an administrative law judge, I read hundreds of briefs, motions and objections. As an attorney for 15 years, I wrote hundreds of them. I always cited a case or passage of evidence “bell, book and candle,” as I was taught. Other attorneys do not seem to cite with precision.

Certainly writing gets done more quickly when one cites generally to “Plaintiff’s deposition, May 5, 2010.” Without a page number, however, the writer comes across like the Mama in the Prego commercial – “It’s in there, it’s in there!”

Is it really? If the writer does not take the time to cite the page number, he might be remembering some words that were spoken off the record. If the writer does go to the trouble of finding the exact phraseology for a quote, for instance because the doctor said something just right, then the writer should go the extra baby step and indicate the page number. This lends authority and integrity to the work.

Pinpoint cites are actually required, but nobody enforces the rule. Instead, when they have time judges’ clerks page through tomes of evidence to find out whether the quote really is in there. When they do not have time, the quote sometimes gets ignored. The writer, not the clerk, is the claimant’s advocate. Precision is an important part of written advocacy.

Another important reason to use pinpoint citations is to avoid being wrong. “Being wrong” could be interpreted as lying to the tribunal. This is not a good career builder.

Suppose a judge receives a brief and decides to have a look at the cited passage. If His Honor cannot find the passage because the lawyer gave no page number, guess who will be seen as disingenuous, if not dishonest?

How does an attorney explain this passage to his client?

ENDNOTE

1. Kentucky Rules of Criminal Procedure

Cher Eaves has practiced law in Kentucky, Illinois and Wisconsin since graduating cum laude from John Marshall Law School in 1993. Bilingual in Spanish, Eaves also has a B.A. in political science and an M.S. in information science. Most recently she has enjoyed clerking for Honorable Larry F. Smith, former administrative law judge, who has been elevated to the Kentucky Board of Workers’ Claims. Eaves lives in Ohio County with her husband of 13 years. She volunteers at Hospice of Western Kentucky and Warm Blessings Soup Kitchen.

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Book Review:

Secrets of the Kentucky Supreme Court: A Memoir

Review by Jim Dady

The reader expecting a lurid expose’ of the private lives of his colleagues in Justice Donald Wintersheimer’s “Secrets of the Supreme Court” is going to be disappointed.

Instead, the book provides the retired justice’s “personal notes, reflections, and recollections,” profiles his colleagues, digests more than three decades of appellate court decisions, and gives valuable insights into the arts of judging and appellate advocacy.

The case commentaries fill 274 pages. All lawyers must find the law in the traditional way to support the legal positions they assert. But the commentaries in the justice’s clear, penetrating prose explain the court’s decisions in a way the opinions themselves cannot.

In his 24 years as a member, the Kentucky Supreme Court said what the law was on some of the fundamental questions in contemporary life, including:

- Upholding a municipality’s legal authority to enact a smoking ban;
- The abolition of the doctrine of contributory negligence;
- A substantial shift toward the defendant in the burden of proof in slip-and-fall cases;
- The upholding of the statute granting grandparental visitation rights;
- Acceptance of the legal concept of the right to die;
- Abolition of the heart-balm right of action;
- Recognition of the right of action for loss of parental consortium.

There can be no doubt about Justice Wintersheimer’s legal philosophy: conservative in criminal matters; open to a proper argument for holding big institutions responsible for harm caused to individuals.

Now that he has been retired for four years, let it be said plainly: Justice Wintersheimer was for law and order. Part of his bedrock philosophy was that in criminal matters courts of review should not substitute their judgment for that of the trier of fact.

He was never a trial judge, but he was loathe to overturn the results of trials in criminal cases, which make up two-thirds of the Supreme Court’s docket. Defendants are entitled to a fair trial, not a perfect trial. Most errors at trial are harmless. There is little affinity in Justice Wintersheimer’s opinions for the expansion of due process accorded the criminally accused since Miranda.

The old saw is that trial courts find truth, appellate courts error. In criminal cases Donald Wintersheimer found few of the latter.

Justice Wintersheimer’s Capitol chambers may have been regarded as a conservative’s redoubt, but his opinions show a solicitude for tort victims.

He wrote the majority opinion in Hoye v. Hoye, establishing in Kentucky the right of recovery for loss of parental consortium. It was a notable display of what many would call judicial activism.

“The loss of consortium is a judge-made common-law doctrine which this Court has the power and duty to modify and conform to the changing conditions of our society,” he wrote.

“When the common law is out of step with the times, this Court has the responsibility to change the law. Development of the common law is a judicial function and should not be confused with the expression of public policy by the legislature,” he continued.

“The doctrine of stare decisis does not commit us to the sanctification of ancient fallacy,” he wrote.

He took something close to the opposite position in dissenting from a 4-3 decision by which Kentucky adopted the Learned Intermediary Rule, an
exception to the rule of strict liability for manufacturers found in the Restatement of Torts 2d §§ 402(a). The majority thus adopted the position found in the Restatement of Torts 3d, Products Liability, 6(D) (duty to warn of possible side effects satisfied if adequate warning given to patient’s health care provider, subject to exceptions).

The Learned Intermediary doctrine is an exception to the Kentucky Product Liability statute, and qualifying a claimant’s rights under the Act should be a decision for the General Assembly, Justice Wintersheimer declared.

He lamented the “summary immunization” extended to drug manufacturers by the majority decision, and that measuring the adequacy of product warnings would become a question for the Court and not the jury.9

It is practically impossible to quantify who has written the most appellate opinions in the history of Kentucky jurisprudence, and he declines the honor, but if there were a contest, Justice Wintersheimer would be a favorite.

The book reflects his priestly zeal for the work. It reveals a veneration for judicial institutions and respect for the litigants who use them.

“Each particular case is important and entitled to dignity and respect. There is little or no room for humor or sarcasm on the part of the judicial officer,” he said in his recollections.

Appellate judges are mired in thousands of pages of briefs and trial transcripts, and Justice Wintersheimer describes the value of oral argument:

“It forces ... the justices ... and the lawyers ... to come together in the courtroom for an hour and argue the case.”

He is generous with his information and insights into the workings of the Supreme Court. Contrary to the impression that may have been created by a review of the book in the popular press, he is lengthily laudatory toward his colleagues and the advocates who came before the Court, including and perhaps especially those he felt compelled to rule against.

Justice Wintersheimer was raised in Campbell County and educated in Catholic schools there. He is a graduate of the University of Cincinnati College of Law. He was a private practitioner and Covington City Solicitor and has lived for many years in Covington in a pleasant modest neighborhood on a low knoll above the Licking River.

Justice Wintersheimer adamantly supports the election of judges, believing it essential to the preservation of judicial independence. In the book, he recalls his own electoral struggles, including two painful losses in judicial campaigns, election to the Court of Appeals over a gubernatorial appointee, and then his relatively narrow victory to keep his seat against a pair of well-known opponents in 1986, a contest still fresh in the memory of veteran Northern Kentucky lawyers.

His digest of the Supreme Court’s opinions during his years of service ends with these grace notes:

“As the reader may have already gathered, although there is some mystery surrounding the Kentucky Supreme Court, the real secret is that there is just a lot of hard work.”

Justice Wintersheimer’s long service, as recorded in the book case by case and year by year, was a great force for truth and justice in Kentucky.

Kentucky lawyers who practice appeals on a regular basis will ignore his book at their peril.

ENDNOTES
1. Lexington-Fayette County Food & Beverage Association v. Lexington-Fayette Urban County Government (Ky. 1995) 894 S.W.2d 624
2. Hilen v. Hayes (Ky. 1984) 673 S.W.2d 713;
4. King v. King (Ky. 1992) 828 S.W.2d 630;
5. DiGrella v. Elston (Ky. 1993) 858 S.W.2d 698;
6. Hoye v. Hoye (Ky. 1992) 824 S.W.2d. 422;
7. Giuliani v. Giuliani (Ky. 1997) 951 S.W.2d 318;
Kentucky Courts have embraced the Internet for research as well as for citation in their published opinions. Like many other states, Kentucky courts are citing to online sources without any real procedure in place to deal with the frequent disappearance of these sources. In this article we have studied citation to the Internet by Kentucky’s appellate courts and found that the problem of link rot is alive and well in the opinions of the Commonwealth’s judiciary. We examine the patterns of citation and the depth of link rot and offer a proposal for how the courts might deal with this problem with an eye towards preserving information for the future generations of Kentucky lawyers.

The citation to online sources by appellate courts is not a new phenomenon. There have been numerous studies of appellate court citations to Internet sources and the corresponding issue of link rot amongst these cited sources. The findings of our study show that Kentucky is not out of line with the practices found in other states, but this should provide small comfort for the legal community. The idea that a court could cite (possibly authoritatively) to material that will no longer be available to future researchers presents a problem when trying to ascertain the rationale behind a judge’s opinion.

How big is this problem in Kentucky? According to our study the courts cited to the Internet 123 times in 93 cases. As of June 2011 the URLs for only 52.8 percent (or 65) were still active and brought the researcher to the cited websites, leaving 47.2 percent (or 58) of the URLs as dead links. This is an alarmingly high number when one considers that the first Internet citation dates back to 2000, with some of the dead URLs dating back to only 2010.

The increased citation to Internet sources raises two issues for consideration; 1) dead links lead to a loss in the understanding of the underlying rationale for why a court decided a case in a particular manner, and 2) it raises the question of what a shift from traditional sources of authority to a more open source of authority will mean to legal research and reasoning in the Commonwealth. The second of these two issues is beyond the scope of this article, while the former is one that has a direct impact upon the way lawyers and judges use judicial opinions.

The ability to look at the authority relied upon by a court in coming to its decision underlies the system of Stare Decisis which forms the basis of the Common Law. Increased use of Internet citations in judicial opinions, especially ones that fall victim to link rot, may undermine this system and make it much more difficult for future lawyers and judges from determining exactly how to use a judicial opinion. By way of example, in Commonwealth v. Lopez, 292 S.W.3d 878 (Ky. 2009), the court in footnote 6 claims:

“Although that order is not in the record before us, it is available to the public in PDF form at: http://www.cemml.colostate.edu/cultural/09476/pdf/GeneralOrderGO-1A.pdf. Paragraph 2e of that order provides that the “[f]ilms, introduction, possession . . . or display of any pornographic or sexually explicit photograph, video tapes, movie, drawing, book, magazine, or similar representations” is prohibited.”

The Court directs readers to a document not in the record that no longer exists at the URL cited by the Court. While it is possible to find the document from other sources, it is also likely that the version retrieved at a later date will not be the same version relied upon by the Court in this case.

In Hardy v. Commonwealth, 2008 WL 466135 (Ky. App. 2008) the court in reviewing the facts of the case wrote:

“Hardy exhibiting signs of extreme nervousness-broken speech, repeated flatulence (a clinically recognized manifestation of distress), and a quivery voice.”

How does an attorney explain this passage to his client?

Footnote 1 informs the reader as follows: “A website (http://harvardatogo. demo.demo.staywellsolutionsonline.co/71, AZ-s0011) indicates that some people swallow a lot of air when they are nervous, and since that air needs an escape route, flatulence results.” Since this URL is currently dead, there is no way to determine what information was published there. Given that this evidence...
was amongst the evidence used to deny a motion to suppress the fruits of a strip search, it is possible than in the future, this passage can be used by courts as a basis for evidence that can support an officer’s search of a defendant. In effect this dead URL is resurrected in the jurisprudence of the Commonwealth without any real chance to understand what was actually published and relied upon by the Court.

“When . . . a court purportedly bases its understanding of the law or the law’s application to case facts upon a source that cannot subsequently be located or confirmed, the significance of the citation to that source becomes more ominous. If present readers of the opinion cannot determine how much persuasive weight was or should be accorded to the unavailable source, they have little reason to place much confidence in the opinion’s authoritativeness.”7 Either a judge’s opinion citing a dead-end source loses some of its authoritativeness or the system becomes one in which we no longer try to tease out a judge’s reasons for a decision.

If this train cannot be stopped, and the authors do not suggest that the train should be stopped, then guidelines should be put in place to ensure that online materials cited by the courts are somehow preserved for future generations.

One such solution to this problem is already being tested by the federal judiciary. The U.S. Supreme Court handles this issue by requiring the clerk’s or reporter’s office to maintain a hardcopy of any internet source cited in the opinion.8 This solution would allow future researchers access to an online source even if the website disappears.

The Judicial Conference of the United States has recognized that disappearing websites are a growing problem and has begun to address the issue as well.9 The Judicial Conference noted in a memorandum that “[j]udges are citing to and using Internet-based information in their opinions with increasing frequency. Unlike printed authority, Internet information is often not maintained at a permanent location, and a cited web page can be changed or deleted at any time.”10 The Judicial Conference urges chief judges to adopt the proposed guidelines11 as a way to preserve the cited internet sources within judicial opinions.

The Guidelines on Citing to, Capturing, and Maintaining Internet Resources in Judicial Opinions/Using Hyperlinks in Judicial Opinions suggest the following procedures be taken for preserving online authority cited in a judicial opinion: “[A]n Internet resource to be cited in an opinion is to be captured, . . . downloaded and preserved as closely as possible to the time it is viewed by chambers, to ensure that the exact version of the Internet resource that was relied upon by the judge will be preserved.”12 The Guidelines further suggest that the downloaded internet resource be placed together with the opinion on the court’s CM/ECF system (or state equivalent).13 These guidelines provide an “easy” system for ensuring future access to authority cited by the courts. As the charts above indicate this issue is not going away; rather, the citation to Internet sources continues to grow. If something is not done to preserve the information cited by judges, the current
system will, as one commentator has cautioned, do “a disservice to clients, and posterity, to create a body of precedent written on the wind.” 14

ENDNOTES

1. “Link rot” is the term used to describe the effect of a Uniform Resource Locator (URL), sometimes referred to as the “web address” of an internet site, that no longer works.


3. This does not include citations to legal databases such as Westlaw or LexisNexis.


6. Michael Whiteman provides a full discussion of this topic in The Death of Twentieth-Century Authority, 58 UCLA L. Rev. Disc. 27 (2010).


10. Id.

11. Id., at 3.

12. Id.

13. Id.


Michael Whiteman is the associate dean for Law Library Services and Information Technology, NKU Chase College of Law. Prof. Whiteman would like to thank Jeremy Enlow and Amanda Perkins for their assistance in compiling the statistics for this article.

Jennifer Frazier started at the State Law Library in 2003 and became the state law librarian in September 2006. She received her B.A. in history from Northern Kentucky University in 1998; her J.D. from the University of Louisville Louis D. Brandies School of Law and her Masters in library and information science from the University of Kentucky in 2007. She was admitted to the Kentucky Bar in October 2001. She is a commissioner on the Kentucky Access to Justice Commission; member of the American Association of Law Librarians; member of the South Eastern Chapter of the American Association of Law Librarians and member of the Kentucky Library Association.
### FEBRUARY 2012 KENTUCKY BAR APPLICANTS

Following is a list of applicants who have applied to take the February 28 & 29, 2012 Kentucky Bar Examination. If anyone has knowledge pertinent to determining the character and fitness of any of the applicants to become a member of the Kentucky Bar, please provide that information to:

Kentucky Office of Bar Admissions  
1510 Newtown Pike, Suite 156  
Lexington, KY 40511-1255  
Phone: (859) 246-2381  
Fax: (859) 246-2385  
E-mail: info@kyoba.org

**NOTE:** This list is current as of December 2, 2011. Any applications filed after this date will not be included in this list.

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Procrastination is an age-old concept that has existed as far back as Ancient Egypt and Ancient Greece. Today, procrastination is ubiquitous among students and within every profession. The problem of procrastination has affected lawyers to such an extent that the ABA considers it to be evidence of lack of diligence and therefore grounds for disciplinary action.

Besides fear of ABA sanctions, there are many good reasons for lawyers to be wary of procrastination. Lawyers communicate primarily through the written word – to each other, clients and judges. Last-minute written work can be stressful and can lead to poor results either because the work product has errors or because it ends up being untimely. Lawyers everywhere have heard of horror stories where a brief or a motion was rejected for being even one minute late.

Thankfully, there are a lot of practical tips that can help lawyers overcome their procrastinating habits. In fact, in the July 2011 issue of Bench & Bar, my colleague, Judith Fischer, gave some great advice for combating writer’s block. In this article, I would like to take her advice a step further and get at the root of writer’s block’s or any other kind of procrastination.

The root of procrastination, as noted in an excellent book, The Mind Gym: Give Me Time (Little Brown & Co. 2005), is the faulty thoughts that make us put off beginning a project, continuing it, or finishing it.

There are several different kinds of beliefs that can cause procrastination. Here are a few that are most commonly found in the legal profession:

1. Immunity from Failure – “I can’t mess this up.”

   This fear is probably the most common. Fear of failure makes people hesitant to begin a project because they fear the result will not be successful, they will have wasted their time and they will be embarrassed or criticized for their lack of success. Of course, if a project is never begun or is unfinished, it will certainly fail.

2. Perfection – “This must be perfect.”

   Perfectionist procrastinators take immunity from failure a step further. They put off work not just because they do not want to fail but because the project must be absolutely perfect. This kind of procrastination will most likely lead you to being unable to finish a project because, particularly with legal writing, you can always find something to change. At a certain point, you must be able to put the red pen down.

3. Certainty – “I need to know everything about this problem before I begin.”

   The quest for certainty makes people unable to start a task. For lawyers and legal writers, this kind of procrastination may entail spending far too much time researching and not enough time actually writing. Unfortunately, all the research in the world means nothing if the writing does not communicate your ideas effectively.

4. The Right Environment – “I can only do work when I’m under pressure/it’s the morning/it’s silent.”

   Everyone has preferences on where they work and when. However, requiring the “right” conditions can place an extremely heavy burden on a writer. You cannot always dictate your surroundings and the perfect environment, like the perfect project, is extremely rare. This kind of procrastination is particularly harmful for those who like to work “under pressure,” which requires that you put work off until doing it becomes extremely stressful.

Identifying what kind of procrastinator you are is only the first step. The next thing you must do is change these faulty beliefs that cause you to procrastinate. Next time you find yourself putting off a project, stop to consider what specific thoughts are causing you to delay. Next, take those thoughts, which will be quite rigid, and make them softer. Instead of saying “this must be perfect,” try saying “I would prefer this to be perfect.” The next step is to add a clause that allows you to escape your previously rigid demand. “This must be perfect” becomes “I would like this to be perfect…… but if it isn’t, that will be okay as long as I put in my best effort.” This isn’t to say that you should endeavor to submit slipshod work but, instead, allow your work to be only good or very good instead of perfect.

Procrastination can be a serious problem for lawyers but this bad habit can be broken. By getting at the roots of why you procrastinate, you can change the very thoughts that delay you. Now, stop stalling and get back to work.
RESOLUTION IN SUPPORT OF THE REPORT OF THE KBA TASK FORCE ON THE
PROVISION AND COMPENSATION OF CONFLICT COUNSEL FOR INDIGENTS

WHEREAS, the right to legal representation is at the foundation of our justice system and is a core value of the Kentucky Bar Association, and, further, that it is especially important to guarantee conflict-free, properly compensated counsel for all persons regardless of their economic or social condition in order for justice to be achieved;

WHEREAS, failure to provide effective assistance of counsel in compliance with the state and federal constitutions and applicable case law risks costly appeals and retrials due to unjust, unreliable verdicts and, worse, the wrongful conviction of innocent defendants and the consequent failure to apprehend and punish the actual perpetrators of crimes;

WHEREAS, Kentucky’s current system for providing counsel in conflict cases does not meet the minimum requirements of national professional standards, and it is in dire need of reform, as well as increased resources and financial support, so that competent, well-trained attorneys are available and have the ability and means to handle such cases;

WHEREAS, the quality of justice in our courts will suffer, and the needs and interests of judges, prosecutors, victims and the indigent accused will be jeopardized unless the present system for the provision and compensation of conflict counsel is addressed and improved; and

WHEREAS, the members of the Kentucky Bar Association have a significant professional responsibility to work to advance equal access to justice, especially for the poor, and the Findings and Recommendations of the KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents reflect necessary reforms and improvements that are in keeping with recognized standards, best practices and our professional responsibility as lawyers;

THEREFORE, NOW BE IT RESOLVED,
that the Board of Governors of the Kentucky Bar Association adopts and endorses the Findings and Recommendations of the KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents, and urges the Governor and General Assembly to review said findings and provide the resources necessary to implement said recommendations in order to improve the administration of justice in our courts, promote a properly functioning public defense system, and ensure justice for all.
Dated this 18th day of November, 2011.

[Signature]

MARGARET E. KEANE, PRESIDENT
KENTUCKY BAR ASSOCIATION
REPORT OF THE
KENTUCKY BAR ASSOCIATION
TASK FORCE ON THE PROVISION AND COMPENSATION OF CONFLICT COUNSEL FOR INDIGENTS

November 3, 2011

Members of the KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents:

JULIA H. ADAMS, Retired Judge, 25th JUDICIAL CIRCUIT
MICHAEL D. BOWLING, Former Chair, HOUSE JUDICIARY COMMITTEE
JERRY J. COX, Chair, KENTUCKY PUBLIC ADVOCACY COMMISSION
CHARLES E. (BUZZ) ENGLISH, JR., Past-President, KENTUCKY BAR ASSOCIATION
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KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents

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KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents

Introduction

On November 3, 2011, the membership of the KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents passed a Resolution adopting the following Statement, Findings and Recommendations to be disseminated to the public, the Governor and the Kentucky General Assembly for consideration and action.

The importance of conflict-free counsel

It is axiomatic that counsel provided to indigent defendants must be conflict-free and properly compensated in order for justice to be achieved.

The right to legal representation is a core value of the American and Kentucky Bar Associations. Each Association has the goal of promoting meaningful access to legal representation and to the American system of justice for all persons regardless of their economic or social condition. Providing full and effective legal representation to the indigent improves the system of justice in the United States, promotes standards of professionalism and enhances public perception and confidence in the courts and the quality of justice rendered by the court system.

Justice and public safety require the provision and compensation of counsel

Both justice and public safety are advanced by the provision and compensation of counsel for indigents. According to the decision in Bradshaw v. Ball, 487 S.W.2d 294 (1972), rendered by the highest court in Kentucky nearly forty years ago, attorneys cannot be appointed to represent indigent defendants without compensation under Kentucky's Constitution. It is the obligation of the state to provide counsel for indigents. In short, the state has the choice of “not prosecuting indigents or of providing compensation for appointed counsel.” Jones v. Commonwealth, 457 S.W.2d 627 (Ky. 1970). Failure to provide effective assistance of counsel in compliance with these decisions, and with the state and federal constitutions, risks costly appeals and retrials due to unjust, unreliable verdicts and, worse, the wrongful conviction of innocent defendants and consequent failure to apprehend and punish the actual perpetrators of crimes. Neither the interests of justice nor public safety are served in such circumstances.

Properly structured and funded plans for the provision of conflict counsel are critical

The minimum requirements of national standards oblige the Commonwealth to improve the current system for providing counsel for indigents in conflict cases and increase the resources necessary to retain the services of competent, well-trained attorneys to handle such cases.

The American Bar Association’s Ten Principles of a Public Defense Delivery System (2002) contain the most widely accepted and cited standards for the establishment and administration of public defense systems in the country. U.S. Attorney General Eric Holder termed the ABA’s ten principles the “basic building blocks” of a properly functioning public defense system.

Fixed-fee contracts have been determined to be ethically problematic, see American Ins. Ass’n v. KBA, 917 S.W.2d 568 (Ky. 1996), and they are inconsistent with ABA standards. The eighth of
the ABA Ten Principles states, “Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload [and] provide an overflow or funding mechanism for excess, unusual, or complex cases.”

The situation in Kentucky is inconsistent with these standards and in dire need of reform and increased resources and financial support. Unless the current system for the provision and compensation of conflict counsel is addressed and improved, the quality of justice in our courts will suffer, and the needs and interests of judges, prosecutors, victims and the indigent accused will be jeopardized.

Our responsibility to our system of justice
We have a significant professional responsibility to work to advance equal access to justice, especially for the poor:

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

SCR 3.130 Kentucky Rules of Professional Conduct, Preamble: A Lawyer’s Responsibilities, VII.

The overarching intent and purpose of the KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents is to improve the administration of justice in the courts of the Commonwealth of Kentucky. In that regard, it is especially important to guarantee that there is equal justice for the poor and that due process is ensured by competent, conflict-free counsel. The following Findings are the result of a comprehensive review of Kentucky’s current system for providing counsel to indigents in conflict cases, and our Recommendations reflect necessary reforms and improvements that are in keeping with recognized standards and best practices. It is hoped that the Task Force’s findings and recommendations will be reviewed, accepted, adopted and acted upon by the executive and legislative branches, and promptly implemented in the court system.
KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents

Findings

1. KRS Chapter 31 assigns the Department of Public Advocacy (DPA) and the Louisville-Jefferson County Public Defender Corporation responsibility for providing representation in all indigent defense cases.

2. The Kentucky Rules of Professional Conduct require DPA and the Louisville-Jefferson County Public Defender Corporation to provide conflict-free counsel to clients they are appointed to represent.

3. When a client has a waivable conflict, and then knowingly and voluntarily waives a conflict pursuant to RCr 8.30, DPA and the Louisville-Jefferson County Public Defender Corporation can ethically assign attorneys within the same office to represent multiple clients.

4. When a client does not waive a conflict pursuant to RCr 8.30, or when the conflict is not waivable, DPA and the Louisville-Jefferson County Public Defender Corporation must either contract with private counsel or represent the client from a separate work unit or adjoining office where there is independent supervision and an assurance of confidentiality.

5. Representing clients from a separate work unit or an adjoining office has the advantage of counsel having access to full-time support staff, including investigation; but the ongoing, unresolved ethical problem faced by DPA of more cases being handled by staff attorneys whose caseloads are already at a level above the ethical limit is real as indicated by an American Bar Association’s May 13, 2006 Formal Opinion 06-441, Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation, found at: http://www.abanet.org/cpr/06_441.pdf

6. In FY 11, Kentucky defenders handled 7,276 conflict cases with 3,563 contracted out to private conflict counsel at an average compensation per conflict case of $406, with 526 cases handled by an adjoining office and 3,187 handled internally with waivers.

7. DPA currently places the responsibility for seeking conflict contracts with the directing attorneys of field offices for the counties that office covers.

8. Absent an exemption from the KRS Chapter 45A personal services contract procedures, DPA is not able to timely meet its responsibility to respond to court appointments and its clients by complying with the bidding provisions KRS Chapter 45A.

9. Current total compensation for conflict cases statewide is approximately $1.4 million. That amount is likely to increase with corresponding increases in caseload and multiple defendant prosecutions; Louisville-Jefferson County went over budget last year.

10. The Department of Public Advocacy and the Louisville-Jefferson County Public Defender Corporation do not have sufficient funding or resources to properly compensate private contract counsel to provide conflict representation; nor do they have the capability of providing conflict-free counsel in all appointed cases as required by the Rules and applicable law.
KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents

Recommendations

A. Funding

1. The Kentucky public defender system cannot perform its necessary role and function in the criminal justice system without a significant increase in funding. The courts, the public, and defender clients cannot be properly served as required by applicable law and governing rules.

2. A cooperative relationship between defenders and private criminal defense attorneys should continue to ensure clients receive competent representation in conflict cases and to ensure that the courts render valid and reliable results in a timely and fair manner.

3. Sufficient funding must be provided to ensure DPA provides adequate compensation to allow attorneys the time and resources necessary to competently represent their contracted clients in capital and noncapital cases.

4. In contracting with private counsel to handle a conflict case, counsel must be compensated in an amount reasonably sufficient to provide incentive to render the "effective assistance of counsel" contemplated by the Sixth Amendment of the Constitution of the United States. "Reasonableness" is determined by the complexity of the case, the nature of the charges, the time spent in investigating, preparing and trying a case, the experience of the litigator, and other factors.

5. DPA should eliminate hard caps on conflict contracts.

6. Professional development should be a funded requirement of a contract with conflict counsel.

7. An additional $5.2 million per year should be provided to DPA to provide reasonable compensation without hard caps as follows (full description in Appendix):

<table>
<thead>
<tr>
<th>Case type</th>
<th>Hourly Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Cases</td>
<td>$125</td>
</tr>
<tr>
<td>A or B Felonies</td>
<td>$100</td>
</tr>
<tr>
<td>C Felonies</td>
<td>$100</td>
</tr>
<tr>
<td>D Felonies</td>
<td>$100</td>
</tr>
<tr>
<td>Misdemeanors</td>
<td>$75</td>
</tr>
<tr>
<td>Juvenile Cases</td>
<td>$75</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Case type</th>
<th>&quot;Soft&quot; Caps</th>
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<tr>
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<td>$50,000</td>
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<tr>
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<td>$10,000</td>
</tr>
<tr>
<td>B Felonies</td>
<td>$7,500</td>
</tr>
<tr>
<td>C Felonies</td>
<td>$5,000</td>
</tr>
<tr>
<td>D Felonies</td>
<td>$2,500</td>
</tr>
<tr>
<td>Misdemeanors</td>
<td>$1,000</td>
</tr>
<tr>
<td>Juvenile cases</td>
<td>$1,000</td>
</tr>
</tbody>
</table>

Mandatory training (at no cost to conflict counsel): $72,100
B. Structure and Statute

1. DPA should create a conflict contract division that has responsibility for:
   a) Seeking qualified local attorneys to enter into contracts for conflict case representation; and
   b) Ensuring the professional development and oversight of conflict counsel.

2. DPA conflict contracts should be statutorily exempt from the KRS Chapter 45A contract process because otherwise DPA cannot promptly provide counsel pursuant to court order as required.
DPA Conflict Counsel Proposal

Proposal: Replace the current system of mostly "flat-rate" contracts with a system that pays an hourly rate with a soft cap and that requires ongoing training for participating attorneys that is provided by DPA. Hourly rates and the soft caps will vary depending on the severity of the case, ranging from misdemeanors and juvenile cases to capital cases. Oversight and coordination of the system would be done by a Division-level Director to improve efficiency and consistency statewide. Funding to be provided to the Louisville Metro Public Defender's Office to implement the plan is included in the estimates below.

Non-Trial Cases

For purposes of this proposal, it is estimated that 95% of cases will end without going to a jury trial or extended litigation. For these cases, results of a survey of conflict attorneys were used to determine the average number of hours expected to be spent on a non-trial case. The results of the survey were consistent with caseload standards of the National Advisory Commission on Criminal Justice Standards (no defender should handle more than 400 misdemeanors, 150 felonies, or 200 juvenile cases in a year).

<table>
<thead>
<tr>
<th>Hours Rates</th>
<th>Hours Per Case</th>
<th>Cost/Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Cases</td>
<td>$125</td>
<td>166</td>
</tr>
<tr>
<td>A or B Felonies</td>
<td>$100</td>
<td>25</td>
</tr>
<tr>
<td>C Felonies</td>
<td>$100</td>
<td>15</td>
</tr>
<tr>
<td>D Felonies</td>
<td>$100</td>
<td>10</td>
</tr>
<tr>
<td>Misdemeanors</td>
<td>$75</td>
<td>5</td>
</tr>
<tr>
<td>Juvenile Cases</td>
<td>$75</td>
<td>6</td>
</tr>
</tbody>
</table>

Trial Cases

For the 5% of cases that are estimated to end in a jury trial or extended litigation, it is projected that the average cost will likely be the cap, with the number of cases approved to exceed the cap roughly equal to the number of cases where the total still falls short of the cap.

<table>
<thead>
<tr>
<th>&quot;Soft&quot; Caps</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Cases</td>
</tr>
<tr>
<td>A Felonies</td>
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<tr>
<td>B Felonies</td>
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<tr>
<td>C Felonies</td>
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<tr>
<th>&quot;Soft&quot; Caps</th>
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<tr>
<td>D Felonies</td>
</tr>
<tr>
<td>Misdemeanors</td>
</tr>
<tr>
<td>Juvenile Cases</td>
</tr>
</tbody>
</table>

Mandatory Training Provided at No Cost

Training would be required as part of a conflict contract and DPA would provide the training at no cost to the participating attorney. Listed below are seminars that are part of DPA's regular educational calendar along with the cost to DPA for providing the education. If an attorney participated in all 5 events, the cost would be more than $1500. There are approximately 150 conflict attorneys currently. The estimate is based on an assumption that all 150 attorneys attend the annual conference and one other educational event.

<table>
<thead>
<tr>
<th>Length</th>
<th>Costs/Atty</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Court</td>
<td>5 days</td>
</tr>
<tr>
<td>Circuit Court</td>
<td>5 days</td>
</tr>
<tr>
<td>Practice Institute</td>
<td>5 days</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Length</th>
<th>Costs/Atty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Conference</td>
<td>2 days</td>
</tr>
<tr>
<td>Death Penalty</td>
<td>3 days</td>
</tr>
</tbody>
</table>

Administration and Oversight of Program

Rather than continue a system where each local office negotiates separate conflict contracts, DPA would employ a division director to oversee and negotiate contracts within the system. In addition to improving consistency and efficiency, this would also avoid the possible appearance of conflict arising when the office that has the conflict chooses the conflict attorney and his compensation. The Louisville Metro Public Defender's office will establish a similar independent division within its office to handle conflicts cases and accomplish the same objectives.

Estimated Total Cost of Proposal: $6,704,925

Additional Funding Needed: $5,254,925
The Supreme Court of Kentucky

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

2012-01

The following rules’ amendments shall become effective March 1, 2012.

AMENDMENTS TO THE RULES OF THE SUPREME COURT

I. SCR 2.014 Legal education

New subsection (c) and (d) of section (2) and subsection (b) of section (3) of SCR 2.014 shall read:

(2)(c) In evaluating the education received the Board of Bar Examiners shall consider, but not be limited to, such factors as the admission of the applicant to the bar of another state or the District of Columbia, the similarity of the curriculum taken to that offered in law schools approved by the American Bar Association or by the Association of American Law Schools, and that the school at which the applicant’s legal education was received has been examined and approved by other state bar associations examining the legal qualifications of non-ABA law school graduates.

(d) The attorney meets all other requirements contained in the Rules of the Supreme Court of Kentucky pertaining to Admission of Persons to Practice Law.

(3)(b) In evaluating the education received the Board of Bar Examiners shall consider, but not be limited to, such factors as the admission of the applicant to the bar of another state or the District of Columbia, the similarity of the curriculum taken to that offered in law schools approved by the American Bar Association or by the Association of American Law Schools, that the school at which the applicant’s legal education was received has been examined and approved by other state bar associations examining the legal qualifications of foreign law school graduates, and the applicant’s proficiency in written and spoken English.

II. SCR 2.110 Admission without examination

New section (4) of SCR 2.110 shall read:

(4) Notwithstanding the requirements stated above, if the applicant has practiced five of the last seven years in a jurisdiction that permits the admission without examination of attorneys from Kentucky, the Character & Fitness Committee may approve admission without examination under the same provisions that allow admission of Kentucky attorneys.

III. SCR 2.120 Administration of Oath and Issuance of Certificate of Admission to Practice Law

SCR 2.120 shall read:

An applicant approved for admission under SCR 2.085, 2.110, 2.111 or 2.112 must apply for and be granted a certificate of admission prior to engaging in the practice of law in this state. As prerequisites for the issuance of such a certificate an applicant shall pay the current annual dues or fees of the Kentucky Bar Association authorized under SCR 3.040, pay a fee of fifty dollars ($50.00) to the Kentucky Office of Bar Admissions, and shall be administered the Constitutional Oath of Office either by a Justice of the Supreme Court or by the Clerk of the Supreme Court. Upon completion of the prerequisites, the Clerk shall deliver to the applicant a Certificate of Admission on a form approved by the Court, and the issuance of the certificate shall be duly recorded by the Clerk.

IV. SCR 2.300 Reinstatement of persons to practice law Scope and Purpose of Reinstatement Guidelines.

New subsections (b), (c), (d), (e) and (f) of section (1) of SCR 2.300 shall read:

(1) Initial Reinstatement Application Process:

(b) Any applicant for reinstatement who is a member of the bar in any other jurisdiction must provide, along with the application, a statement from the disciplinary authority of each jurisdiction listing any complaint or charge that has been filed against the applicant and its disposition. Reciprocal discipline, based on a Kentucky disciplinary order, shall also be disclosed.

(c) Any applicant who is permanently disbarred in another jurisdiction is not eligible to apply for reinstatement in Kentucky.

(d) Upon receipt of a complete application for reinstatement and payment of necessary fees by an applicant who has been suspended more than one hundred eighty (180) days (and in some cases where the suspension has been less than one hundred eighty (180) days) the Kentucky Bar Association will refer the application to the Kentucky Office of Bar Admissions, Character and Fitness Committee for investigation, for a hearing, if necessary, and for a formal recommendation regarding the disposition of the application in accordance with SCR 3.500, SCR 3.505, and SCR 3.510.

(e) Upon receipt of a Reinstatement Application from the Kentucky Bar Association, the Kentucky Office of Bar Admissions, Character and Fitness Committee will immediately send the applicant an Application for Admission to the Bar. The applicant must complete that form and return it to the Character and Fitness Committee with documentation specified in instructions accompanying the application.

(f) The submission of an incomplete application or the failure of an applicant to submit necessary documentation and/or fees will delay the Character and Fitness Committee’s ability to render a timely recommendation. Failure of an applicant to submit the application for admission to the Bar within thirty (30) days of the date a notice of deficiency is sent to the applicant by the Committee may result in an unfavorable recommendation.
**V. SCR 3.030 Membership, practice by nonmembers and classes of membership**

Section (2) of SCR 3.030 shall read:

(2) A person admitted to practice in another state, but not in this state, shall be permitted to practice a case in this state only if that attorney subjects himself or herself to the jurisdiction and rules of the Supreme Court of Kentucky, pays a one time per case fee of two hundred seventy dollars ($270.00) to the Kentucky Bar Association and engages a member of the association as co-counsel, whose presence shall be necessary at all trials and at other times when required by the court. No motion for permission to practice in any state court in this jurisdiction shall be granted without submission to the admitting court of a certification from the Kentucky Bar Association of receipt of this fee.

**VI. SCR 3.040 Dues: date of payment and amount**

Sections (1), (2) and new section (4) of SCR 3.040 shall read:

(1) On or before July 1 of each year every member of the Association, including every justice or judge of the Kentucky Court of Justice and United States judge in or who is appointed from or maintains a residence in Kentucky, except board-designated honorary members, shall be assessed dues for the ensuing twelve months. Dues shall be fixed by the Supreme Court on recommendation of the Board. Dues shall be paid to the treasurer on or before September 1 of each year.

(2) Any member of the association shall be relieved of the payment of dues for any fiscal year in which the member serves actively for a period of not less than six months in the armed services of the United States of America, other than as a career member of the armed forces.

(4) Any member of the bar 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 to 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).

**VII. SCR 3.050 Collection of dues; suspension for non-payment**

SCR 3.050 shall read:

If dues are not paid on or before September 1, then an additional late payment fee of fifty dollars ($50.00) shall be assessed. On or before September 15 of each year, the Treasurer shall notify a member in writing of his or her delinquency and late fee. On or before October 15 of each year, the Treasurer shall in writing certify to the Board the names of all members who remain delinquent. The Board shall cause the notice of delinquency and late fee to be sent to the member by certified mail, return receipt requested, at the member’s bar roster address. Such notice shall require the member to show cause within thirty (30) days from the date of the mailing why the member’s license should not be suspended for failure to pay dues and the late fee. In addition, such notice shall inform the member that if such dues and late fee, as well as costs in the amount of fifty ($50.00), are not paid within thirty (30) days, or unless good cause is shown within thirty (30) days that a suspension should not occur, the lawyer will be stricken from the membership roster as an active member of the KBA and suspended from the practice of law. At the conclusion of the thirty (30) days, unless the dues, late fees and additional costs payment have been received, or unless good cause has been shown as to why the member should not be suspended, the Board of Governors will vote to suspend any such member from the practice of law. A copy of the suspension notice shall be sent by the Director to the member, the Clerk of the Supreme Court of Kentucky, the Director of Membership, and the Circuit Clerk of the member’s roster address district for recording and indexing. The suspended member may apply for restoration to membership under the provisions of SCR 3.500. A member may appeal to the Supreme Court of Kentucky from such suspension within thirty (30) days of the date the suspension notice is recorded in the membership records. Such appeal shall include an affidavit showing good cause why the suspension should be revoked.

**VIII. SCR 3.130 (1.8) Comment 13: Conflict of interest: current clients; specific rules**

Comment 13: Aggregate Settlements

Comment (13) of SCR 3.130 (1.8) shall read:

(13) Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients’ informed consent. In addition, Rule 1.2(a) protects each client’s right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The Rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, as described herein.

A non-certified, non-class aggregate settlement is a settlement of the claims of two or more individual claimants in which the resolution of the claims is interdependent. The resolution of claims in a non-class aggregate settlement is interdependent if the defendant’s acceptance of the settlement is contingent upon the acceptance by a specified number or percentage of the claimants or specified dollar amount of claims; or the value of each claim is not based solely on individual case-by-case facts and negotiations. In such situations potential conflicts of interest stemming from interdependency exist, thus posing a risk of unfairness to individual claimants.

When the terms of an aggregate settlement do not determine individual amounts to be distributed to each client, detailed disclosures are required. For example, if a lump sum is offered in an aggregate settlement and the claimants’ attorney is involved in dividing the settlement sum, that attorney must disclose to each client the number of his or her clients participating, specifics of each client’s claim relevant to the settlement, and the method of dividing the lump sum. In addition, the attorney must disclose the total attorney fees and costs to be paid, payments to be made other than to clients, to their attorneys and for costs, the method by which the costs are to be apportioned among the clients and ultimately the amount each client receives.

By contrast, if the terms of the aggregate settlement establish the method of calculating and distributing payments to each claimant, based upon the individual claim for liability and/or damages, the disclosures to each client represented by the same attorney do not need to be as detailed. In that instance, each client should be generally informed of the terms of the aggregate settlement offer, how such terms apply specifically to such client, the fact that the attorney represents multiple clients in the settlement and, if applicable, any contingency in the settlement requiring a percentage of claimants to accept the settlement. The claimants’ attorney must also disclose fees and costs to each client (including how costs are apportioned among the joint clients) but attorney fees may be stated as a percentage of the total recovery as opposed to a specific dollar amount.
IX. SCR 3.130(1.19) Dissolution of law firm

New rule SCR 3.130(1.19) shall read:

Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account.

X. SCR 3.130(1.20) Sale of law practice

New rule SCR 3.130(1.20) shall read:

Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of client trust account records.

XI. SCR 3.130(5.5) Unauthorized practice of law; multijurisdictional practice of law

Subsection (1) of section (c) of SCR 3.130 (5.5) shall read:

(c)(1) comply with SCR 3.030(2), or they do not require compliance with SCR 3.030(2) due to federal statute, rule or regulation; or

XII. SCR 3.130(7.03) Attorneys’ Advertising Commission

Sections (4) and (5), sub-sections (a), (b), (c), (d) and (e) to section (6) and sections (7), (8) and new section (9) of SCR 3.130(7.03) shall read:

(4) The Board shall appoint a Chair from among the Commission members. The term shall be one (1) year; however, the Chair may serve more than one (1) term.

(5) The Commission shall be provided with sufficient administrative assistance from the Director as from time to time may be required.

(6) The Commission shall have general responsibilities for the implementation of this Rule. In discharging its responsibilities the Commission shall have authority to:

(a) Issue and promulgate regulations and such forms as may be necessary, subject to prior approval by the Board. Each member of the Association shall be given at least sixty (60) days advance notice of any proposed regulations and an opportunity to comment thereon. Notice may be given by publication in the journal of the Kentucky Bar Association.

(b) Report to the Board at its last meeting preceding the Annual Convention of the Association, and otherwise as required, on the status of advertising with such recommendations or forms as advisable.

(c) Delegate to an employee of the KBA designated by the Director of the Kentucky Bar Association the authority to review advertisements on its behalf.

(d) Review advertisements, issue advisory opinions concerning the compliance of an advertisement with the Advertising Rules and Advertising Regulations, conduct such proceedings or investigations as it deems necessary, or delegate this authority to a Commission member or a hearing officer who shall proceed in the name of the Commission.

(e) Seek out violations of the Advertising Rules and the Advertising Regulations, resolve the violations under Rule 7.06(4), or refer violations to the Inquiry Commission. Referral to the Inquiry Commission may be by any panel or by a majority of a quorum of the entire Commission.

(7) The Commission shall prepare a budget for the succeeding year and shall submit same to the Board of Governors for inclusion with the budget of the Association.

XIII. SCR 3.130(7.05) Filing of advertisements

Subsection (b) of section (1), section (2) and new section (4) of SCR 3.130(7.05) shall read:

(1)(b) If the advertisement contains only those items listed in SCR 3.130(7.05)(1)(a), or in AAC Regulation 2, the lawyer shall mail or deliver to the Commission, c/o the Director of the Kentucky Bar Association, three (3) copies of the advertisement, or electronically transmit the advertisement via facsimile or email in PDF (Portable Document Format) to the Attorneys’ Advertising Commission address attorneyadvertising@kybar.org. If the advertisement is to be published by broadcast media, including radio or television, a fair and accurate representation of the advertisement plus three (3) copies of a typed transcript of the words spoken shall be submitted. Any such advertisement is exempt from a fee for submission. Submission under this subsection shall occur no later than the publication of the advertisement.

(2) If the advertisement does not qualify under SCR 3.130(7.05)(1) for submission without a fee, the lawyer shall mail or deliver to the Commission, c/o the Director of the Kentucky Bar Association, three (3) copies of the advertisement. If the advertisement is to be published by broadcast media, including radio or television, a fair and accurate representation of the advertisement plus three (3) copies of a typed transcript of the words spoken shall be submitted. Website advertisements that do not qualify for submission without a fee must be submitted in electronic format on a data disc in PDF (Portable Document Format), or other such data storage media as the Commission may designate by regulation. Three (3) copies of the data disc should be mailed or delivered to the Commission, c/o the Director of the Kentucky Bar Association. A filing fee of seventy-five dollars ($75.00) for each advertisement filed under this subsection shall accompany each submission. Submission under this subsection shall occur no later than the publication of the advertisement. An additional administrative fee of one hundred dollars ($100.00) may be imposed for late submissions. Additionally, advertisements of more than 100 pages, or longer than 10 minutes of video or audio, will require a supplemental fee of one hundred dollars ($100.00). The same fees are required if an advisory opinion has been sought under SCR 3.130(7.06)(1).

(4) The lawyer shall retain a copy or recording of all advertisements utilized by the lawyer, as well as a record of when and where it was used, for two (2) years after its last dissemination. Electronic retention is permitted if in PDF format, or such other formats as the Commission may designate by regulation. In the event of the pendency of any disciplinary action before the Inquiry Commission, Board of Governors or Court, the lawyer shall continue to retain a copy until the termination of that proceeding.

XIV. SCR 3.130(7.09) Direct contact with potential clients

Subsections (a), (b) and new subsection (c) of section (1) of SCR 3.130(7.09) and the Supreme Court Commentary of SCR 3.130(7.09) shall read:

(1) No lawyer shall directly or through another person, by in person, live telephone, or real-time electronic means, initiate contact or solicit professional employment from a potential client unless:

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(a) the lawyer has an immediate family relationship with the potential client;

(b) the lawyer has a current attorney-client relationship with the potential client; or

(c) the lawyer is advocating a public interest issue and is not significantly motivated by the lawyer’s pecuniary gain.

This Rule shall not prohibit response to inquiries initiated by persons who may become potential clients at the time of any other incidental contact not designed or intended by the lawyer to solicit employment.

Supreme Court Commentary

(1) There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer’s presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

(2) Communications to prior clients are not prohibited if the lawyer is required by the circumstances of the representation to communicate with a prior client to advise the client of changes in the law that would result in additional legal work.

(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); Ohralik v. Ohio State Bar Ass’n, 436 U.S. 447 (1978); and NAACP v. Button, 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.

(4) SCR 3.130(7.09)(5) permits a lawyer to participate with an organization that uses personal contact to solicit members for its group or prepaid legal service plan, provided that personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (3) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and to use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but should be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must make reasonable efforts to determine that the plan sponsors are in compliance with the Rules.

(5) Neither this rule nor SCR 3.130(7.20) prohibits communications authorized by law, such as notice to members of a class in class action litigation.

 XV. SCR 3.130(8.3) Reporting professional misconduct

Section (f) of SCR 3.130(8.3) shall read:

(f) As provided in SCR 3.166(2), a lawyer prosecuting a case against any member of the Association to a plea of guilty, conviction by judge or jury or entry of judgment, should immediately notify Bar Counsel of such event.

XVI. SCR 3.166(2) Automatic suspension after conviction of a felony

Section (2) of SCR 3.166 shall read:

(2) The attorney prosecuting the case to a plea of guilty, conviction by judge or jury or entry of judgment, whichever occurs first, shall immediately notify Bar Counsel and the Clerk of the Supreme Court that such plea, finding or entry of judgment has been made.

XVII. SCR 3.180 Investigations and trials to be prompt; subpoena power

Section (3) and new section (4) of SCR 3.180 shall read:

(3) Upon application of Bar Counsel to the Inquiry Commission and after a hearing of which Respondent is given at least five (5) days’ notice, for good cause shown the Inquiry Commission may authorize the Director or the Disciplinary Clerk to issue a subpoena to a Respondent, or any other person or legal entity, to produce to Bar Counsel any evidence deemed by the Inquiry Commission to be material to the investigation of a complaint and to testify regarding such production. Such an application may be made in connection with complaints against more than one Respondent if the complaints are based on the same or a related set of facts. The person or entity so subpoenaed will not divulge, except to his/her own attorney, that such a subpoena has been served nor what evidence is sought or obtained. The Respondent may be present at the time the evidence or material is examined or obtained by Bar Counsel and will be furnished copies of all documents obtained, unless obtained from the Respondent.

(4) If any witness refuses to testify concerning any matter for which he or she may lawfully be interrogated, upon application of the Inquiry Commission to the Circuit Court of the county in which the witness resides, the Circuit Court may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the Circuit Court.

XVIII. SCR 3.181 Assistance to other lawyer disciplinary jurisdictions

New rule SCR 3.181 shall read:

(1) Upon receipt by the Director of a subpoena certified to be duly issued under the rules or laws of another lawyer disciplinary jurisdiction, or by a clients’ security fund of any jurisdiction, the Inquiry Commission may authorize the Director or Disciplinary Clerk to issue a subpoena directing a person domiciled or found within the Commonwealth of Kentucky to give testimony and/or produce documents or other things for use in the other lawyer disciplinary or clients’ security fund proceedings as directed in the subpoena of the other jurisdiction.

(2) The testimony or production shall be only in the county wherein the person resides or is employed, or as otherwise fixed by the Inquiry Commission for good cause shown, and shall be taken as provided in CR 28.01.

(3) Any attack on the validity of a subpoena issued by another jurisdiction may be heard and determined by the disciplinary authority of the other state in accordance with the law of the issuing jurisdiction.

(4) In addition to the relief available under the law of the requesting disciplinary jurisdiction or clients’ security fund, upon motion made by a party or by the person from whom appearance or production is sought, and for good cause shown, the Inquiry Commission may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (a) that the testimony or production
XXIII. SCR 3.365 Notice of appeal

Section (2) of SCR 3.365 shall read:

(2) The notice of appeal shall specify by name the appellant and the report appealed from.

XXIV. SCR 3.390 Notice to client of suspension or disbarment

SCR 3.390 shall read:

(a) Any order suspending a lawyer from the practice of law, other than an order of suspension under SCR 3.165 or 3.166, shall take effect on the tenth (10th) day following its entry unless otherwise provided within the order. The suspended lawyer shall promptly take all reasonable steps to protect the interests of the lawyer’s clients. A lawyer suspended from the practice of law shall not during the term of suspension accept new clients or collect unaearned fees, and shall comply with the provisions of SCR 3.130-7.50(5).

(b) Within ten (10) days after the issuance of an order of disbarment, or suspension under SCR 3.050 or SCR 3.669(4), or upon issuance of an order of suspension from the practice of law for more than sixty (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.

XXV. SCR 3.450 Recovery of Appropriate Costs

SCR 3.450 shall read:

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 costs, which shall include the expenses incurred by the Kentucky Bar Association in connection with the investigation and prosecution of the matter, including the expenses associated with the trial commissioner’s hearing.

Every final order of the Board or the Court which adjudges the Respondent guilty of unprofessional conduct shall provide for the recovery of appropriate costs. 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 ten (10) days thereafter, the Clerk shall notify the Director of the Association.

XXVI. SCR 3.500 Restoration to membership

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 3.661 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 five (5) years may apply for restoration by:

(a) Submitting an application for restoration using the forms provided by the Director, with a fee of three hundred fifty dollars ($350.00) and all applicable unpaid Bar Association dues; and
(b) Submitting with the application a certificate from the Office of Bar Counsel that the former member has no pending disciplinary matters; and

(c) Submitting with the application a certificate from the Director of Continuing Legal Education pursuant to SCR 3.675.

(d) Upon the filing of the foregoing items, the Office of Bar Counsel shall present the matter to the Board at its next meeting. Within thirty (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 two hundred fifty dollars ($250.00) 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) A former member whose withdrawal or suspension from membership has prevailed for five (5) years or longer may apply for restoration by:

(a) Submitting an application for restoration using the forms provided by the Director, with a fee of seven hundred fifty dollars ($750.00) and all applicable unpaid Bar Association dues; and

(b) Submitting with the application a certificate from the Office of Bar Counsel that the former member has no pending disciplinary matters; and

(c) Submitting with the application a certificate from the Director of Continuing Legal Education pursuant to SCR 3.675.

(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 five hundred dollars ($500.00) 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.

(e) If the Character and Fitness Committee recommends approval of the application and the Board concurs, the application shall be referred to the Board of Bar Examiners of the Kentucky Office of Bar Admissions. If the applicant fails the examination, the Board of Bar Examiners shall certify the fact of the failure to the Court and the record shall be transmitted to the Court for its consideration of the application for restoration to membership. Upon this certification, the Disciplinary Clerk shall transmit the record to the Court for its action and recommendation to the Court.

(f) If the Character and Fitness Committee recommends disapproval of the application, the matter shall be referred to the Board of Governors for its review. The Applicant and the KBA may file briefs and an oral argument may be held upon the request of either party. If, after its consideration, the Board concurs in the disapproval of the application, its findings and recommendation shall be filed with the Disciplinary Clerk, and the record shall be sent to the Clerk of the Supreme Court. Upon receipt of the record, the Clerk of the Supreme Court shall send notice of the filing by certified mail, return receipt requested, to the Applicant's bar roster address. Within twenty (20) days, the Applicant may petition the Court for review of the action of the Board. If the Court reverses the Board's disapproval of the application, it shall refer the matter to the Board of Bar Examiners for the procedure set forth above in paragraph 3(e).

(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 or corporate surety bond in the amount of two thousand five hundred dollars ($2500.00) to secure the costs to be incurred shall be paid to the Office of Bar Admissions by the Applicant.

(5) The burden of proof for establishing the Applicant's present qualifications to practice law in Kentucky is on the Applicant.

(6) If the Character and Fitness Committee or the Board of Governors recommends restoration of membership on conditions as provided in SCR 2.042, such conditions may be imposed by the Board, for application processed by it under subsection (2)(d) of this rule, or by the Court in any order of restoration.

XXVII. SCR 3.600 Continuing Legal Education Definitions

SCR 3.600 shall read:

As used in SCR 3.610-3.690, the following definitions shall apply unless the context clearly requires a different meaning:

"Approved activity" is a continuing legal education activity that has been approved for credit by the CLE Commission.

"Attorney Identification Number" is the five (5) digit number assigned to each member of the Association upon admission.

"Award" is the Continuing Legal Education Award.

"Commission" is the Continuing Legal Education Commission.

"Continuing legal education," or "CLE," is any legal educational activity or program which is designed to maintain or improve the professional competency of the practicing attorneys and is accredited by the Commission.

"Credit" is a unit for measuring continuing legal education activity.

"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.

"Ethics, professional responsibility and professionalism" is the category by which "ethics credits" shall be earned and includes, but is not limited to 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.

"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.

"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.
“Non-compliance” means not meeting continuing legal education requirements set forth in Rule 3.661 and Rule 3.652 and includes both lack of certification and lack of completion of activities prior to established time requirements.

“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.

XXVIII. SCR 3.620 Selection and tenure of the commission, filling vacancies on the commission

SCR 3.620 shall read:

The Court shall appoint all members of the Commission from a list consisting of three 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, three shall be appointed for one year, two for two years and two for three years. Thereafter, appointments shall be made for a three-year term. Members may be reappointed but no member shall serve more than two successive three-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.

XXIX. SCR 3.630 Commission member’s qualifications

SCR 3.630 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 two years immediately preceding the appointment.

XXX. SCR 3.635 Commission quorum

SCR 3.635 shall read:

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

XXXI. SCR 3.640 Commission staff

SCR 3.640 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.

XXXII. SCR 3.650 Commission duties

Sections (2), (6) and (7) of SCR 3.650 shall read:

(2) Conduct, sponsor, or otherwise provide high quality continuing legal education, specifically including, but not limited to, one (1) twelve and one-half (12.5) credit seminar in each Supreme Court District each year.

(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 recommend changes to these rules and regulations and their implementation.

XXXIII. SCR 3.651 Kentucky Law Update Seminars in Each Appellate District

SCR 3.651 shall read:

(1) Each educational year, the Commission shall conduct a twelve and one-half (12.5) credit continuing legal education seminar in each Supreme Court District. Subjects taught at each seminar shall include the latest Kentucky Supreme Court and Court of Appeals decisions, procedural rule changes, Federal Court decisions, legal ethics, professional responsibility and professionalism, Kentucky statutory changes and other subjects relating to improvements in basic legal skills. Each program shall include a minimum of two (2.0) credits for subjects specifically addressing legal ethics, professional responsibility and professionalism.

(2) Registration for the Kentucky Law Update seminars shall be free to all members in good standing of the Association.

(3) Members may attend Kentucky Law Update seminars in any location. The maximum credit that may be earned for attending any one Kentucky Law Update seminar is twelve (12.5) credits. However, if different tracks of programs are attended at different locations, additional credit may be approved by the Commission. Pursuant to Rule 3.664 (1) duplicate credits shall not be earned by attending the same program at a different location.

XXXIV. SCR 3.652 New Lawyer Program

SCR 3.652 shall read:

(1) At least twice each educational year, the Commission shall provide or cause to be provided a New Lawyer Program of not less than twelve and one-half (12.5) credits. The Commission may in its discretion, accredit a New Lawyer Program proposed by other CLE providers.

(2) 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.

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

(4) The Commission or other provider accredited under SCR 3.652(1) may charge a reasonable registration fee approved by the Court for the New Lawyer Program.

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

(6) Each individual attending the New Lawyer Program shall certify to the Director the completion of the Program on the attendance certificate provided for that purpose. Such certification shall be submitted to the Director upon completion of the program and in no case shall the certification be submitted later than thirty (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 3.666(1)(b), then said credits shall carry forward in accordance with SCR 3.661(5) and (6).
(7) Members required to complete the New Lawyer Program pursuant to paragraph (5) of this Rule may, upon written 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 five (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 twelve and one-half (12.5) credits, including two (2) ethics credits, offered by the state bar association of another jurisdiction and approved by the Director.

(8) The time for completion and certification set forth in paragraphs (5) 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 thirty (30) days after the member’s deadline to complete the Program as set forth in paragraph (5) 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 (5) 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 two hundred fifty dollars ($250.00) and complete the requirement set forth in paragraphs (5) and (6) at the next regularly scheduled New Lawyer Program.

(9) Failure to complete and certify attendance for the New Lawyer Program pursuant to paragraphs (5), (6), or (8) of this Rule shall be grounds for suspension from the practice of law in the Commonwealth or other sanctions as deemed appropriate by the Court. Ninety (90) days prior to the end of the twelve (12) month period all individuals not certifying completion of the New Lawyer Program pursuant to paragraphs (5), (6) or (8) shall be notified in writing that the program must be completed before the end of the twelve (12) month period, indicating the date. Names of all individuals not submitting certification of completion of the New Lawyer Program within the twelve (12) month period or not being granted an extension of time, pursuant to paragraph (8) of this Rule, shall be submitted to the Court by the Director, certifying the member’s failure to comply with the New Lawyer Program requirement. The Clerk shall docket the matter and the Court shall issue each such member a rule returnable within twenty (20) days thereafter to show cause why the member should not be suspended from the practice of law or otherwise sanctioned as deemed appropriate by the Court. The Commission shall be permitted to file a reply within ten (10) days following the filing of a response by a member. Unless good cause is shown by the return date of the rule, or within such additional time as may be allowed by the Court, an Order shall be entered suspending the respondent from the practice of law or imposing such other sanctions as may be deemed appropriate by the Court. An attested copy of the Order shall forthwith be delivered by the Clerk to the member, the Director, and in the case of suspension, to the Circuit Clerk of the district wherein the member resides for recording and indexing as required by Rule 3.480.

XXX. SCR 3.661 Continuing legal education requirements: compliance and certification

Sections (2), (3), (4), (5), (6) (7) and (8) of SCR 3.661 shall read:

(2) Certification of completion of approved CLE activities must be received by the Director no later than August 10th immediately following the educational year in which the activity is completed. Certification shall be submitted to the Director by the sponsor of the accredited activity or by individual attorneys. Sponsors submitting certifications to the Director shall comply with all requirements set forth in SCR 3.665(6).

(3) Programs or seminars or designated portions thereof devoted to legal ethics, professional responsibility or professionalism include but are not limited to 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.

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

(5) A member who accumulates an excess over the twelve and one-half (12.5) credit requirement may carry forward the excess credits into the two successive educational years for the purpose of satisfying the minimum requirement for those years. Carry-forward credits are limited to a total of twenty-five (25) credits. All excess credits above a total of twenty-five (25) credits will remain on the member’s records but may not be carried forward.

(6) Carry-forward credits shall be allowed to satisfy the two (2) credit annual requirement for continuing legal education addressing the topics of legal ethics, professional responsibility and professionalism, and may be carried forward into the two years immediately succeeding the year in which the hours were earned. Carry-forward credits for ethics, professional responsibility and professionalism are limited to a total of four (4) credits.

(7) Certification may be submitted by sponsors or by individuals on approved Association forms, uniform certificates, or any other format adopted by the Commission.

(8) Compliance and certification requirements concerning the New Lawyer Program are set forth at SCR 3.652(5) and (6).

XXXVI. SCR 3.662 Qualifying continuing legal education activity standards and credit limits

Subsections (b), (j), (k) and (l) of section (1), subsections (b), (c), and (h) of section (2), and subsections (a), (b), (c), and new (e) of section (3) of SCR 3.662 shall read:

(1)(b) The activity may be presented live or by technological transmission as defined in Rule 3.600. If presented by technological transmission, the transmission must be produced from an activity submitted and approved by the Commission pursuant to SCR 3.665. Activities including audio components must have high quality audio reproductions so that observers 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. If activities are presented by technological transmission and an attorney facilitator is available for purposes of answering questions and leading discussions, that activity is considered a live seminar.

(i) The activity may be presented live or by technological transmission as defined in Rule 3.600. If presented by technological transmission, the transmission must be produced from an activity submitted and approved by the Commission pursuant to SCR 3.665. 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. If activities are presented by technological transmission and an attorney facilitator is available for purposes of answering questions and leading discussions, that activity is considered a live seminar.

(k) In cases of in-house activity, as defined in SCR 3.600, such activities may be approved if all standards set forth herein for accreditation are met. A maximum of six (6.0) credits per educational year earned at in-house activities may be applied to meet the annual twelve and one-half (12.5) credit requirement. The following additional requirements must also be met for accreditation of in-house activities:
(i) At least half the instruction hours must be provided by qualified persons having no continuing relationship or employment with the sponsoring firm, department or agency. For technologically transmitted activities, the activities must meet all standards for qualifying continuing legal education activities as set forth in SCR 3.662 and must be included as part of the application as set forth at SCR 3.662(1)(k).

(ii) Members of the Court, the Commission or a Commission designee may attend or participate in any such program to observe compliance without payment of registration or other fees.

(l) In cases of law school classes attended by members, the member may receive continuing legal education credit provided the following requirements are met:

(i) The member registers for the class with the law school.

(ii) The member completes the course as required by the terms of registration, for credit or by audit.

(iii) Credit is calculated pursuant to Rule 3.663.

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

(b) In-house activities for which less than half the instruction is provided by qualified persons outside the firm, department or agency, and for which members of the Court, the Commission or Commission designee are prohibited from observing for compliance without charge of fees.

(c) Seminars or meetings sponsored by law firms or other organizations which are determined by the Commission to be in the nature of client development.

(h) Any activity completed prior to admission to practice in Kentucky except the program required pursuant to SCR 3.661(8) and 3.652(5).

(3)(a) Teaching or participating as a panel member or seminar leader in an approved activity. No credit may be earned for teaching or participating as a panel member or seminar leader for activities that do not meet standards set forth in Rule 3.662. A maximum of twelve and one-half (12.5) credits earned under this Rule per educational year may be applied to meet the annual minimum requirement.

(b) Researching, writing or editing material to be presented at an approved activity. No credit may be earned for researching, writing, or editing materials for activities that do not meet the standards set forth in Rule 3.662. A maximum of twelve and one-half (12.5) credits earned under this Rule per educational year may be applied to meet the annual minimum requirement.

(c) Publication of legal writing. A 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. A maximum of six (6.0) credits earned under this Rule per educational year may be applied to meet the annual minimum requirement.

(d) Public speaking. Upon application, 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 two (2.0) 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.

(e) Seminars designed for non-lawyer professionals 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 twelve and one-half (12.5) credit annual minimum requirement but may count toward continuing legal education award credits as determined by the Commission.

XXXVII. SCR 3.663 Calculation and reporting of continuing legal education credits: formulas and limits

(1) Members completing or participating in the course of study of an approved activity will be granted one (1) credit for each sixty (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. For activities involving technologically transmitted programming, actual instructional time may be deemed inappropriate for assigning credit hours. In such circumstances credits claimed will be limited by the total assigned by the Commission. The Commission’s assignment of credit hours for such activities will include consideration of the sponsor’s estimates of average completion time, volume of material, opportunities for interaction, duration of program and other factors as deemed appropriate. No additional credit is given for completing or participating in duplicate activities at different times or locations. Duplicate completion of or participation in any course of study of any accredited activity shall not result in duplicate continuing legal education credits awarded. Continuing legal education credit shall be claimed on forms provided by the Association, or any uniform certificate adopted by the Association, and shall be forwarded to the Director.

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

(a) One (1) credit for each two (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 twelve and one-half (12.5) credits per educational year.

(b) One (1) credit for each two (2) hours spent researching, writing or editing material presented by another member at an approved continuing legal education activity, up to a maximum of twelve and one-half (12.5) credits per educational year.

(5) Members may earn credits for publication of legal writing up to a maximum of six (6.0) credits per year. One (1) credit is granted for each two (2) hours of actual preparation time including research, writing, and editing. Any excess credits will be applied toward the award established in Rule 3.680. The Commission may grant up to twenty (20) credit hours for published legal writing toward the award, but may only grant up to six (6.0) credits to meet the annual minimum requirement. Applications for continuing legal education credit for a published legal writing shall be made on forms provided by the Association and shall be accompanied by a copy of the published legal writing for which credit is sought. Said application shall be forwarded to the Director.

(9) The Commission shall grant a maximum of two (2.0) credits to meet the annual minimum requirement for public speaking credit earned pursuant to SCR 3.662(3)(d).

XXXVIII. SCR 3.665 Procedure for accreditation of continuing legal education activities and obligations of sponsors

Sections (4) and subsections (d) and (e) of section (6) of SCR 3.665 shall read:

(4) Activity sponsors which apply for accreditation and receive approval prior to the activity may announce in advertising materials, “This activity has been approved by the Kentucky Bar Association Continuing Legal Education Commission for a maximum of XX.XX credits, including XX.XX ethics credits.” Sponsors who have made application
for accreditation of activities that have not yet been approved may announce in advertising materials, "Application for approval of this activity for a maximum of XXXX credits, including XX.XX ethics credits, is PENDING before the Kentucky Bar Association Continuing Legal Education Commission." Sponsors may not advertise accreditation if accreditation has not been granted by the Commission and notice of such accreditation received by the sponsor.

(6)(d) Provide to each Kentucky attorney completing an approved activity an Association approved credit reporting form and activity code. Credit reporting forms and activity numbers shall be made available to sponsors upon request from the Association for use at approved activities.

(e) Collect credit reporting forms from Kentucky attorneys and submit to the Commission all forms received within thirty (30) days of completion of the program. Failure to submit completed credit reporting forms within thirty (30) days of the activity shall be accompanied by a late filing fee from the sponsor of ten dollars ($10.00) per form or certificate. Submit all attendance forms or certificates for activities held during the month of June no later than July 10th, immediately following the end of the educational year on June 30th. For programs held during the month of June, programs held during the month of June provision of the rule supersedes the thirty (30) day submission period provided above. Failure to submit forms or certificates pursuant to this schedule will result in the sponsor's obligation to pay a late filing fee of ten dollars ($10.00) per form or certificate.

XXXIX. SCR 3.666 Exemptions and removal of exemptions

Subsection (b) of section (1) and subsections (b) and (c) of section (2) of SCR 3.666 shall read:

(1)(b) New lawyers who have been admitted less than one full educational year as of the June 30th deadline. Such members shall be subject to the provisions of SCR 3.652.

(2)(b) Members who practice law within the Commonwealth, but demonstrate that meeting the requirements of Rule 3.661 would work an undue hardship by reason of disability, sickness, or other clearly mitigating circumstances.

(c) Members required to complete the New Lawyer Program following procedures set forth in SCR 3.652(7).

XL. SCR 3.667 Extension of time requirements

Sections (1) and (2) of SCR 3.667 shall read:

(1) The time requirements associated with completion of continuing legal education and certification thereof, as set forth in Rule 3.661(1) and (6), 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 3.652(8).

(2) A member who fails to complete the requirements of Rule 3.661 for any educational year, and who cannot show hardship or other good cause clearly warranting relief, may submit a plan for making up his or her delinquency, provided that the Commission has not approved such a plan for the member for either of the two preceding educational years. The plan must be received by the Commission no later than the September 10th immediately following the end of the educational year for which the time extension is sought. The plan will be approved only if the member pays a filing fee of two hundred fifty dollars ($250.00) and the plan lists activities which would provide, by the September 10th immediately following the end of the educational year, the credit hours needed to make up the deficiency. Such plan shall be deemed accepted by the Commission unless within fifteen (15) days after receipt of the compliance plan and filing fee, the Commission notifies the applicant to the contrary.

XLI. SCR 3.668 Non-compliance, definition

SCR 3.668 shall read:

(1) Delinquency of Certification. Any certification of continuing legal education activity for an educational year (July 1-June 30) which is submitted after the August 10th immediately following the close of that educational year, shall be deemed past due and in non-compliance. All past due reports shall be accompanied by a late filing fee of fifty dollars ($50.00) per certificate or report to cover the administrative costs of recording credits to the prior year. All past due reports for completion of an activity in the immediately preceding educational year must be received by the Commission with the late fee of fifty dollars ($50.00) per certificate or report no later than the close of the current educational year (June 30). Past due reports shall be accepted only until the end of the educational year (June 30) immediately following the year during which the activity is completed. This deadline (June 30) will not apply in instances where the member or former member is in the process of requesting removal of an exemption per SCR 3.666(6) or attempting certification per SCR 3.675, but the late fee of fifty dollars ($50.00) per certificate or report shall be applied if the report is received after the August 10th reporting deadline described above.

(2) Delinquency of Credits. Failure to acquire a minimum of twelve and one-half (12.5) credits to meet the minimum continuing legal education requirements of Rule 3.661 and associated certification requirements shall be grounds for suspension by the Court from the practice of law.

XLII. SCR 3.669 Non-compliance: procedure and sanctions

SCR 3.669 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 Rule 3.661, nor applied for and satisfied the conditions of an extension under Rule 3.667 or exemption under Rule 3.666, 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 thirty (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 3.661. 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 fifty dollars ($50.00) payable to the Kentucky Bar Association.

(4) Unless good cause is shown by the return date of the rule, 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
XLV. SCR 3.680 Continuing Legal Education Award

New sections (a) and subsections (b) and (c) of section (3) of SCR 3.680 shall read:

(a) KYLAP may, with the approval of the Board, establish such non-profit tax exempt Foundations as are necessary for the purpose of carrying out its mission. This may include establishment of a Foundation to obtain donations in order to furnish financial assistance, in the form of loans, to enable members of the legal community to obtain treatment for their impairment. The Board will appoint the Directors of any such Foundation.

(b) The Commission may reveal information to appropriate law enforcement authorities or to the judge under investigation that it believes is reasonable necessary in order to protect the public or the administration of justice.

(c) On or before June 1 of the years in which regular elections are held, the Commission shall hold a special election to select candidates for the various commissions as specified in paragraph (c) of this rule. The Board shall immediately certify the names of its nominees to the director. On or before July 1 the director shall

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L. SCR 7.040 Nomination and election – special elections

Sections (1) and (2) of SCR 7.040 shall read:

(1) On or before ten (10) days after receipt of the notice to the director (hereinafter referred to as “Director’s notice”) of the need for a special election, to fill an unexpired term resulting from a vacancy in the bar representation on any commission, the board shall nominate the bar representative for each vacancy in the same manner as provided in Rule 7.030(2) and (3).

(2) On or before twenty (20) days after the director’s notice, the director shall cause to be published by appropriate means to each member residing in the circuit or jurisdiction concerned a list of candidates nominated by the board.

All sitting. All concur, except:

Justice Scott, would not adopt the amendments to SCR 3.050, SCR 3.130(1.19) or (1.20). Justice Cunningham and Justice Scott, would not adopt the amendments to SCR 3.130(7.09).

Justice Scott, concurring with the majority’s decision not to adopt amendments to SCR 3.150: Given this Court’s recent opinion which extends “full immunity” to persons or institutions filing frivolous or malicious bar complaints. Morgan & Pottinger, Attorneys, P.S.C. v. Botts, 348 S.W.3d 599 (Ky. 2011)—one of such complaints I suggest this Court just wisely caught and rejected—I cannot, at this time, vote for this amendment. Moreover, the amendment would necessarily do away with the penalty of a “private” reprimand in many instances, now rightly reserved for only the most minor of infractions. See Kentucky State Bar Ass’n v. Taylor, 482 S.W.2d 574, 577 (Ky. 1972) (“Publicity cuts both ways. Sometimes the desirability of having it is outweighed by the desirability of protection from it . . . . Usually it is the respondent . . . whose protection from it is sought in a disciplinary case, but quite often there are others whose protection is equally important.”). That being said, the current process, once concluded, fully discloses to the public by permanent publication the attorney’s name, all the charges, all the conduct underlying the same, as well as the penalty imposed in all cases except those where a respondent is found “not guilty” of the charges or the minor infractions found warrant only a private reprimand. Plainly, this Court is not an advocate of unbridled secrecy. For these reasons, I join the majority in voting “no” on this proposed amendment at this time.

Justice Abramson, joined by Chief Justice Minton and Justice Schroder, dissents from the majority’s decision not to adopt amendments to SCR 3.150 opening the lawyer disciplinary process to the public upon a finding of probable cause and the issuance and service of a charge. The public access amendment proposed by retired Circuit Judge John W. Potter is a much-needed change and would align Kentucky’s lawyer disciplinary process with that of 38 sister states, the Model Rules of the American Bar Association and the rules applicable to other professions in the Commonwealth of Kentucky. Missteps by lawyers, often inexperienced lawyers, that fall short of “serious misconduct” can still be addressed by informal resolution, warning letter or other measures identified in SCR 3.160, undermining any argument that minor violations would be unfairly publicized. Other states and other professions in Kentucky have balanced public access for more serious allegations with private discipline for minor infractions and the proposed amendment would allow that balance.

Justice Scott, would not adopt the amendments to SCR 3.180, the new rule SCR 3.181, or the amendments to SCR 3.500. Justice Abramson and Justice Venters, would adopt an amendment to increase the fee to five hundred ($500.00) dollars in SCR 3.510(1). Justice Cunningham, Justice Noble and Justice Scott, would adopt the amendments to SCR 3.662(3)(e) pertaining to Pro Bono Legal Services Credit. Justice Cunningham and Justice Scott, would not adopt the amendment to SCR 3.666(2)(b).

Justice Scott, would not adopt the amendments to SCR 3.669. Justice Scott, would adopt the amendments to SCR 4.300. Justice Scott, would not adopt the amendments to SCR 4.310(2) and (4).
Salmon P. Chase College of Law

By Wendy Lane
NKU Chase Advancement Coordinator

NKU Chase Opens Children’s Law Center Clinic

The Northern Kentucky University College of Law has established the NKU Chase Children’s Law Center Clinic through a partnership between the law school and the Children’s Law Center in Covington. The ribbon cutting ceremony was held on December 1.

“We are extremely pleased to partner with the Children’s Law Center to offer our students the opportunity to gain extensive experience while providing valuable services to clients who desperately need their help,” said Dennis Honabach, dean of Chase College of Law.

The clinic will be housed in the Lowell Schechter Student Learning Center, a newly-renovated and fully-equipped 3000-square-foot clinic space on the third floor of the Children’s Law Center. The clinic is the brainchild of Chase alumna Kim Brooks Tandy ’89, director of the Children’s Law Center, and Chase Professor Emeritus Lowell Schechter.

Chase Professor Amy Halbrook will direct the clinic. Professor Halbrook joined the law school this fall after completing clinical teaching fellowships in the Children and Family Justice Center at Northwestern University School of Law and the Loyola University Chicago Civitas ChildLaw Clinic. “I hope to empower Chase students to become compassionate, dedicated lawyers for children and youth,” says Halbrook.

Clinic students will receive specialized instruction and training in child and family law and advocacy, with a focus on abuse and neglect, family law, juvenile justice, education, professional responsibility, and advocacy techniques. Under close supervision, students will then provide high-quality legal representation to child clients in child protection, high-conflict custody, school, and other matters. In addition to their litigation duties, students may participate in research, policy development, and community education related to children’s issues.

“The intensive level of instruction and experiential learning these students will receive is a welcome addition to our student opportunities here,”’ Tandy noted. “We’re thrilled that Amy has joined our team and look forward to how the clinic will enhance our work.”

The clinic will equip the students with the knowledge and skills they will use throughout their professional careers, with a focus on the unique practical and ethical challenges related to representing children. In addition, it will respond to unmet legal needs and improve the quality of legal representation to children and teens.

“The relationship between Chase and the Children’s Law Center is key,” said Halbrook. “Kim Tandy and her staff attorneys provide the highest quality advocacy for children and youth. Clinic students will have training, support, supervision, and the benefit of the Children’s Law Center’s specialized knowledge as they step up in court for the first time.”

This fall, Professor Halbrook and three Chase students worked together to plan and develop every aspect of the clinic. The clinic will enroll eight students per semester and will begin accepting clients in January.

Professor Amy Halbrook and Director Kim Brooks Tandy.

University of Georgia School of Law, where he will be teaching contracts and commercial law beginning in the fall of 2012.

That same semester, the College of Law will be welcoming our second, as yet unknown, Visiting Assistant Professor. The two-year VAP program was designed, in large part, to enhance the reputation of the College by giving UK Law graduates an opportunity to gain valuable experience in law instruction, with the goal of teaching at top-level law schools. The UK Law faculty have recognized the high caliber of students that graduate from the College, and believe the VAP program will reap huge benefits both for the College, and for those top alumni who are interested in teaching careers. Because of this, UK Law graduates are especially encouraged to apply, though applications from all qualified candidates are welcome. Interested applicants should email Professor Gene Gaetke at ggaeke@uky.edu.

Professor Barnett is a 2005 summa cum laude and Order of the Coif graduate of the College of Law, and a summa cum laude and Phi Beta Kappa graduate of Centre College. During his time at UK Law, he has published two articles, “Avoiding Independent Agency Armageddon,” forthcoming in the Notre Dame Law Review, and “The Consumer Financial Protection Bureau’s Appointment with Trouble,” in the American University Law Review. The UK College of Law has benefitted greatly from Professor Barnett’s time here, both as a student and a Visiting Assistant Professor, and we wish Kent all the best in his career!
The University of Louisville’s 2011 Law Alumni Awards

The University of Louisville’s Brandeis School of Law is pleased to recognize the recipients of its 2011 alumni awards:

Creighton Mershon, Sr.
Lawrence Grauman Award

Creighton E. Mershon, Sr., is a 1963 graduate of Bellarmine University and received his J.D. from the University of Louisville’s Brandeis School of Law in 1968. He has been a member of the Kentucky bar since 1968 and remains a member of the Louisville Bar Association.

Mershon is the retired general counsel for Kentucky Operations/BellSouth Corporation. While in law school, he was the notes and associate editor for the Journal of Family Law. He is a former member of the Alumni Association Board of Directors, and he sits on the Law Alumni Council.

Mershon has served as a Peace Corps volunteer in Ciudad Bolivar, Venezuela; special assistant to Louisville mayor Frank W. Burke; a two-term member and three-term president of the Louisville Board of Aldermen; a member of the Kentucky Workers Compensation Board; a member and vice chair of the Louisville Waterfront Development Corporation; a member and two-term vice chair of the Transit Authority of River City Board; and a current member and vice chair of the Louisville Water Company Board.

Donald Vish
Distinguished Alumnus Award

Donald Vish is a member of the Kentucky and Florida bars, a life member of the American Law Institute, a life fellow of the District of Columbia chapter of the American Bar Foundation, and a member and past president of the Louisville Bar Foundation.

Mershon has served as a Peace Corps volunteer in Ciudad Bolivar, Venezuela; special assistant to Louisville mayor Frank W. Burke; a two-term member and three-term president of the Louisville Board of Aldermen; a member of the Kentucky Workers Compensation Board; a member and vice chair of the Louisville Waterfront Development Corporation; a member and two-term vice chair of the Transit Authority of River City Board; and a current member and vice chair of the Louisville Water Company Board.

Donald Vish
Distinguished Alumnus Award

Donald Vish is a member of the Kentucky and Florida bars, a life member of the American Law Institute, a life fellow of the District of Columbia chapter of the American Bar Foundation, and a member and past president of the Louisville Bar Foundation. He is a current member and past president of the Bellarmine University Board of Overseers. He also belongs to the Trinity High School Foundation, Olmsted Parks Conservancy, and the Louisville Committee on Foreign Relations.

Donald Vish
Distinguished Alumnus Award

Donald Vish is a member of the Kentucky and Florida bars, a life member of the American Law Institute, a life fellow of the District of Columbia chapter of the American Bar Foundation, and the Louisville Bar Foundations. He graduated in 1970 with honors from the Brandeis School of Law and in 1968 from Bellarmine University, where he is included among an honor roll of distinguished graduates.

John Tate
Distinguished Alumnus Award

John Tate is a member of Stites & Harbison PLLC.

After receiving his undergraduate degree from Wake Forest University in 1969, Tate earned an M.A. from the University of Louisville. He taught writing and literature courses in the old University College, and spent seven years working for an environmental protection agency. While working full time, he attended the Brandeis School of Law’s evening division, serving as articles...
editor for the *Journal of Family Law* and graduating *magna cum laude* in 1981.

Tate is a trial lawyer specializing in bet-the-company litigation and defending complex product liability claims. He has tried cases to jury verdicts in eight states and is a frequent author and speaker on trial practice topics. Elected in 1999 to be a Fellow of the American College of Trial Lawyers, Tate credits the talented mentors and inspirational leaders at Stites & Harbison for his legal successes. His community involvement includes the boards of Actors Theatre, Louisville Bar Foundation, American Lung Association, St. Francis Goshen, and Louisville Audubon Society.

Together with Phyllis McMurry, his wife of 43 years, Tate lives on a working farm in Shelby County and does his best as the hired hand. His son Adam is an architect in Phoenix, and daughter Emily is an actress in Chicago.

**Nancy Niederman**

*Distinguished Alumna Award*

Nancy S. Niederman is a senior executive at Twenty-First Century Fox Film Studios specializing in theatrical motion picture production. At Fox, she has served as the production attorney on numerous films including the international blockbuster *Avatar*, and the family favorites *Alvin and the Chipmunks I and II, Garfield I and II, and The Chronicles of Narnia: Voyage of the Dawn Treader*.

Niederman received her B.A. from the University of Kentucky in 1975 and graduated *magna cum laude* from the University of Louisville School of Law in 1980, where she was a member of the Brandeis Honor Society and Notes Editor on the *Journal of Family Law*. She began her career in the Beverly Hills entertainment firm of Kaplan, Livingston, Goodwin, Berkowitz, & Selvin. She then moved to Columbia Pictures, where she served as senior counsel in the motion picture division. In 1986, Niederman moved to MGM/UA where, as the senior vice president of Studio Legal Affairs, she oversaw the studio’s legal department and was in charge of all theatrical, television and video production legal matters. Motion pictures produced by MGM/UA during her tenure include *Rain Man, A Fish Called Wanda, Rocky IV and V, and Moonstruck*.

Niederman joined Twenty-First Century Fox in 1993. For 18 years she has overseen some of the studio’s biggest franchises. She is currently the legal executive in charge of *Avatar II and III, Alvin and the Chipmunks III, Diary of a Wimpy Kid 3*, and the upcoming Ridley Scott thriller *Prometheus*.

**Mary Jo Gleason**

*Distinguished Alumna Award*

Mary Jo Gleason is a 1996 graduate of the Louis D. Brandeis School of Law. Currently, she serves as a staff attorney for the Kentucky Court of Appeals. Gleason was a mediator for Just Solutions in Louisville and Oldham County District Court. She now serves on the Board of Just Solutions and works as a facilitator.

Gleason participates in many volunteer activities, including the Board of Family and Children’s Place. She is currently involved in a project with the law school and Central High School’s law magnet program. Gleason, law students, and volunteer lawyers work with the juniors in the program on legal advocacy both oral and written.

Formerly, Gleason was the director of the Samuel L. Greenbaum Public Service Program at the Brandeis School of Law. She coordinated and administered the public service program. During that time, she also served as the vice president of membership for the Women Lawyers Association of Jefferson County. Gleason was honored to receive the Women Lawyers Association Outstanding Member of the Year Award in 2005.

From 2002 to 2003, Gleason served as legal counsel to the Governor’s Office of Child Abuse and Domestic Violence Services, where she provided legal services and staffed committees of the Governor’s Council on Domestic Violence and Sexual Assault. She prepared a civil remedies manual for victims of domestic violence and sexual assault that is used to train attorneys about additional options and greater access for victims.

Gleason believes strongly in the power of public service and its importance in the legal profession. She is committed to the value that all people have worth and seeks to live a life that demonstrates this belief.

**Tori Murden McClure**

*Distinguished Alumna Award*

Tori Murden McClure is the president of Spalding University in Louisville which offers 27 degree programs at the bachelor, master, and doctoral level, to more than 2,000 students. From 2004 through 2009, she served as the vice president of external relations, enrollment management, and student affairs at Spalding University.

She holds a Bachelor of Arts from Smith College, a master of divinity from Harvard University, and her *juris doctor* from the University of Louisville’s Louis D. Brandeis School of Law. In 2005, she earned her master of fine arts in writing from Spalding University. Her non-fiction book, *A Pearl in the Storm*, was published by Harper-Collins in 2009.

A passionate world adventurer and humanitarian, McClure is best known as the first woman and first American to row solo across the Atlantic Ocean. She was also the first woman and first American to travel over land to the geographic South Pole. An avid mountaineer, McClure has climbed on several continents. She is a fully certified emergency medical technician in both urban and wilderness areas, and is
a graduate of the National Outdoor Leadership School (NOLS), where she currently serves as the chair of the board of trustees.

Karen Paulin
Recent Alumna Award

Karen M. Paulin is an attorney at Stites & Harbison, PLLC, where she has been a member of the firm’s labor and employment law services group since 2007. She also actively participates with the health care and business litigation service groups. Paulin represents employers and focuses her practice on all areas of employment law, including discrimination, harassment, wage and hour, FMLA, ADA, affirmative action, employment contracts, the prevention of workplace violence, employee handbooks, and training and development.

In law school, Paulin was an officer on the Moot Court and Professional Skills Board, a member of the Brandeis Law Journal (now the University of Louisville Law Review), and a member of the Brandeis American Inns of Court. She also served as the student representative on the Law School dean search committee. A strong believer in the value of the moot court program, Paulin and her husband continue to provide support for the law school’s ACTA National Trial Competition.

Prior to returning to graduate school to obtain her J.D. and M.B.A., Paulin had a career in human resources and earned her Senior Professional in Human Resources certification (SPHR) from the Human Resources Certification Institute. Most recently, she was the vice president of Human Resources at Metro United Way.

Paulin is an active community volunteer. Currently, she is president of the UofL Law Alumni Council, a member of the UofL Alumni Association Board of Directors, president of the GuardiaCare Services, Inc. Board of Directors, and a member of the Metro United Way Human Resources Committee.

Lowry Watkins, Jr.
Dean’s Service Award

Lowry Watkins, Jr. is a 1968 graduate of the College of Business at the University of Louisville. He is the grandson of William Marshall Bullitt, one of the most prominent alumni of the University of Louisville’s Brandeis School of Law. Watkins continues to be one of the Law School’s biggest supporters. Last year, Watkins pledged his largest gift to the Law School to date, an endowed Faculty Chair in Business Law in the name of his grandfather, William Marshall Bullitt, insurance attorney and solicitor general of the United States. Having been appointed solicitor general by President Howard Taft on June 28, 1912, Bullitt argued over 50 cases in front of the Supreme Court of the United States. During his service as solicitor general, Bullitt argued cases involving the maintenance of the Prohibition law during the First World War, enforcement of the Sherman Anti-Trust Act on cotton corners, and publicity laws and mail rates regarding newspapers and their circulation.

Watkins continues to be a generous supporter of the University of Louisville’s many academic programs, but maintains his deepest connection with the Law School. For that, and for the tremendous commitment that he has made in support of the Louis D. Brandeis School of Law at the University of Louisville, we forever will consider him one of our own.

Linda Sorenson Ewald
Excellence in Teaching Award

Professor Linda Sorenson Ewald graduated from the Brandeis School of Law and New York University. She served as a member of the law school faculty for 35 years and also served as associate dean for 17 of those years. For many years, she

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taught civil procedure to first-year students. More recently her teaching and research interests have focused on domestic relations and professional responsibility. Professor Ewald served on Jefferson County Public Defender Board, the Judicial Nominating Commission for Jefferson County and on the KBA Ethics 2000 Committee. She has been chair of the KBA Ethics Committee for the past 10 years and currently serves as co-chair of the ABA Death Penalty Assessment Team for Kentucky.

Professor Ewald has received a number of awards recognizing her service to the community and the profession, including the Kentucky Bar Association’s Justice Thomas Spain Continuing Legal Education Award, the University of Louisville Lifetime Faculty Service Award, the Jefferson County Women Lawyers’ Association Member of the Year Award, the Judge Benjamin F. Shobe Civility and Professionalism Award, and the KBA President’s Special Service Award.

Howard Fineman
2010 University of Louisville Alumni Fellow

Howard Fineman is editorial director of the AOL Huffington Post Media Group, the leadership team bringing the HuffPost’s unique blend of news, commentary and reader engagement to all AOL content sites and 250 million users worldwide. He continues to report and write on politics for the Huffington Post main site.

A long-time political reporter and commentator, Fineman serves as an analyst for NBC News and MSNBC. He is a regular on MSNBC’s “Hardball with Chris Matthews” and “Last Word with Lawrence O’Donnell.” He also appears on MSNBC’s “Rachel Maddow Show,” “Morning Joe,” NBC’s “Today Show” and the weekend NBC-syndicated “Chris Matthews Show.”

Fineman joined The Huffington Post in October 2010 after many years as a reporter, columnist, editor, and deputy Washington bureau chief at Newsweek Magazine. When HuffPost was acquired by AOL in March 2011, Fineman was named editorial director of the new media group by Huffington Post founder and editor-in-chief Arianna Huffington.

The author of scores of Newsweek cover stories and a Newsweek column called “Living Politics,” Fineman’s work also has appeared in The New York Times, The Washington Post, and The New Republic. He has interviewed every major presidential candidate since 1985 as well as business and entertainment leaders and has appeared on most major news and commentary shows.

His book, The Thirteen American Arguments, was published by Random House in 2008 and was a national best-seller. The paperback edition of the book, published in 2009, went to new printings in 2010 and is available in major bookstores or on Amazon.com. He is the winner of numerous awards, including the Alumni Award from his professional alma mater, the Columbia Journalism School; an American Bar Association “Silver Gavel” Award; and a New York Press Association “Headliner’s Award.” In addition, Fineman’s work helped Newsweek win three National Magazine Awards. In May 2011 he was awarded an honorary Doctorate in Humane Letters by Colgate University, his college alma mater.

A Phi Beta Kappa graduate of Colgate, Fineman earned an M.S. from Columbia and a J.D. degree from the University of Louisville during his years as a reporter with The Courier-Journal in Kentucky. He won a Watson Traveling Fellowship while at Colgate and a Pulitzer Traveling Fellowship at Columbia.

Fineman is married to Washington attorney Amy L. Nathan. They are the parents of two children, Meredith and Nicholas.

Before You Move...

Over 16,000 attorneys are licensed to practice in the state of Kentucky. It is vitally important that you keep the Kentucky Bar Association (KBA) informed of your correct mailing address. Pursuant to rule SCR 3.175, all KBA members must maintain a current address at which he or she may be communicated, as well as a physical address if your mailing address is a Post Office address. If you move, you must notify the Executive Director of the KBA within 30 days. All roster changes must be in writing and must include your 5-digit KBA member identification number. There are several ways to do this for your convenience.

VISIT our website at www.kybar.org to make ONLINE changes or to print an Address Change/Update Form

EMAIL the Executive Director via the Membership Department at kcobb@kybar.org

FAX the Address Change/Update Form obtained from our website or other written notification to: Executive Director/Membership Department (502) 564-3225

MAIL the Address Change/Update Form obtained from our website or other written notification to:
Kentucky Bar Association
Executive Director
514 W. Main St.
Frankfort, KY 40601-1812

* Announcements sent to the Bench & Bar’s Who, What, When & Where column or communication with other departments other than the Executive Director do not comply with the rule and do not constitute a formal roster change with the KBA.
SUMMARY OF MINUTES
KBA BOARD OF GOVERNORS
MEETING
SEPTEMBER 16-17, 2011

The Board of Governors met on Friday and Saturday, September 16-17, 2011. Officers and Bar Governors in attendance were, President M. Keane; President-Elect D. Myers; Immediate Past President T. Rouse; Immediate Past President B. Davis; Young Lawyers Section Chair R. Rechter. Bar Governors absent were: A. Britton and S. Jaggers.

In Executive Session, the Board considered two (2) discipline cases and three (3) discipline default cases. Malcolm Bryant of Owensboro, Steve Langford of Louisville, Roger Rolfe of Covington and Dr. Robert Strode of Frankfort, 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:

- Heard a status report from the Member Services Committee, Office of Bar Counsel, Rules Committee,
- Legislative Committee and Task Force on Dues Structure Evaluation.
- Authorized the KBA Probate & Trust Law Section of the Legislation Committee to communicate the legislation to the Legislature on the following seven (7) proposed legislations: amendments to KRS 386.454, Kentucky Decanting Statute, KRS 386.502, amendments to KRS 386.810 and 395.195, amendments to KRS 381.180 and proposal to grant specific authority in the District Court to create a self-settled special needs “Pay Back” Trust.
- Approved authorizing the Task Force on Mentor Program to move forward with the development of an on-line mentoring program.
- Young Lawyers Section Chair Rebekkah Rechter reported that there had been a Federally Declared Disaster in several Western Kentucky counties as a result of tornadoes and the YLS had some activity there with the YLS Disaster Legal Services. She also reported that the section will have a full day of free CLE programming in October at the University of Louisville for recent graduates with a panel for alternative legal careers and how to pursue non-traditional careers with a law degree. Ms. Rechter reported that the section has contracted with a web based email provider that will allow the YLS to create a full graphic, full color newsletter that now will be going out to the YLS members twice a month.
- Director of Accounting/Membership

KY LAP TO OFFER NEW MEETING

The Kentucky Lawyer Assistance Program (KY LAP) is pleased to announce that a new Lawyers in Recovery meeting began on Jan. 26, 2012, in Louisville. The meeting will be held weekly, on Thursday mornings at 7:30 a.m., for one hour, at Dish on Market, 434 West Market Street, Louisville in a private setting. (Formerly the Delta Bar & Lounge).

Coffee, pastries, and a full breakfast will be available for purchase beginning at 7 a.m. The meeting will begin at 7:30 a.m., and is 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. For additional information, please visit our website at www.kylap.org, call us at 502-564-3795, ext. 266, or e-mail us at abeitz@kylap.org.

KENTUCKY BAR NEWS

Michele Pogrotsky presented the financial report.
- Adopted a proposed media protocol for Board members.
- Approved adding the employee salary listing to the KBA website.
- Approved the appointment of a Task Force on Conflict Counsel for Indigent Criminal Defendants.
- President Keane reported that as she attends the KLU programs she is holding receptions for the local bar leaders in Bowling Green, Owensboro, Ashland, Gilbertsville, Prestonsburg and London.
- Approved the total reserve/surplus carry forward of 23 section funds for fiscal year ending on June 30, 2011.
- Approved the total reserve/surplus carry forward for computer funds for fiscal year ending on June 30, 2011 in the amount of $150,000.
- Approved the appointment of the Corporate House Counsel Section 2011-2012 Officers.
- Executive Director John Meyers reviewed the survey responses to the questions on the dues statement. 42 percent answering the ethnicity survey, the majority of which were Caucasian, 43 Hispanic and 154 Black/African American, that 6 percent responded as being Veterans. There were 1,500 names received in response to the Pro Bono inquiry.
- A copy of the CLE Commission Annual Report that is filed with the Supreme Court was distributed to the Board for their information and review.

To KBA Members

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

March 16-17, 2012
May 18-19, 2012

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.
The Louisville Bar Association presents the 2012 Attorney Bowl, which will take place Thursday, February 16, 2012, on 4th Street Live at the Sports and Social Club. Teams can bowl at 5, 6, and 7 p.m.

It is not too early to start gathering your team or fundraising! There will be prizes for the top individual fundraiser and the top single-team fundraiser in addition to several other prizes!

Please visit Bowlforkidssake.com to set up your online account to start fundraising!

Bowl for Kids’ Sake is a fundraiser benefiting Big Brothers/Big Sisters (check out www.bbbsky.com to learn more).

It’s not about bowling. It’s about kids. Bowl for Kids’ Sake is an easy and enjoyable way to make a positive difference. Everyone can get involved! If you care about kids and can spare a little time for fun, then Bowl for Kids’ Sake is right up your alley!

All participants will play one game of bowling, plus receive free appetizers and a commemorative T-shirt and various door prizes. Each bowler contributes a minimum of $85 in donations. Players with top pledges are also eligible to win additional prizes.

For more information please contact Kate Lindsay, director of Pro Bono/Public Service Programs at the Louisville Bar Association. Lindsay can be reached by phoning 502-292-6729 or by emailing klindsay@loubar.org.

Call for Entries - Deadline June 1, 2012

The Kentucky Bar Association invites and encourages students currently enrolled at the University of Kentucky College of Law, the University of Louisville Louis D. Brandeis School of Law, and the Northern Kentucky University Salmon P. Chase College of Law to enter the KBA Annual Student Writing Competition. This competition offers these Kentucky legal scholars the opportunity to earn recognition and a cash award. First, second, and third place awards will be given. Entries must be received by June 1, 2012.

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

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

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

*Also includes possible publication in the Bench & Bar.
Kentucky Drug Court Judge David A. Tapp, who serves Lincoln, Pulaski and Rockcastle counties, has been awarded with the prestigious National Association of Drug Court Professionals ‘All Rise’ award during a star-studded conference in Washington, DC.

The National Association of Drug Court Professionals (NADCP) Annual Training Conference is considered the world’s largest on substance abuse and the criminal justice system. This year’s event took place July 17-20 and brought nearly 4,000 state and federal justice leaders, celebrities, judges, prosecutors, defense attorneys, clinicians, police and probation officers, military veterans, business owners, Drug Court graduates and their family members to the nation’s capital.

Judge Tapp was recognized along with actors Martin Sheen, Matthew Perry and Harry Lennix during the closing ceremony of the conference on July 20. Judge Tapp was honored for his role in securing and conducting an interview with Congressman Hal Rogers (R-KY), Chairman of Appropriations in the U.S. House of Representatives, last December for NADCP’s All Rise Magazine. The interview was so successful that it was featured as the cover story of the quarterly.

Judge Tapp, who is a Circuit Court judge, has presided over Drug Court since 2005. Circuit Court Judge Jeffrey T. Burdette also serves as a Drug Court judge for Lincoln, Pulaski and Rockcastle counties. The judges volunteer their time to preside over Drug Court. This Drug Court, like the nearly 2,700 in existence nationwide, serves seriously drug-addicted individuals through intense treatment and supervision. Nationally, Drug Courts have been proven to significantly reduce drug abuse crime and recidivism while saving money.

LAW DAY 2012 PLANNING GUIDES AVAILABLE FOR DOWNLOAD NOW

Bar associations across the Commonwealth are invited to begin their preparations for the KBA’s Annual Law Day Awards Competition by downloading the free 2012 Law Day Planning Guide at www.lawday.org and accessing the link under “Ideas and Resources.” The 2012 Law Day theme, “No Courts, No Justice, No Freedom,” underscores the importance of the courts and their role in ensuring access to justice for all Americans. The planning guide is designed to assist bar associations in making their Law Day events successful, interesting and easy to accomplish.

The KBA Law Day Committee will award $300 to the first place winner in each of the three bar categories – small, medium and large bar associations. Representatives from the winning associations will be honored at the KBA Membership Luncheon to be held Friday, June 8, 2012, during KBA Annual Convention held this year at the Galt House in historic downtown Louisville. Additional materials regarding Law Day 2012 will be mailed to local bar associations in the weeks ahead. If you need additional information, please contact Shannon Roberts in the Communications Department at the Kentucky Bar Association at sroberts@kybar.org or (502) 564-3795, ext. 224.
The Law Firm of Goldberg Simpson is pleased to announce that Brant W. Sloan has joined the firm as an associate in the Workouts, Bankruptcy, Real Estate and General Litigation Groups. Sloan graduated from the University of Louisville Louis D. Brandeis School of Law, cum laude, in 2010. He graduated from Butler University with a Bachelor of Arts, cum laude, in 2007. Sloan is a member of the Louisville and Kentucky Bar Associations.

Fowler Measle & Bell PLLC is pleased to announce that Casey Cavanaugh Stansbury has become a member of the firm. Stansbury graduated from Louisiana State University in 1998 and received his Juris Doctor from Ohio Northern University in 2001. He is a member of the firm’s Litigation Group, and concentrates his practice on insurance defense, government and municipalities, product liability and construction.

Robert J. Reid is a partner in the Cincinnati office of Quintairos, Prieto, Wood & Boyer, P.A., with his practice mainly focused in the area of labor and employment law. Reid is certified by the Ohio State Bar Association as a specialist in Labor and Employment Law. He provides defense counsel to private and public employers in labor and employment issues, including discrimination and civil rights issues, breach of employment contracts, employment-at-will, OSHA matters, Sarbanes-Oxley matters, employment investigations and audits, wage and hour and other FLSA issues, collective bargaining negotiations, labor arbitration, and unfair labor practice issues under the National Labor Relations Act and corresponding state law. Reid received his Juris Doctor from the University of Cincinnati College of Law and a Bachelor of Arts summa cum laude from Xavier University in Cincinnati, Ohio. Reid is licensed to practice law in Ohio and the Commonwealth of Kentucky. Reid is also a member of the Labor and Employment Law Committees of both the Ohio State Bar and Cincinnati Bar Associations.

Spurgeon & Tinker, PSC, is pleased to announce that Jilliam M. Dove and Zachary M. Becker have joined the firm as associate attorneys. Dove attended Centre College for her undergraduate degree, graduating in 2008 with majors in Spanish and international studies. Dove earned her law degree from the University of Kentucky College of Law where she was the president of the Trial Advocacy Board, a legal intern at the University of Kentucky’s Legal Clinic, an officer for the Student Bar Association and a member of Phi Alpha Delta. Becker received his law degree from the University of Kentucky College of Law, where he was the president of the Moot Court Board, member of the Moot Court National Team and the Evan A. Evans Moot Court Team, officer of the Student Bar Association, as well as an editor for the Kentucky Journal of Equine, Agriculture and Natural Resources Law. Prior to law school, Becker graduated, cum laude, from Southern Methodist University with majors in music and medieval studies.

Seiller Waterman, LLC, is pleased to announce that Robert J. Packard has become an associate with the firm. Packard received his J.D. from the University of Louisville Louis D. Brandeis School of Law and is licensed to practice law in Kentucky, Colorado and Utah. Packard holds an LLM in taxation from the University of Denver. His practice includes estate planning and administration, corporate transactions, tax planning and IRS litigation.

Dinsmore is pleased to announce that William A. Blodgett, Jr., former senior vice president and deputy general counsel of Brown-Forman Corporation, has joined the firm. He will practice in the Labor & Employment, Litigation and Corporate Departments of the firm’s Louisville office. Prior to joining Brown-Forman, Blodgett was a partner at Woodward, Hobson & Fulton, which combined with Dinsmore in 2009. Blodgett presently serves on the Boards of Directors of the Kentucky School of Art (chair) and the Kentucky Opera and is a member of the Board of Trustees of Spaulding University. He earned his J.D. from the University of Louisville Louis D. Brandeis School of Law and his B.A. from the University of North Carolina.

Wyatt, Tarrant & Combs, LLP, is pleased to announce Daniel C. Soldato has been named associate. Soldato is a member of the firm’s Health Care Service Team. He was formerly an associate at McGuireWoods LLP in Chicago. Soldato received a B.A. and a M.Ed. from the University of Notre Dame and a J.D., cum laude, from Northwestern University School of Law. Soldato focuses his practice on corporate services and regulatory matters for healthcare organizations. In this capacity,

Have an item for WHO, WHAT, WHEN & WHERE?

The Bench & Bar welcomes brief announcements about member placements, promotions, relocations and honors. Notices are printed at no cost and must be submitted in writing to: Managing Editor, Kentucky Bench & Bar, 514 West Main Street, Frankfort, KY 40601 or by email to sroberts@kybar.org. Digital photos must be a minimum of 300 dpi and two (2) inches tall from top of head to shoulders. There is a $10 fee per photograph appearing with announcements. Paid professional announcements are also available. Please make checks payable to the Kentucky Bar Association.
WHO, WHAT, WHEN & WHERE

he has assisted in negotiating operating agreements, asset purchase agreements, employment agreements and medical director agreements. He has advised clients regarding healthcare fraud and abuse laws, Medicare and Medicaid participation requirements, HIPAA, and various state healthcare laws and regulations. Soldato also assists clients in the development of corporate compliance programs.

The law firm of Schiller Osbourn Barnes & Maloney, PLLC, is pleased to announce that Deron M. Schulten has become associated with the firm. Schulten obtained his J.D. from the University of Louisville Louis D. Brandeis School of Law as a member of the evening division, and was admitted to practice in Kentucky in 2011. He joins the firm as an associate and will concentrate his practice in insurance defense, specifically including the areas of personal injury, products liability and insurance litigation.

Jefferson County Attorney Mike O’Connell has appointed the following as assistant county attorneys: John Carroll, Kristie Daugherty, Lonita Gaines, Justin Gooch, Mary C. Head, Justin Janes, and Blake Nolan.

Christopher L. Muzzo is a partner in the Cincinnati office of Quintairos, Prieto, Wood & Boyer, P.A. Muzzo represents clients before federal and state trial and appellate courts in Ohio and Kentucky in a wide variety of matters involving contracts, business torts, antitrust, negligence, professional and premises liability, non-compete and trade secret litigation, and complex litigation. Muzzo received his Juris Doctor, cum laude, from Northwestern University School of Law in Chicago and a Bachelor of Arts from Northwestern University. Muzzo is licensed to practice law in Ohio and the Commonwealth of Kentucky. His professional affiliations include the American, Ohio, and Cincinnati Bar Associations as well as the Cincinnati Academy of Leadership for Lawyers. His civic involvement includes the United Way Emerging Leaders Society, and he is also a tutor at Rothenberg Preparatory School.

Dinsmore is pleased to announce that Sunni Harris, Haley Trogdlen McCauley and Daniel O’Gara have joined the firm’s Kentucky offices. Sunni Harris joins the firm’s Labor & Employment Department. Prior to joining the firm, Harris worked for the Lexington-Fayette Urban County Government. She earned her J.D. from the University of Kentucky College of Law and her B.S. from Vanderbilt University. Haley Trogdlen McCauley joins the firm’s Litigation Department. Prior to joining the firm, McCauley completed a clerkship with Judge John M. Rogers of the United States Court of Appeals for the Sixth Circuit. She earned her J.D. from the University of Kentucky College of Law and her B.A. from Transylvania University. Daniel O’Gara joins the firm’s Litigation Department. Prior to joining the firm, O’Gara worked with Judge Ronald F. Bartkowitz and the Cook County Circuit Court. He earned his J.D. from Loyola University of Chicago and his B.A. from Miami University.

Ferreri & Fogle, PLLC, is pleased to announce the addition of five new associate attorneys to its Kentucky offices: Michael Kunjoo, Brittany MacGregor, Whitney Mobley, Sara Cowles and Doug Dawson. Kunjoo received both his Bachelor of Science and his J.D., from the University of Kentucky. He will be working out of the firm’s Lexington office in the practice area of workers’ compensation defense. MacGregor received her Bachelor of Arts in political science from Transylvania University and her J.D. from the University of Kentucky. She will be working out of the firm’s Lexington office in the practice area of workers’ compensation defense. Mobley received her bachelor’s degree of business administration in marketing and her J.D., both from the University of Kentucky. She will be working out of the firm’s Lexington office in the practice area of workers’ compensation defense. Cowles received her bachelor’s degree of business administration in finance and management and her J.D. from the University of Cincinnati. She will be working out of the firm’s Bowling Green office in the area of workers’ compensation defense. Dawson did his graduate studies in music at the University of Louisville and received his J.D. from the University of Louisville Louis D. Brandeis School of Law. He will be assisting out of Ferreri & Fogle’s Louisville office in the area of workers’ compensation defense and will be doing estate planning as well.

Landrum & Shouse LLP is pleased to announce that Bridget M. Bush has joined the firm as counsel in the Louisville office and will practice in the areas of commercial litigation and white collar criminal defense/internal investigations. She earned her J.D. from Harvard Law School and previously practiced in the Washington D.C. office of Debevoise & Plimpton. Bridget clerked for the Honorable Richard J. Cardamone, U.S. Court of Appeals for the Second Circuit.
The law firm of Schachter, Hendy & Johnson, PSC, is pleased to announce that Sarah N. Smith has joined the firm as an associate attorney. While in law school, she worked as a law clerk for the firm. Smith earned her J.D., summa cum laude, from the Northern Kentucky University Salmon P. Chase College of Law and her B.A., magna cum laude, from Ball State University. Her primary areas of practice at Schachter, Hendy & Johnson will include product liability, medical malpractice and personal injury.

Wyatt, Tarrant & Combs, LLP, is pleased to welcome Christopher Melton and Jennifer Wintergerst to its Health Care Service Team as counsel. Melton concentrates his practice in the area of health care law, with an emphasis in Medicaid and Medicare claims litigation, governmental investigations, long-term care investigations and defense, and white-collar criminal defense. Melton represents health care professionals and entities at all stages of investigation, prevention and litigation in administrative, civil and criminal matters. Wintergerst concentrates her practice in the areas of Medicare and Medicaid billing and compliance, governmental audits and investigations, RAC and MIC audits and appeals, false claims litigation, long-term care investigations and defense, and the development of compliance plans for physicians, hospitals and long term care facilities.

Alina Klimkina has joined Dinsmore as an associate in the Labor & Employment Department. She will practice in the firm’s Louisville office. Prior to joining the firm, Klimkina served as a law clerk to the Honorable Edward B. Atkins, United States Magistrate Judge for the Eastern District of Kentucky. She earned her J.D. from the University of Kentucky College of Law and her B.A. from Centre College.

Gwin Steinmetz & Baird is pleased to announce that Ashley Ryan Gaddis, Zachary T. Greer, and Marilyn O. Patterson have joined the firm as associates. Gaddis obtained her J.D. from the University of Kentucky College of Law. She will concentrate her practice in the areas of insurance defense in personal injury litigation, as well as insurance coverage and bad faith actions. Greer obtained his J.D. from the University of Kentucky, College of Law. He will concentrate his practice in the areas of trucking litigation and personal injury and tort defense. Patterson obtained her J.D. from the University of Louisville Louis D. Brandeis School of Law. She will concentrate her practice in the areas of healthcare/long-term care defense, trucking litigation and insurance defense.

Sittingler McGlincy & Theiler is pleased to announce that Willis S. Taylor has joined the firm as an associate attorney. He will concentrate his practice in the area of civil litigation. Taylor received his J.D. from the University of Louisville Louis D. Brandeis School of Law in 2011.
Mary E. Schaffner is a partner in the Louisville office of Quintairos, Prieto, Wood & Boyer, P.A. She represents employers in all aspects of workers’ compensation defense before administrative bodies and trial courts. Her practice also includes handling subrogation claims and insurance defense litigation. Since 1992, Schaffner has represented employers, carriers, self-insured companies and servicing agents in trials and in hearings before Administrative Law Judges. She regularly appears before the Workers’ Compensation Board, the Kentucky Court of Appeals, and Supreme Court of Kentucky. Schaffner received her Juris Doctor from the University of Louisville Louis D. Brandeis School of Law in 1992 and her Bachelor of Arts, from Centre College. Schaffner is a member of the Kentucky Bar Association.

The law firm of Stites & Harbison, PLLC, announced the addition of five new associates to the firm. Laura S. Crittenden is a member of the Business Litigation Service Group. She earned her J.D. from the University of Kentucky College of Law in 2008. During law school, Crittenden was a staff member of the Kentucky Law Journal. Prior to joining the firm, she was a law clerk to Judge Gregory F. Van Tatenhove, U.S. District Court, Eastern District of Kentucky. Nathan V. Simon is a member of the Construction Service Group. He graduated magna cum laude from the University of Alabama School of Law in 2011. In law school, he served as the managing editor of The Journal of the Legal Profession, competed in the national Duberstein Bankruptcy Moot Court Competition, and was a member of the

Katherine S. Lloyd, is pleased to announce that Katherine S. Lloyd has joined the Louisville firm in its creditors’ rights practice. Lloyd will concentrate primarily in commercial and consumer collection matters throughout Kentucky. Lloyd received her law degree from the University of Louisville Louis D. Brandeis School of Law in 2011, and follows in the footsteps of her father, grandfather and great-grandfather.

Sturgill, Turner, Barker & Moloney, PLLC, is pleased to announce that Stephanie M. Wurdock has joined the firm as an associate attorney. Wurdock’s practice will focus on health care litigation. Wurdock graduated in 2011 from the University of Kentucky College of Law, where she was the articles editor of the Kentucky Journal of Equine, Agriculture, and Natural Resources Law and a member of the Trial Advocacy Board. She earned a Bachelor of business administration degree from the University of Kentucky in 2008. Wurdock is a native of Louisville and a 2004 graduate of Ballard High School. Wurdock is a member of the Fayette County and Kentucky Bar Associations.

Fuloton & Devlin, LLC, is pleased to announce that Natalie Laszkowski has joined the firm. Laszkowski graduated from the University of Louisville with a Bachelor of Science degree in justice administration and a minor degree in communication. She graduated from the University of Louisville Louis D. Brandeis School of Law in 2010. Her practice is concentrated on workers’ compensation insurance defense.

Alan C. Stout has been appointed to the U.S. Bankruptcy bench in Louisville, filling the seat formerly held by Judge David T. Stosberg, who retired in October of 2011, and the late Honorable G. William Brown. Judge Stout was a practicing bankruptcy attorney in both Paducah and Marion, Ky., and has served as a Chapter 7 trustee. Judge Stout is a graduate of Murray State University and the Northern Kentucky University Salmon P. Chase College of Law. He was admitted to practice law in the State of Kentucky in 1981 and in Illinois in 1998. Judge Stout is admitted to practice in the U.S. Supreme Court; the U.S. Sixth Circuit Court of Appeals; and the U.S. District Courts for the Western and Eastern Districts of Kentucky. Judge Stout has previously served as president and on the Board of Directors of the National Association of Bankruptcy Trustees (NABT). Judge Stout is married to Doris Stout. They have three children and two grandchildren.

Strause Law Group is pleased to welcome attorney Emmie L. Schulte to our firm. Schulte received her J.D. from Thomas M. Cooley Law School and her B.A. from Texas Tech University. Schulte practices in family law/domestic relations, administrative law, appellate practice, general civil litigation, personal injury, contract law, securities

Bench & Bar Legal Honor Society. Simon joined Stites & Harbison after participating in the firm’s summer associate program in 2009. Brian M. Bennett is a member of the Creditors’ Rights & Bankruptcy Service Group. He earned his J.D., cum laude, from the University of Louisville Louis D. Brandeis School of Law in 2011. While attending law school, Bennett served as a notes editor of the University of Louisville Law Review, was vice president of administration of the Moot Court Board, and competed on the Brandeis School of Law National Trial Team. Bennett participated in Stites & Harbison’s summer associate program in 2009 and also clerked with the firm during his final semester of law school, spring 2011.

Lloyd & McDaniel, PLC, is pleased to announce that Stephanie M. Wurdock has joined the firm as an associate attorney. Wurdock’s practice will focus on health care litigation.

Natalie Laszkowski
arbitration, landlord/tenant law, health care law, and business transactions. Schulze clerked for Jefferson County Family Court Judge Dolly Berry before becoming an associate at Whonssettler & Johnson, PLLC. She is a member of the Kentucky and Louisville Bar Associations.

Nathaniel (“Nate”) R. Kissel is an associate in the Lexington office of Quintairos, Prieto, Wood & Boyer, P.A. Kissel focuses his practice on professional negligence defense. He also has substantial experience in the insolvency area, emphasizing bankruptcy, corporate restructuring, creditors’ rights, workouts and commercial litigation in several industries, including retail, health care, transportation, manufacturing, REITs, and financial institutions. Kissel represents financial institutions and other secured creditors in workouts and complex Chapter 11 reorganization cases. He also represents many interests in Chapter 7 liquidation cases, as well as individuals in both Chapter 7 and Chapter 13 proceedings. Kissel received his Juris Doctor from the University of Kentucky College of Law in 2009 and his Bachelor of Arts, cum laude, from Centre College in 2003. During law school, he served as Notes Editor for the Kentucky Law Journal. He also worked as a summer associate and as a law clerk for two Lexington law firms.

The Harrodsburg Law Office of David A. Taylor is pleased to announce that Whitney Zimmerman has joined his office. Zimmerman received her B.A. in political science from the University of Kentucky and her J.D. from the University of Kentucky College of Law, where she served as online editor for the Kentucky Law Journal. She will practice in the areas of domestic relations, criminal defense and civil litigation.

Kinkead & Stitz, PLLC, is pleased to announce that Tanya M. Richardson has joined the firm as an associate. Richardson focuses her practice in the areas of bankruptcy, creditors’ rights and commercial litigation. She also has experience in construction litigation, contract negotiation, and health care law. She received her B.A., summa cum laude, from Northern Kentucky University in 2007 and her J.D., cum laude, from the University of Illinois College of Law in 2010.

Arnett Law Office, PLLC, is pleased to announce Christopher M. Stearns has joined the firm as an associate attorney. Arnett Law Office represents clients in Union, Webster, Henderson, and Crittenden counties in Western Kentucky. Stearns is a 2010 graduate of the University of Kentucky College of Law and received an MBA from the University of Kentucky in 2003. From 2010-11 he served as a law clerk to the Hon. Squire N. Williams III in Frankfort. Stearns’ practice areas include domestic law, estate planning, and civil litigation.

Adams, Stepner, Woltermann & Dusing, PLLC, is pleased to announce that Andrew J. Vandiver and Edward L. Metzger III are now admitted to practice in the State of Indiana.

Andrew J. Vandiver concentrates his practice in the areas of bankruptcy, creditor’s rights law, construction law and commercial litigation. He routinely works with small to medium sized businesses with regard to facilitating and structuring secured transactions. Further, he is experienced in assisting clients with collecting accounts receivables and other commercial obligations.

Edward L. (Lee) Metzger III concentrates his practice in the areas of civil litigation, insurance law, school law, personal injury, and civil rights. In Metzger’s insurance law practice, he regularly defends individuals, business entities, and insurance companies pursuant to automobile and commercial general liability insurance policies. He also is experienced in representing individuals who have suffered personal injuries; he assists those who are unfamiliar with the litigation process, providing them with sound representation and peace of mind.

Reminger Co., LPA, elected attorney Emily Weaver Newman as a shareholder during their annual November shareholder meeting. Newman started her career with Reminger in the Toledo office and now practices in the Louisville office. She concentrates on the defense of clients in the areas of professional liability, employment practices liability, medical malpractice and nursing home negligence. She is a member of the American, Ohio, Michigan, Kentucky and Louisville Bar Associations.

The Zoppoth Law Firm in Louisville is pleased to announce that Amanda R. Walker has joined the firm as an associate attorney. Walker graduated from the University of Louisville in 2006, with a Bachelor’s degree in political science. She received her J.D. from Northern Kentucky University Salmon P. Chase College of Law in 2010. Walker will concentrate her practice in the area of labor and employment law.

Ian F. Koffler has been elected as a partner with Peck, Shaffer & Williams LLP, a national leader in public finance law. He has participated in government financings across the Commonwealth of Kentucky. He advises state agencies, universities, counties, cities, school districts and other special districts issuing tax-exempt traditional general bonds.
obligation financings as well as revenue-backed financings. Koffler is a member of the Kenton County Republican Party Executive Committee and is active in the Northern Kentucky Chamber of Commerce, a member of the Board of Directors of the Northern Kentucky/Greater Cincinnati chapter of the UK Alumni, and an elder at Lakeside Presbyterian Church. Koffler earned his bachelor’s degree in 1999 at the Jepson School of Leadership Studies at the University of Richmond, a master’s in public administration in 2001 from the University of Kentucky’s Martin School of Public Policy and Administration, and his law degree in 2004 from the University of Kentucky College of Law.

Casey Marie Keller joined Miller & Wells PLLC after practicing for nearly four years at the firm of Chaffin, Burnsed & Blackburn in Nashville. Keller practices primarily in the areas of corporate and commercial litigation, estate planning and probate administration, commercial finance transactions, and bankruptcy. She has extensive experience in the protection and enforcement of creditor rights and remedies in both state and federal courts, including judicial and nonjudicial foreclosures, domestication of foreign judgments, evictions, bank levy and garnishment proceedings, repossesion of collateral, attachment and recovery of personal property, and pursuit of claims against decedents’ estates. She graduated magna cum laude from the University of Kentucky with a B.A. in English in 2004 and earned her J.D from the University of Kentucky College of Law in 2007, where she was a member of the Moot Court Board. Keller is a member of both the Tennessee and Kentucky Bar Associations.

Wyatt, Tarrant & Combs, LLP, is pleased to welcome Peter Wayne to its Special Needs and Government Benefit Analysis practice. Wayne focuses his practice on the evaluation of applicable government benefits, special needs, and Medicare set-aside trusts as well as settlement planning. He also works with the Firm’s Health Care Service Team on issues relating to Medicare and Medicaid compliance. Prior to joining Wyatt, he was a settlement planning consultant as well as general counsel and compliance officer for FORGE Consulting, LLC. Wayne earned his undergraduate degree at Miami University (Ohio) and received his J.D. from Northern Kentucky University Salmon P. Chase College of Law. He was chair of the Young Lawyers Section of the Louisville Bar Association (LBA) in 2008-2010 and was recognized as Chair of the Year of the LBA in 2010. Wayne is active on the boards of the Louisville Bar Association, the Metropolitan Housing Coalition, the Main Street Association, and the Louisville Asset Building Coalition.

Fowler Mease & Bell PLLC is pleased to announce the following three attorneys have joined the firm:

C. Jane Harrison has joined the firm as of counsel. Harrison received her Bachelor of Arts from Vassar College, a Juris Doctor from the University of Arkansas in Little Rock, and an LL.M. in taxation from the University of Florida. Her portfolio includes patents, trademarks, copyrights, and corporate law. She worked for a global biotechnology company prior to joining Fowler.

Matthew C. Cocanougher has joined Fowler Measle & Bell PLLC as an associate. Cocanougher received his Bachelor of Arts from Centre College in English and his Juris Doctor in May, 2011 from the University of Kentucky College of Law. His primary areas of practice will be collections and litigation. Tia J. Combs

IN THE NEWS

Bingham Greenebaum Doll LLP is pleased to announce that Robert L. Brown, a member in the firm’s Louisville office, has been elected
chair of the World Trade Center Kentucky (WTC-KY). Brown previously served as Vice-Chair of the WTC-KY. The WTC-KY is an international business organization helping Kentucky companies with their export, import and overseas operations through consulting, trade missions and trade education. An affiliate of the World Trade Center’s Association in New York, WTC-KY’s network encompasses a global reach of over 300 World Trade Centers in 100 countries. Through its business partnership with the Kentucky Chamber of Commerce, Kentucky Cabinet for Economic Development and the U.S. Commercial Service, this global reach is expanded, providing its clients even greater access to resources for their international operations. Brown is a member of Greenebaum’s Corporate and Commercial Practice Group and is the executive member of the Lexington Business & Finance Service Group and the firm’s International Team Chair and China Team Chair.

Fowler Measle & Bell PLLC is pleased to announce Elizabeth S. Feamster, member, has been appointed to the Kentucky Board of Bar Examiners. She will serve as a member of the board for a three-year term.

The Kentucky Office of Bar Admissions is the agency responsible for the admissions of persons to the practice of law in the Commonwealth of Kentucky and the board was created by the Kentucky Supreme Court to administer the bar process through which persons seeking to become admitted may prove their eligibility. Feamster is a member in the firm’s Litigation Group with extensive experience in litigation and appellate work. Her practice focuses on bad faith, insurance coverage liability, malpractice defense, products liability, and nursing home defense. Her appellate experience includes cases heard before all courts in the Commonwealth of Kentucky, the United States District Courts for the Eastern and Western Districts of Kentucky, the Sixth Circuit Court of Appeals, and the United States Supreme Court.

Stites & Harbison, PLLC, announced that Ken Sagan has been elected as its new chair. Sagan will succeed Kennedy Helm III, who has served as the firm’s chair for 15 years and who will become chair-emeritus. Sagan assumed his new position of the 250-attorney firm following the firm’s annual meeting in January. Sagan is a business lawyer who has spent his entire legal career with Stites & Harbison beginning in 1983. He has practiced in both the Louisville and Lexington offices. Sagan has held a number of leadership positions within the firm as a member of the Management Committee, as chair of the Business & Finance Service Group and executive member of the Lexington Office, succeeding Steve Beshear.

Bingham Greenebaum Doll LLP is pleased to announce that Carolyn M. Brown has been named deputy chairperson of the firm’s Lexington office. Brown succeeds David A. Owen, who has managed the firm’s Lexington office for the past five years. Brown also serves as chair of the firm’s Environment, Energy & Natural Resources Practice Group. Her practice focuses on all areas of environmental law and includes advice and counseling on regulatory requirements, permitting and transactional issues as well as environmental litigation. Brown received her bachelor’s degree from the University of Kentucky and her law degree from the University of Kentucky College of Law.

Bingham Greenebaum Doll LLP is pleased to announce that Brian W. Chellgren has been elected to serve as co-chair of the Louisville Bar Association’s (LBA) Intellectual Property Section for the 2012 calendar year. Dr. Chellgren currently serves as the section’s chair-elect. With a membership of more than 3,400, the LBA is among the 40 largest local bars in the country and is the oldest continuously operating bar association in Kentucky. The mission of the LBA is to promote justice, professional excellence and respect for the law, improve public access to the judicial system, provide law-related services to the community and to serve its members. The LBA has 18 practice-focused sections, including the Intellectual Property Section. The section leadership hosts regular meetings and plans Continuing Legal Education programs for their members. He is a member of Greenebaum’s Intellectual Property Practice Group and a member of the Life Sciences and Health and Insurance teams. A registered patent attorney, he concentrates his practice in patent and trademark prosecution, both in the U.S. and internationally. Dr. Chellgren received his B.S. from Vanderbilt University, his Ph. D. from the University of Kentucky College of Medicine and his J.D. from the University of Kentucky College of Law.

Pomeroy, a leader in optimizing IT infrastructure, announced that Kristi Nelson, its general counsel and senior vice president of human resources, is a finalist for the Cincinnati USA Regional Chamber’s WE Celebrate “Woman of the Year – Corporate” award. The WE Celebrate awards honor women and women-owned businesses for their achievement, innovation, social responsibility and mentoring. As general counsel and senior vice president of human resources, Nelson is responsible for the overall management of Pomeroy’s legal affairs, human resources organization and its corporate facilities in North America. She is board chair of the Kentucky Higher Education Assistance Authority and the Kentucky Higher Education Student Loan Corporation. She serves on the board for the Northern Kentucky University Foundation and The Boone Conservancy. Nelson is also a member of Kindervelt, a volunteer auxiliary of Cincinnati Children’s Hospital Medical Center, and The Advocates, a fundraising group for the Northern Kentucky Children’s Advocacy Center.
pleased to announce that Bingham Greenebaum Doll LLP, is and Bankruptcy Courts in Kentucky.

years of experience before the Federal Measle & Bell PLLC and has over 30

Workout practice group for Fowler Bankruptcy, Financial Restructuring and

College of Law. McKinstry leads the

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sectors. The members meet regularly

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from government, legal and business

sctors. The members meet regularly

with the dean, faculty and students of

the college to discuss and provide guid-

ance to the University of Kentucky College of Law. McKinstry leads the

Bankruptcy, Financial Restructuring and Workout practice group for Fowler Measle & Bell PLLC and has over 30 years of experience before the Federal and Bankruptcy Courts in Kentucky.

Bingham Greenebaum Doll LLP is pleased to announce that Taft A. McKinstry, managing member, has been appointed to serve on the University of Kentucky College of Law Visiting Committee. The visiting committee includes active alumni from government, legal and business sectors. The members meet regularly with the dean, faculty and students of the college to discuss and provide guidance to the University of Kentucky College of Law. McKinstry leads the Bankruptcy, Financial Restructuring and Workout practice group for Fowler Measle & Bell PLLC and has over 30 years of experience before the Federal and Bankruptcy Courts in Kentucky.

O’Hara, Ruberg, Taylor, Sloan and Sergent are pleased to announce that partner Stephanie Dietz has been elected to the Board of Directors, and associate Jenna Scholl has been elected chair of the Young Lawyers Section of the Northern Kentucky Bar Association. Both Dietz and Scholl concentrate their practices in domestic relations.

Fowler Measle & Bell PLLC is pleased to announce that Taft A. McKinstry, managing member, has been appointed to serve on the University of Kentucky College of Law Visiting Committee. The visiting committee includes active alumni from government, legal and business sectors. The members meet regularly with the dean, faculty and students of the college to discuss and provide guidance to the University of Kentucky College of Law. McKinstry leads the Bankruptcy, Financial Restructuring and Workout practice group for Fowler Measle & Bell PLLC and has over 30 years of experience before the Federal and Bankruptcy Courts in Kentucky.

Bingham Greenebaum Doll LLP is pleased to announce that Michelle Browning Coughlin, an associate in the firm’s Louisville office, has been appointed to the Board of Directors for Maryhurst, a local non-profit organization that cares for abused and neglected children. Coughlin is a member of Greenebaum’s Intellectual Property Practice Group and the firm’s Life Science and Health and Insurance Teams. Coughlin, who has a biochemistry degree and a healthcare background, focuses in the life sciences area. Her practice includes intellectual property, technology and domain names. She also works in the areas of privacy, research funding, and research administration. Coughlin received her bachelor’s degree, magna cum laude, from Western Kentucky University, her Master of Social Work degree, honors graduate, from Spalding University and her law degree, magna cum laude, from the University of Louisville Louis D. Brandeis School of Law.

The Supreme Court of Kentucky has appointed Stites & Harbison attorney Beth Breetz to the Civil Rules Committee and as the chair of the Appellate Rules Subcommittee. During 2012, the Civil Rules Committee will focus on Appellate Rules. The Appellate Rules subcommittee is working on a complete overhaul of the appellate rules, including breaking them out of the Kentucky Rules of Civil Procedure to create stand-alone appellate rules. The Civil Rules Committee is comprised of 12-14 members, including judges, lawyers, and representatives from the circuit court clerk. Breetz is counsel to Stites & Harbison, PLLC, based in the Louisville office. She is a member of the firm’s Business Litigation Service Group and co-chair of the Appellate Advocacy Group. Her practice focuses on both federal and state appellate advocacy, complex commercial litigation, including financial institution, real estate, and trust and estate litigation. Breetz was the first chair of the Kentucky Bar Association’s Appellate Advocacy Section when that section was established by the Kentucky Supreme Court in 2007. She is a past chair of the Louisville Bar Association’s Appellate Section.

Beth Breetz

Lyndrup is chair of Greenebaum’s Corporate and Commercial Practice Group. She represents numerous publicly and privately held corporations in U.S. and international transactions. Lyndrup has over 25 years of experience working with manufacturing and service corporations in corporate and commercial matters. Lyndrup received her J.D., summa cum laude, from the University of Louisville Louis D. Brandeis School of Law, and was valedictorian of her class. She is also a past president of the Louisville Bar Association.

Jenna Scholl

Bingham Greenebaum Doll LLP is pleased to announce that Peggy B. Lyndrup, a member in the firm’s Louisville office, has been re-elected to the board of directors of TerraLex, a global legal network of independent law firms. Lyndrup has served on the TerraLex board since 2006. TerraLex has 160 member law firms in 100 countries and 45 U.S. states, and is one of the largest international legal networks. Lyndrup is chair of Greenebaum’s Corporate and Commercial Practice Group. She represents numerous publicly and privately held corporations in U.S. and international transactions. Lyndrup has over 25 years of experience working with manufacturing and service corporations in corporate and commercial matters. Lyndrup received her J.D., summa cum laude, from the University of Louisville Louis D. Brandeis School of Law, and was valedictorian of her class. She is also a past president of the Louisville Bar Association.

James H. Frazier, III, managing member of McBrayer, McGinnis, Leslie & Kirkland, PLLC, has been elected to the Commerce Lexington Inc. Board of Directors to serve a three-year term beginning in 2012.

Brady Dunnigan, a partner in Dinsmore’s Lexington office, was recently appointed to the Kentucky Applied Behavior Analyst Licensing Board by Gov. Steve L. Beshear. The Board is responsible for overseeing the licensure of mental health professionals seeking to practice Applied Behavioral Analysis, a method of therapy for people with developmental disabilities, most notably autism spectrum disorders. Dunnigan, whose twin sons are diagnosed autistic, will serve on the board for a three-year term. Dunnigan practices primarily in the areas of commercial lending and real estate, as well as general business law and mergers & acquisitions. He earned his J.D. from the University of
Louisville Louis D. Brandeis School of Law and his B.A. from the University of Kentucky.

Bingham Greenebaum Doll LLP is pleased to announce that Eric L. Ison, a member in the firm’s Louisville office, has been re-appointed chairman of the Kentucky Board of Bar Examiners by the Kentucky Supreme Court. One attorney from each of the state’s seven judicial districts is appointed to the board, which is responsible for administering the bar examination in Kentucky. Ison, who has served as a member of the board for 14 years, was named chairman in 2005. Ison concentrates his legal practice in commercial litigation, in state and federal courts, at the trial and appellate levels. He received his bachelor’s degree from the University of Louisville and his J.D. from Vanderbilt School of Law.

Mayor Jim Gray has appointed Morgan & Pottinger’s Scott White to the Lexington-Fayette County Health Department’s Board of Health. As a board member, White will help determine the long-range planning goals for the health department and that the board’s policies and goals are implemented. His term runs through June 30, 2012. White heads M&P’s Litigation Practice Group and the firm’s criminal law practice, which focuses on “white collar” crimes such as personal and business tax avoidance, fraud, complex conspiracies and RICO.

Ford & Harrison LLP, a national labor and employment law firm, is pleased to announce that The Central Florida Women’s Resource Center has presented their prestigious Summit Award to Orlando-based partner Kay L. Wolf. The award was presented on October 18 at the Orlando Museum of Art. Awards are given to women who have contributed to the Central Florida community by performing countless hours of community work for the good of all; having a history of diverse community service, and whose service goes beyond job related responsibilities. In addition, the award winner demonstrates leadership through community visibility, support of women’s issues, and acting as a role model (both professionally and socially). Wolf, board-certified by the Florida Bar as a specialist in labor and employment law, has practiced in the area since 1976. Her practice is devoted to providing management with the necessary tools to meet the challenges in today’s employment arena, through proactive legal advice, training, and litigating complex cases in both trial and appellate courts. Wolf is a certified mediator in Florida’s circuit courts and in the U.S. Middle District of Florida. She also serves as an arbitrator. She received her J.D. from University of Louisville Louis D. Brandeis School of Law in 1975.

Bingham Greenebaum Doll LLP is pleased to announce that Mark A. Loyd, a member in the firm’s Louisville office, has authored a chapter in Aspatore Books’ 2011 Edition of Inside the Minds: Strategies for Corporate Tax Planning. Loyd’s chapter is titled, “Throw Out the Mold When Discerning Effective State and Local Tax Strategies for Businesses.” The Inside the Minds series, by Aspatore Books, was conceived in order to give readers actual insights into the leading minds of top lawyers and business executives worldwide. Loyd is chair of Greenebaum’s State and Local Tax Team and is a member of the firm’s Tax and Finance Practice Group. His areas of practice concentration are state, local and federal tax controversy resolution, litigation and planning. Loyd received his bachelor’s degree from Bellarmine College, his MBA from the University of Louisville and his J.D. from the University of Louisville Louis D. Brandeis School of Law.

The firm’s phone number will remain (502) 515-2889.

Jessica L. Newman of Newman Law Office, PLLC, is pleased to announce the relocation of her office to 208 Main Street, Irvine, KY, 40336. Newman Law Office, PLLC focuses on bankruptcy, debtor-creditor litigation, domestic relations, real property litigation, estate planning and probate.

Jon R. Fritz is pleased to announce the opening of his new law firm, Fritz Law Firm PLLC. Located in Webster County, the firm is a full-service general law practice focusing on commercial litigation and business transactions. Prior to opening the firm, Fritz was a senior associate in the Litigation and Dispute Resolution Group at Clifford Chance LLP’s Washington, D.C. office. He also served as general counsel and head of Corporate Compliance Service for Driven, a northern Virginia based litigation support company, and vice president of Planning and Compliance for Renshaw Automotive Group’s dealerships in Bowling Green, Hopkinsville, and Paducah. Fritz earned his law degree from the University of Kentucky College of Law in 1998. He is licensed to practice before the United States Supreme Court, District of Columbia Court of Appeals, United States District Courts for the Eastern and Western Districts of Kentucky, and Kentucky Supreme Court. Fritz is a member of the Honorable Order of Kentucky Colonels and Kentucky Academy of Governor’s Scholars. His office is located at 260 State Route 109 S., Clay, KY., 42404, and he can be reached at (202) 251-5746 or jon.fritz@att.net.

U.S. Attorney David J. Hale would like to announce that the United States Attorney’s Office for the Western District of Kentucky has moved its Louisville office to 717 West Broadway, Louisville, KY., 40202 as of Jan. 17, 2012. The telephone number remains unchanged at (502) 582-5911.
Our deepest appreciation goes to these distinguished members of the Kentucky Bar for their financial support of the Foundation’s charitable efforts.
Catherine Rice Holderfield of Bowling Green currently serves as SVP & General Counsel for Citizens Union Bank of Shelbyville. A graduate of the University of Kentucky and Capital University Law School, she was admitted to the Kentucky Bar in 1979. Ms. Holderfield also currently serves as a member of the Kentucky IOLTA Fund Board of Trustees.

Brandon C. Jones practices law in London with the law firm of Hamm, Milby & Ridings. A graduate of the University of Kentucky and Capital University Law School, he was admitted to the Kentucky Bar in 2001. Mr. Jones is a Life Fellow.

Donald L. Jones practices law in Paintsville. A graduate of Union College and Northern Kentucky University Chase College of Law, he was admitted to the Kentucky Bar in 1983.

John F. Kelley, Jr. practices law in London with the law firm of Kelley, Brown & Breeding. A graduate of the University of Virginia and the University of Virginia School of Law, he was admitted to the Kentucky Bar in 1979.

Susan Coleman Lawson practices law in Pineville with the law firm of Lawson & Lawson. A graduate of the University of Kentucky and the University of Kentucky College of Law, she was admitted to the Kentucky Bar in 1979. Ms. Lawson currently serves on the Character & Fitness Committee of the Office of Bar Admissions, and is also a member of the Kentucky Bar Foundation Board of Directors. Ms. Lawson is a Life Fellow.

Jackie Madison Matheny, Jr. practices law in Paducah with the law firm of Denton & Keuler. A graduate of Murray State University and Ohio Northern University Pettit College of Law, he was admitted to the Kentucky Bar in 2008. Mr. Matheny is a Life Fellow.

Christopher D. Minix practices law in Bowling Green. A graduate of Western Kentucky University and Southern Illinois University School of Law, he was admitted to the Kentucky Bar in 2007.

Mark E. Nichols practices law in Lexington with the law firm of Wellman, Nichols & Smith. A graduate of Asbury College and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1988 and is also a member of the Tennessee Bar. Mr. Nichols is a Life Fellow.

Mary C. Noble of Lexington currently serves as Justice of the Kentucky Supreme Court representing the 5th Supreme Court District. In 2010, Chief Justice John Minton appointed her Deputy Chief Justice. She formerly served as Chief Judge of the Fayette Circuit Court. A graduate of Austin Peay State University and the University of Kentucky College of Law, Justice Noble was admitted to the Kentucky Bar in 1982.

Kim O'Donnell practices law in Lexington with the law firm of Stoll Keenon Ogden. A graduate of the University of Kentucky and the University of Kentucky College of Law, she was admitted to the Kentucky Bar in 2008.

Clayton O. Oswald practices law in London with the law firm of Taylor, Keller & Oswald. A graduate of Eastern Kentucky University and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 2004.

Brett A. Reynolds practices law in Bowling Green with the law firm of English, Lucas, Priest & Owsley. A graduate of Centre College of Kentucky and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1996. Mr. Reynolds is a Life Fellow.

Bruce M. Reynolds practices law in Lexington with the law firm of Stites & Harbison. A graduate of the University of Kentucky and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1971. Mr. Reynolds is a Life Fellow.

Don W. F. Rodgers of Louisville serves as an Assistant Public Advocate. A graduate of the University of the South and the University of Louisville Brandeis School of Law, he was admitted to the Kentucky Bar in 2009. Mr. Rodgers is a Life Fellow.

Kenneth R. Sagan practices law in Lexington with the law firm of Stites & Harbison. A graduate of the University of Kentucky and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1983.

Jonathan C. Shaw practices law in Paintsville with the law firm of Porter, Schmitt, Banks & Baldwin. A graduate of Morehead State University and the University of Louisville Brandeis School of Law, he was admitted to the Kentucky Bar in 1999. Mr. Shaw currently serves as a member of the Kentucky Bar Foundation Board of Directors.

Carson W. Smith practices law in Lexington with the Billings Law Firm. A graduate of the University of Kentucky and the University of Dayton School of Law, he was admitted to the Kentucky Bar in 2009.

Richard L. Walter practices law in Paducah with the law firm of Boehl, Stopher & Graves. A graduate of the University of Kentucky and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1980.

G. Davis Wilson practices law in Paris with the law firm of Overly & Johnson. A graduate of the University of Mississippi and the University of Louisville Brandeis School of Law, he was admitted to the Kentucky Bar in 2005.
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The KBA welcomes volunteers in support of its new Find a Mentor service through which new attorneys may connect with more experienced attorneys listed by practice area and location for in-person mentoring and support. The service is a part of the Great Place To Start (GPS) resource hub for new attorneys that will also include a Lawyer to Lawyer service that will allow new Kentucky attorneys to ask questions of more experienced “Attorney Advisors” via e-mail and/or telephone. The new services will be available only to bar members who register through the KBA and who have been licensed for less than five years.

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